



# Woollahra Local Planning Panel (Public Meeting)



## Agenda

Thursday 3 December 2020

1.00pm

Items D1 to D4

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.

People connecting to this meeting by conferencing technology are reminded that under the *Local Government Act 1993*, the recording of meetings by a member of the public using any electronic recording device including a mobile phone or video camera is not permitted. Any person found recording without the permission of Council may be expelled from the meeting.

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*.

For further information please visit [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)

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

1 Chair, 2 Experts and 1 Community Representative

#### **Quorum:**

3 Panel members

# Woollahra Municipal Council

## Notice of Meeting

25 November 2020

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

Dear Panel Members,

### **Woollahra Local Planning Panel (Public Meeting) – 3 December 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 3 December 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

## Meeting Agenda

Item	Subject	Page
1.	Leave of Absence and Apologies	
2.	Late Correspondence	
3.	Declarations of Interest	

### Items to be Decided by the Panel

D1	DA 198/2020/1 - 35 Glenview Street Paddington - 20/220722 ..... 7 <b>*See Recommendation Page 42</b>	
D2	DA621/2017/3 - 2-8 Elizabeth Street, Paddington (aka Barbetta) - 20/219441 ..... 117 <b>*See Recommendation Page 141</b>	
D3	DA510/2019/1 - 16 Olphert Avenue Vaucluse - 20/217568 ..... 247 <b>*See Recommendation Page 282</b>	
D4	DA258/2019/1 - 157-159 Hargrave Street Paddington (8.2 Review) - 20/220767 ..... 409 <b>*See Recommendation Page 437</b>	



**LOCAL PLANNING PANEL  
DEVELOPMENT APPLICATION ASSESSMENT REPORT**

<b>ITEM No.</b>	D1
<b>FILE No.</b>	DA198/2020/1
<b>ADDRESS</b>	35 Glenview Street PADDINGTON
<b>COUNCIL WARD</b>	Paddington
<b>SITE AREA</b>	300.5m <sup>2</sup>
<b>ZONING</b>	R2 Low Density Residential
<b>PROPOSAL</b>	Alterations & additions including a new two- level extension into the side passage with parking and attic space
<b>TYPE OF CONSENT</b>	Local development
<b>COST OF WORKS</b>	\$450,000.00
<b>DATE LODGED</b>	16/06/2020
	<b>01/10/2020 – Amended plans</b>
<b>APPLICANT</b>	Mr R Kaufmann
<b>OWNER</b>	Mr R Kaufmann
<b>AUTHOR</b>	Ms A Healey
<b>TEAM LEADER</b>	Mr M Moratelli
<b>SUBMISSIONS</b>	Twelve (12)
<b>RECOMMENDATION</b>	Approval, subject to <b>Condition C.1</b>

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

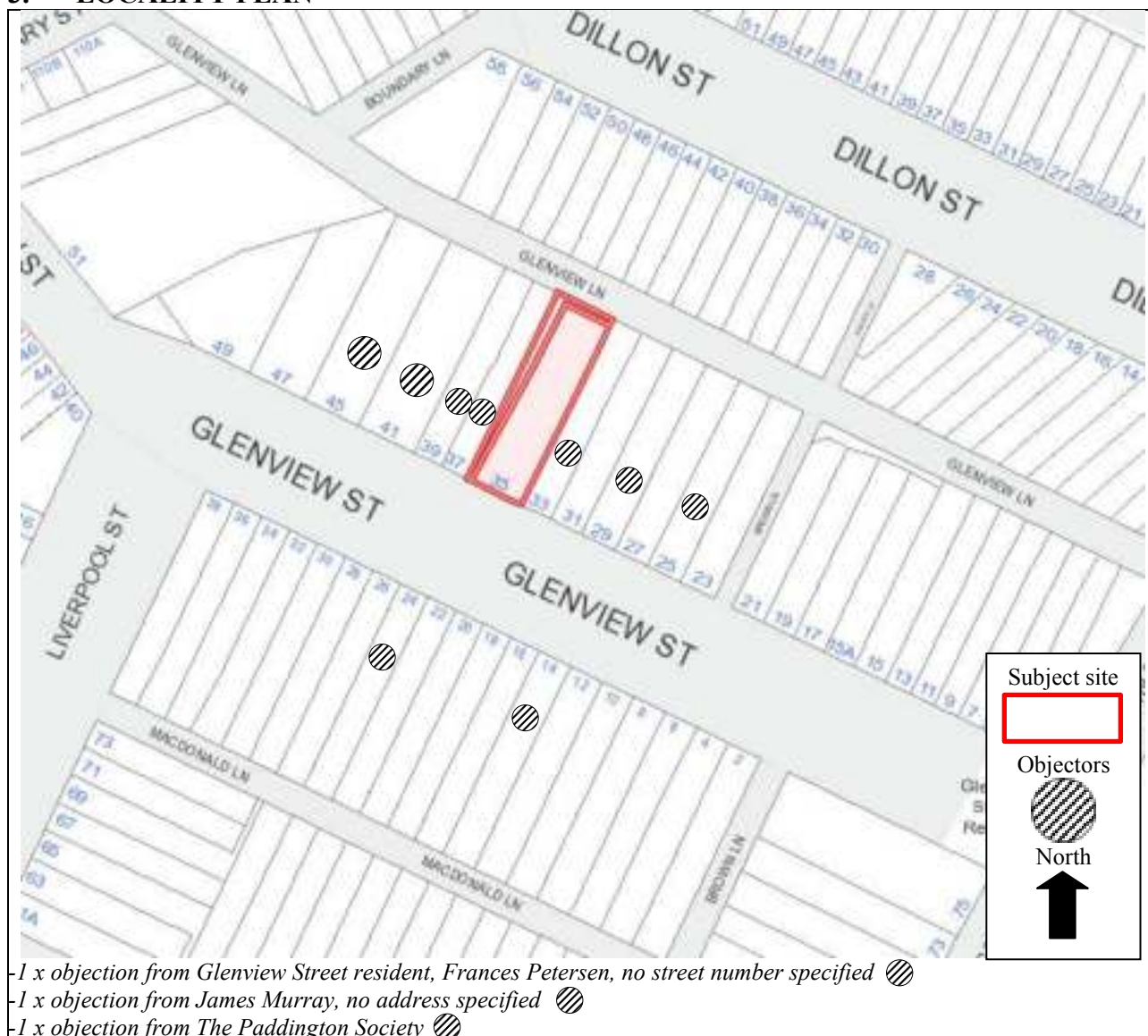
**2. REASONS FOR RECOMMENDATION**

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

- It is considered to be satisfactory with all relevant planning policies including the objectives of WLEP 2014 and WDCP 2015;

- It will not have adverse effects on the local built and natural environment nor any adverse social and economic impacts in the locality;
- It will not have an adverse heritage impact upon the subject contributory item, nor the wider Paddington Heritage Conservation Area;
- The submitted Clause 4.6 Variation Request to Clause 4.3 Height of Buildings is well founded and is in the public interest, and while non-compliant with this development standard, the contravention is supported and acceptable;
- 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



### 4. PROPOSAL

The proposal **was amended on 01/10/2020**, and further associated additional information received on 06/10/2020. It involved the following changes:

- Revising the proposed works by pulling back the north-western boundary wall, so that the works are contained wholly within the subject site, and not encroaching onto No. 37 Glenview Street (01/10/2020); and
- Revising the associated shadow diagrams (06/10/2020).

The proposal, as amended, involves the following works:

- Construction of a new side addition above the existing ground floor level carport structure, to comprise two storeys and an attic, adding an ensuite to the existing master bedroom on the first floor level, and a bedroom and rear dormer to the attic level;
- New paving to the existing car parking area;
- Addition of a rear dormer to the principal building form on the existing attic level, and conversion to a bedroom/study with new bathroom; and
- Alterations to an existing first floor level rear window within the principle building.

## 5. ISSUES

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

Clause	Development Standard	Departure from Control	Conclusion
Part 4.3	Height of Buildings	1.4m or 14.73% departure from the 9.5m control	Satisfactory

### 5.2. Primary Issues

Issue	Conclusion	Section
Non-compliance with the <i>Height of Buildings</i> development standard	There is an existing height non-compliance for the terrace dwelling, and the terrace group to which it belongs, where the alterations and additions are a satisfactory continuation of the existing built form. The applicant has submitted a Clause 4.6 request to vary the statutory height of buildings limit for the site. The request is considered to be well-founded, and the variation is acceptable in this instance.	14.3, 14.4
New dormer to principle building	Subject to <b>Condition C.1 a)</b> , the proposed rear-facing dormer within the principle building form is to be amended to be designed in accordance with the relevant provisions of Part C1.5.1 of Chapter C1 of the Woollahra DCP 2015.	15.1
New bathroom window glazing	Subject to <b>Condition C.1 b)</b> , the proposed new bathroom windows to the side addition on the First Floor Level are to be fitted with translucent glazing in accordance with the relevant provisions of Part C1.4.10 of Chapter C1 of the Woollahra DCP 2015.	15.1

### 5.3. Summary of Submissions

Issue	Conclusion	Section
Scale of additions incompatible with coherent urban form of the Glenview Street heritage streetscape	This has been discussed in Section 15.1 under Chapter C1 <i>Paddington Heritage Conservation Area</i> . The proposal is supported by Council's Heritage Officer, and is considered to be satisfactory with regard to the streetscape character and desired future character objectives. Furthermore, the proposal is considered satisfactory with regard to the objectives of the R2 low density residential zone. Accordingly, it is considered to be acceptable with regard to streetscape character, and would not warrant its refusal or further modification.	15.1
Heritage impact to fabric of streetscape	Concerns that the existing development pattern should be maintained, and respect the physical qualities and character of the original subject terrace building and its place in the streetscape, and the provision of new and historic urban fabric.	15.1

Issue	Conclusion	Section
	This has been discussed in Section 15.1 under Chapter C1 <i>Paddington Heritage Conservation Area</i> , particularly under Part C1.3.4 <i>Multi-storey terrace housing, Side additions between buildings</i> . The proposal is supported by Council's Heritage Officer, and considered to be satisfactory with regard to the impact of the new contemporary side addition upon the fabric of the streetscape. Accordingly, it is considered to be acceptable with regard to streetscape fabric, and would not warrant its refusal or further modification.	
Exceedance of the height limit is excessive, and should be limited to single storey additions only	Concerns of impacts to the historical fabric of the street, and also concerns of being higher than the adjacent buildings at No. 37 and No. 39 Glenview Street, and providing an incompatible relationship with neighbouring buildings.  There is an existing height non-compliance for the terrace dwelling, and within the terrace group to which it belongs, where the alterations and additions are a considered a satisfactory continuation of the existing built form. The applicant has submitted a Clause 4.6 request to vary the statutory height of buildings limit for the site. The request is considered to be well-founded, and the variation is acceptable in this instance.	14.4
Contravention of height limit under Clause 4.3 of the Woollahra LEP 2014	The applicant has submitted a Clause 4.6 request to vary the statutory height of buildings limit for the site. The request is considered to be well-founded, and the variation is acceptable in this instance.	14.3, 14.4
Impact to historic roof line	Concerns that the ridge should be lower than, and the form should be subservient to and cohesive with, the existing building. This has been discussed in Section 15.1 under Chapter C1 <i>Paddington Heritage Conservation Area</i> , particularly under Part C1.3.4 <i>Multi-storey terrace housing, Side additions between buildings</i> . The proposed side addition does not exceed the uppermost ridge of the principle building form to which it is attached, and is consistent with the roof form, pitch, modulation, fenestration and articulation of the contributory item and its terrace group. The proposal is supported by Council's Heritage Officer, and considered to be satisfactory with regard to the impact of the new side addition upon the roof line of the streetscape. Accordingly, it is considered to be acceptable with regard to the historic roof line, and would not warrant its refusal or further modification.	15.1
Removing the existing gap in the built form, and blocking of views from the streetscape over the existing single-storey carport to the backyard trees of the subject site	There is an existing single-storey side addition structure on the subject site. It is noted that no specific panoramic views, vistas or corridors from the public domain are specified as impacted by the proposal, but rather an existing view into the backyard of the subject property over the existing structure. The proposal will not impact upon any opportunities for views or vistas, or protected views and vistas under the DCP, and will create and maintain consistent closed vista with the addition to a terrace row, which is characteristic of the streetscape configuration defined by the close-textured fabric of the terraces within the Paddington HCA. The existing separation between No. 35 and No 37 Glenview Street will be maintained by the existing approx. 900mm passageway. Accordingly, it is considered to be acceptable with regard to views, and would not warrant its refusal or further modification.	15.1
Prevention of winter sun reaching the north side of the street	This is not a consideration for assessment under the Woollahra DCP 2015, where solar impacts to north-facing windows of habitable rooms, and the main ground level private open space of properties have been given consideration. The proposal has been assessed against the relevant controls and objectives in regard to solar access, and is considered to be acceptable with the provisions under Part C1.4.5 <i>Building height, bulk, form and scale</i> , and would not warrant refusal or further modification.	15.1

Issue	Conclusion	Section
Opportunity for Council to require removal of the existing off-street parking and side carport, and the applicant to propose relocation to rear laneway parking	<p>Further concerns due to being an ‘eyesore’ and safety reasons due to cars parking across the footpath using the existing carport.</p> <p>The existing off-street car parking space and associated crossover were previously approved elements of the subject site. Council’s Technical Services Engineer had no objection to the retention of the existing car-parking provisions for the site. The proposal maintains and does not include the relocation of the existing off-site parking, nor the addition of any new parking areas, and the applicant cannot be compelled to propose this via the DA process.</p>	15.2
Arched First Floor Level window (Glenview Street elevation) not in keeping with existing fenestration of terraces within the street	<p>Concerns and request to match the proposed window to the existing windows/French doors within the subject terrace.</p> <p>The proposal includes a new side addition visible from the streetscape which is supported by Council’s Heritage Officer. The proposal has been assessed against the relevant controls and objectives, and is considered to be acceptable with the provisions under Part C1.3.4 <i>Multi-storey terrace housing</i>, <b><i>Side additions between buildings</i></b>, and Part C1.5.3 <i>Windows, doors, shutters and security</i>. The addition is set back from the principle building façade, does not propose an additional or continuation of the front balcony, nor provide the opportunity for new French doors. The proposal provides a contemporary design approach that respects the context, scale, form, fenestration and articulation of the terrace houses within Glenview Street and the wider Paddington HCA, rather than mimicking a traditional form. The proposed arched timber-framed window to the front elevation and associated operable timber batten privacy screen interprets traditional proportions, materials and form, and provides a new sympathetic contemporary layer within the Paddington HCA, and would not warrant refusal or further modification</p>	15.1
Arched Attic Level dormer (northern elevation of the side addition) unsympathetic to surrounding development and proposed principle building dormer	<p>Concerns and request to match to a traditional dormer style and that of surrounding development. The proposed dormer window on the rear elevation of the side addition is contemporary in detailing and provides a modern interpretation of traditional forms, appropriate to a modern addition, and is supported by Council’s Heritage Officer. The proposal has been assessed against the relevant controls and objectives in regard to dormers, and is considered to be acceptable with the provisions under Parts C1.3.4 <i>Multi-storey terrace housing</i>, <b><i>Side additions between buildings</i></b>, C1.4.3 <i>Rear elevations, rear additions, significant outbuildings and yards</i>, and C1.5.1 <i>Dormers and skylights</i>, and would not warrant refusal or further modification.</p>	15.1
Request for an independent Heritage Report as part of Council’s assessment	<p>The proposal has been considered and assessed under the <i>Environmental Planning and Assessment Act 1979</i>, and the submitted documentation from the applicant is satisfactory in undertaking this assessment. Furthermore, consideration has been given to all submissions made in response to the proposal, which included an independent Heritage submission. The proposal is satisfactory in this regard.</p>	N/A
Impact to the original nightsoil lane and historic pattern of development	<p>Concerns of exacerbating the existing low-impact single storey carport built over an original nightsoil lane. Concerns that leaving this gap allows for light, ventilation and views to and from the street, and the historical built form presenting to the street, and also the historical separation between No. 35 and No. 37 Glenview Street.</p> <p>The proposal will provide a contemporary side addition to the existing terrace and alter the existing side addition, while maintaining the existing off-street car parking space, and a private narrow walkway adjacent to the subject site, which historically formed part of a former nightsoil lane. Council’s heritage Officer supports the proposal, which would not result in any additional incursion or impact to the private walkway/former nightsoil lane. It is further noted that approval was granted in 2000 for construction of the existing covered carport, laundry and structures located to the west of the principle building form. The proposal is satisfactory in this regard.</p>	15.1

Issue	Conclusion	Section
Impact to the principle building form of No. 37 Glenview Street	<p>The objector notes that the side addition <i>‘protrudes out beyond the principle building form of neighbouring No. 37 Glenview on the Northern side blocking morning light from reaching three windows on the Eastern side of our property. It also extends beyond our skylights obstructing existing views of the sky’</i>; and <i>‘The proposed extension extends beyond the form of the principle dwelling of neighbouring 37 Glenview. Any extension should be subservient to the existing principle form of the neighbouring buildings.</i></p> <p>The existing building does not form part a terrace group with the neighbouring dwelling located at No. 37 Glenview Street, and there are distinct differences in the site characteristics, height, and built form and composition of the neighbouring dwelling. The subject dwelling’s existing principle building form extends further to the rear of the site relative to the neighbouring dwelling. The proposal has been assessed and is considered to be acceptable with the provisions under Part C1.4.1 <i>Principle building form and street front zone of contributory buildings</i>, is subservient to the existing subject principle building, is supported by Council’s Heritage Officer, and would not warrant refusal or further modification.</p> <p><u>Note:</u> Comments regarding solar access impacts are provided below.</p>	15.1
Side addition for an ensuite is unnecessary	<p>The side alterations and additions will comprise the existing carparking/laundry/storage spaces on the ground floor level, a bathroom on the first floor level and an additional bedroom on the attic level in total. The proposed side addition has been assessed and is considered to be acceptable with the provisions under Part C1.3.4 <i>Multi-storey terrace housing, Side additions between buildings</i>, and would not warrant refusal or further modification.</p>	15.1
Height incompatibility with the neighbouring terraces at No. 37 and No. 39 Glenview Street	<p>Concerns that effectively the proposal moves the dwelling closer to the neighbouring terraces and exacerbates the existing height difference. Concerns that single storey alterations or a height &lt;9.5m would more appropriate.</p> <p>The existing building does not form part of a terrace group with the neighbouring dwellings located at No. 37 and No. 39 Glenview Street, and there are distinct differences in the site characteristics, height, and built form and composition of the neighbouring dwellings, and the two terrace groups. The applicant has submitted a Clause 4.6 request to vary the statutory height of buildings limit for the site. The request is considered to be well-founded, and the variation is acceptable in this instance. Furthermore, the proposal has been assessed and is considered to be acceptable with the provisions under Part C1.4.1 <i>Principle building form and street front zone of contributory buildings</i>, is subservient to the existing subject principle building, is supported by Council’s Heritage Officer, and would not warrant refusal or further modification.</p>	14.4, 15.1
Adverse impact upon significant trees, with the removal of an existing palm tree on the subject site	<p>The proposal is supported by Council’s Tree and Landscape Officer, and it is noted that no significant trees will be adversely impacted upon by the development. The removal of an existing palm tree will not be a removal, but rather a transplantation to a location in close proximity to its existing location. The proposal is satisfactory in this regard.</p>	15.4
‘Large expanses of glass’ resulting from the proposed windows on the Northern and Southern elevations	<p>The proposed fenestration on the front and rear elevations are supported by Council’s Heritage Officer. The proposed fenestration to the side addition are vertically proportioned, and interpret traditional proportions and patterns. The proposed side addition has been assessed and is considered to be acceptable with the provisions under Part C1.3.4 <i>Multi-storey terrace housing, Side additions between buildings</i>, and would not warrant refusal or further modification.</p>	15.1

Issue	Conclusion	Section
Side addition is not subservient/secondary to the principle building	Concerns that the <i>'The proposed extension is cantilevered at the back (North side) fully hiding the form of the existing principle dwelling... Ideally the extension should be set back at least a meter'</i> . The proposal has been assessed and is considered to be acceptable with the provisions under Part C1.3.4 <i>Multi-storey terrace housing</i> , <b>Side additions between buildings</b> , and Part C1.4.1 <i>Principle building form and street front zone of contributory buildings</i> . The proposal is set back from the front and rear facades of the subject principle building, is narrower than the subject principle building, is subservient to the existing subject principle building, and is supported by Council's Heritage Officer. The proposal is satisfactory in this regard and would not warrant refusal or further modification.	15.1
Works proposed encroach onto north-western adjacent property	The applicant provided amended plans on 01/10/2020 revising the proposed works by setting back the wall along the north-western boundary, so that the works are not built or located atop the existing boundary wall which straddles adjacent sites (No. 35 and No. 37 Glenview Street), and contained wholly within the subject site, not encroaching on No. 37 Glenview Street. The proposal is satisfactory in this regard.	N/A
Side addition would extend the current north-western boundary fencing wall >10m tall	The applicant has provided amended plans on 01/10/2020 revising the proposed works by setting back the wall along the north-western boundary, so that the works are not built or located atop the existing boundary wall, and are wholly located within the subject site. The side additions will be built to the north-western side boundary, and have been assessed and considered to be acceptable with the provisions under Part C1.3.4 <i>Multi-storey terrace housing</i> , <b>Side additions between buildings</b> , and would not warrant refusal or further modification.	15.1
Solar impacts to 3 x ground-floor windows and adjacent side passage/garden at No. 37 Glenview Street	This has been discussed in Section 15.1 under Part C1.4.5 <i>Building height, bulk, form and scale</i> , and the proposal in particular satisfies relevant controls C4 and C5. While the two-storey side addition will provide new and additional shadowing between the 9am and 12pm period on the winter solstice to the ground floor level of the adjacent side wall of the dwelling at No. 37 Glenview street, the following is noted: <ul style="list-style-type: none"> <li>• There are two existing 'Dining' room windows on this elevation at ground floor level;</li> <li>• There is an approved 'Office' window (Under DA601/2017/3) on this elevation at ground floor level;</li> <li>• There are no first floor level windows on this elevation of the principle building;</li> <li>• The three ground floor level windows noted above have adequate separation from the subject site and are located approx. 930mm from the shared side boundary and are subject to existing overshadowing from the existing boundary wall;</li> <li>• The orientation of these windows face south-east, where controls C4 and C5 specify no additional shadowing to <u>north-facing</u> habitable room windows and the principle ground floor private open space areas of dwellings. These windows do not satisfy this criteria;</li> <li>• Protection of views to the sky (via existing skylight/roofing are not protected under the DCP; and</li> <li>• The main living area and the principle private open space at the rear of the dwelling are oriented to the northeast, and will not be impacted upon by additional shadowing as a result of the proposal, nor will the south-east facing kitchen openings.</li> </ul> The proposed side addition has been assessed and is considered to be acceptable with the provisions under Part C1.4.5 of the DCP, and would not warrant refusal or further modification.	15.1

Issue	Conclusion	Section
Privacy concerns of overlooking the back yard of adjacent No. 37 and No. 33 Glenview Street	<p>Concerns that new north-facing windows should be reduced in scale and use opaque glass.</p> <p>This has been discussed in Section 15.1 under Part C1.4.10 <i>Acoustic and visual privacy</i>, and the proposal in particular satisfies relevant controls <i>C3</i> and <i>C4</i>. No new balconies are proposed, and <b>Condition C.1 b)</b> will be imposed upon the consent to ensure that the new bathroom windows will have translucent glazing. Furthermore, the proposed window screening devices combined with the distance to the neighbouring main living room and private open space areas, and the angle at which the neighbouring dwelling's habitable room openings are oriented, will ensure adequate privacy is maintained by the development. The proposed rear fenestration for the side addition has been assessed and is considered to be acceptable within an urban context and under the provisions under Part C1.4.10 of the DCP, and would not warrant refusal or further modification.</p>	15.1
Opportunity for Council to 'rectify' the height of the rear boundary wall (Glenview Lane) 'accidentally' built above the permitted height and adjacent properties	The proposal does not include any works to the existing rear wall of the subject site, and this is not a matter for consideration under the current DA. The applicant cannot be compelled to propose this via the DA process.	N/A
Inaccurate shadow diagrams and current form of No. 37 Glenview Street	<p>Concerns regarding not showing accurate relative roof heights, nor impacts to existing windows and skylights.</p> <p>The applicant provided amended shadow diagrams on 06/10/2020. These diagrams are considered to be acceptable in undertaking an assessment of solar impacts under the <i>Environmental Planning and Assessment Act 1979</i>. The proposed side addition has been assessed and is considered to be acceptable with the provisions under Part C1.4.5 of the DCP, and would not warrant refusal or further modification.</p>	15.1
Proposal contrary to Part 1.2 (2) (f) of the Woollahra LEP 2014	The proposal has been assessed and is considered to be acceptable with the provisions under Part 1.2 <i>Aims of Plan</i> of the Woollahra LEP 2014, including (2) (f) <i>to conserve built and natural environmental heritage</i> , and would not warrant refusal or further modification.	14.1
Proposal contrary to Objectives (1) (a) and (b) in Part 5.10 of the Woollahra LEP 2014	The proposal has been assessed and is considered to be acceptable with the (1) <i>Objectives</i> under Part 5.10 <i>Heritage conservation</i> of the Woollahra LEP 2014, including (a) <i>to conserve the environmental heritage of Woollahra</i> , and (b) <i>to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views</i> . Furthermore, Council's Heritage Officer supports the proposal, and the current proposal would not warrant refusal or further modification.	14.5
Side addition has insufficient setback from the front façade of the subject Victorian terrace	<p>Concerns that any additions should be recessive (although noted that no numerical value setbacks are prescribed in the DCP).</p> <p>The proposal has been assessed and is considered to be acceptable with the provisions under Part C1.3.4 <i>Multi-storey terrace housing</i>, <b>Side additions between buildings</b>, and Part C1.4.1 <i>Principle building form and street front zone of contributory buildings</i>. The proposal is set back from the front and rear facades of the subject principle building, is narrower than the subject principle building, is therefore subservient to the existing subject principle building, is supported by Council's Heritage Officer, and would not warrant refusal or further modification.</p>	15.1



Issue	Conclusion	Section
Uncharacteristic streetscape appearance in the Paddington HCA	<p>Concerns include the provision of cantilevered first floor and attic levels which was not a building technique available to original terrace builders. Also concerns that the arched front elevation window mimics the original Victorian terrace windows, which is not a desirable heritage outcome, and are also considered a large and predominant built form element presenting to the streetscape.</p> <p>The proposal includes a new side addition visible from the streetscape which is supported by council's Heritage Officer. The proposal has been assessed against the relevant controls and objectives, and is considered to be acceptable with the provisions under Part C1.3.4 <i>Multi-storey terrace housing</i>, <b>Side additions between buildings</b>. The proposal provides a contemporary design approach that respects the context, scale, form, fenestration and articulation of the terrace houses within Glenview Street and the wider Paddington HCA, rather than mimicking a traditional form. The proposed arched timber-framed window to the front elevation and associated operable timber batten privacy screen interprets traditional proportions, materials and form, and provides a new sympathetic contemporary layer within the Paddington HCA. The proposal is satisfactory in this regard.</p>	15.1
The approval at No. 45 Glenview Street should not be a precedent for new side additions	<p>Concerns that this was assessed as 'infill' development in a different context where its form presents as consistent analogous form between two terrace houses. Concerns that the façade of the proposed side addition is not recessive to the principle building, and disrupts the unity of the group of terrace houses (No. 35, 33 and 31) to which it forms a part, and that Chapter C1 DCP amendments were adopted after this DA was approved.</p> <p>While a similar side addition proposal was approved at No. 45 Glenview Street under a previous iteration of the DCP, the current proposal has not been assessed with the view that a precedent has been set within Glenview Street, but on its own merits under the current provisions of the DCP. The proposal is considered satisfactory in this regard, is supported by Council's Heritage Officer, and would not warrant refusal or further modification.</p>	15.1
Non-compliance with DCP Part C1.3.4 <i>Multi-storey terrace style housing</i>	<p>Concerns of non-compliance with the objectives of this section, and Controls C3, C4, C7, C8 and C10.</p> <p>The proposal has been assessed and is considered to be acceptable with the provisions under Part C1.3.4 <i>Multi-storey terrace housing</i>, <b>Side additions between buildings</b>, is supported by Council's Heritage Officer, and would not warrant refusal or further modification.</p>	15.1
Uncharacteristic rear-facing dormers and fenestration	<p>Concerns that the dormer to the principle building in non-compliant with DCP Part C1.5.1 <i>Dormers and skylights</i> Figure 13. Concerns that the dormer to the side addition is not a characteristic dormer form, and is visually connected to the window on the floor level below. Concerns that the new arched window to the rear principle building form does not comply with the typology common to the terraces in the row nor Figure 8 under Part C1.4.3 <i>Rear elevations, rear additions, significant outbuildings and yards</i>.</p> <p>The proposed dormer window on the rear elevation of the side addition is contemporary in detailing and provides a modern interpretation of traditional forms, appropriate to a modern addition, and is supported by Council's Heritage Officer. The proposal has been assessed against the relevant controls and objectives in regard to dormers, and is considered to be acceptable with the provisions under Parts C1.3.4 <i>Multi-storey terrace housing</i>, <b>Side additions between buildings</b>, C1.4.3 <i>Rear elevations, rear additions, significant outbuildings and yards</i>, and C1.5.1 <i>Dormers and skylights</i>, and would not warrant refusal or further modification.</p>	15.1

Issue	Conclusion	Section
	<p>With regard to the proposed dormer to the principle building form, <b>Condition C.1 a)</b> will be imposed upon the consent to ensure that the new dormer will comply with the relevant controls under Part C1.5.1 <i>Dormers and skylights</i> and Figure 13.</p> <p>With regard to the replacement of the existing non-original window at the first floor level of the rear elevation of the principal building form, the contemporary design is supported in this instance on merit, as there is no existing pattern within the group (other rear elevation windows to items within the group have been modified to rear balconies). The proposed round headed timber framed window is consistent with the overall character of fenestration within the group, and would replace fabric of low significance.</p>	
Council should apply the Heritage related controls consistently across all developments	The proposal has been considered and assessed on its own merits under the current provisions of the DCP. The proposal is considered satisfactory in this regard, is supported by Council's Heritage Officer, and would not warrant refusal or further modification.	15.1
Inappropriate contemporary materials, finishes and details	<p>Concerns that the proposal will draw attention to the new work as being out of place with the existing building types and architectural styles in the streetscape.</p> <p>The proposed material palette, finishes and details are supported by Council's Heritage Officer, where it is considered that the use of contemporary materials interprets traditional materials and would provide a sympathetic contemporary layer within the Paddington HCA.</p> <p>The proposal has been assessed and is considered to be acceptable with the provisions under Part C1.5.8 <i>Materials, finishes and details</i>, and would not warrant refusal or further modification.</p>	15.1
The bulk, height and unsympathetic appearance of the side addition will be visible to No. 45 Glenview Street and neighbouring dwellings, and from the dwellings located on Dillon Street	The location, scale and distance of the proposed side addition will not be readily visible from the non-adjacent neighbouring properties. Where visible from the streetscape and neighbouring properties, the bulk and height of the proposal is considered acceptable and satisfactory under the provisions of the Woollahra LEP 2014, and Chapter C1 <i>Paddington Heritage Conservation Area</i> . The proposal is supported by Council's Heritage Officer, and is considered to be satisfactory with regard to the appearance of a modern addition providing a contemporary layer to the existing urban fabric within the Paddington HCA.	15.1
Impact to sunlight and alteration to the existing view of terrace houses available to No. 24 Glenview Street	There are no protected or significant views or vistas that will be impacted upon by the proposal, nor will there be any impact to the existing solar access to north-facing habitable rooms or ground floor level principle private open space areas of No. 24 Glenview Street. The proposal is satisfactory in this regard.	15.1
Overdevelopment of the site, where the subject building is already a large structure	The existing subject terrace dwelling is of typical size and proportions, consistent with the terrace group to which it belongs. The subject site however is atypical, and larger than that of the neighbouring terrace dwellings. Within this context, the proposal has the opportunity to provide an altered side addition to the west of the existing principle building. The proposal is acceptable with the relevant provisions of the Woollahra LEP 2014, and the objectives of the R2 low density residential zone. Furthermore, the proposal is acceptable under the provisions of Chapter C1 <i>Paddington Heritage Conservation Area</i> of the Woollahra DCP 2015. The proposal is considered an appropriate development for the site and within the local context, and would not warrant its refusal or further modification.	14, 15.1

Issue	Conclusion	Section
The DA plans noting an 'existing mid-level terrace', the use of this space as trafficable, and amenity impacts to No. 37 Glenview Street	<p>The concerns request that the subject DA condition this part of the building to delete 'mid-level terrace', note it as non-trafficable and revert the existing access doors to windows with opaque glass.</p> <p>In response to these concerns, it is noted that there are no new works or alterations proposed to this part of the subject building. Notwithstanding, <b>Condition A.5</b> has been included in the consent conditions to ensure that no approval is given as part of this DA to a trafficable roof terrace, access thereto, and any associated amenity impacts to neighbouring dwellings.</p> <p>This matter is currently being actioned by Council's Compliance Section to take appropriate action.</p>	N/A

## PROPERTY DETAILS AND REFERRALS

### 6. SITE AND LOCALITY

<b>Physical features</b>
The subject site comprises Lot 1 in DP 198616 and Lot 2 in DP 198616, known as 35 Glenview Street, and is located on the northern side of Glenview Street, Paddington. The site is bounded by Boundary Street to the west, Brown Street to the east, and Glenview Lane to the north (rear). The combined lots present a site that is generally rectangular in shape, with a total site area of 300.5m <sup>2</sup> , a front boundary length of 8.735m, a rear boundary length of 9.295m, and side boundary lengths of 33.87m (combined NW boundary lengths) and 33.74m (combined SE boundary lengths).
<b>Topography</b>
The site slopes down from the front (south) to the rear (north). The fall from the front of the site to the rear laneway is approximately 3.3m, with a level of RL 27.38 at the Glenview Street front footpath, and a level of RL 24.06 at the top of the kerb in Glenview Lane to the rear. There is level access to the Ground Floor Level of the terrace dwelling and the single car parking space from the street frontage. There is an existing breezeway and side passage along the north-western side boundary, behind the existing single storey carport/laundry side addition. The rear Ground Floor Level sits elevated from the rear laneway with levels of RL 26.92 for the terrace, RL 26.36 for the swimming pool and associated decking, RL 25.91 for the garden bed, behind a masonry wall with a height level of RL 27.79.
<b>Existing buildings and structures</b>
The site contains a two-storey semi-detached terrace dwelling, with a split mid-level rear wing containing a landing, a bathroom and an open terrace, and an attic storage space. There is an existing single storey single car parking space side addition adjacent to the north-western side boundary, comprising a glass-roofed carport and gravel-roofed laundry and access passage to the breezeway and rear yard behind. There is a single driveway crossover on the Glenview Street frontage. There is no access from the rear laneway, Glenview Lane, to the rear of the site.
<b>Surrounding Environment</b>
The site is located within the Paddington Heritage Conservation Area, and is a contributory item within this area. The local vicinity is characterised by Victorian terrace housing, where the subject dwelling forms part of a group (from Nos. 31-35 Glenview Street).



## 7. RELEVANT PROPERTY HISTORY

<b>Current use</b>
Residential.
<b>Relevant Application History</b>
DA599/2000/2 – Modification application for the addition of a glass canopy to side entrance and increase in height of boundary wall to 2.6m – Approved 15 April 2002.
DA599/2000/1 – Development application for alterations and additions to existing terrace – Approved 13 December 2000.
DA258/1999/1 – Development application for alterations and additions – Refused 3 November 1999.
BA968/1976/1 – Building application.
BA1037/1970/1 – Building application.
BA1046/1968 – Building application.
<b>Relevant Compliance History</b>
CRM 17287/2020 – Building Control Illegal Unauthorised Works – ‘Non-trafficable rear roof terrace’ – Received 28 October 2020 – Currently undetermined.
<b>Pre-DA</b>
Pre-DA 6/2020/1 – Alterations and additions to an existing dwelling – Minutes dated 16 March 2020.

Requests for Additional Information and Replacement Applications
<p>1. On 18 September 2020, Council requested the following:</p> <ul style="list-style-type: none"><li>• Amended plans showing all works to be within the boundary of the subject site; and</li><li>• With the relocation of the north-western wall (in regard to the point above), associated amendments and accuracies added to the shadow diagrams.</li></ul> <p>The amended plans were provided on 01 October 2020, and the amended shadow diagrams were provided on 06 October 2020.</p>
Land and Environment Court Appeal(s)
N/A

## 8. REFERRALS

Referral	Summary of Referral Response	Annexure
Technical Services	Satisfactory – subject to conditions of consent. <i>Note:</i> No formal referral, conditions provided following the internal Development Application Review Committee Meeting (DARC).	N/A
Trees and Landscaping	Satisfactory, subject to conditions of consent.	3
Heritage	Satisfactory subject to <b>Condition C.1.</b>	2

## 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 01 July 2020 to 15 July 2020 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. Submissions were received from:

1. Bob and Lynn Sitsky, 29 Glenview Street Paddington
2. Richard Uechtritz, 41 Glenview Street Paddington
3. Frances Peterson, Street number not specified in submission, Glenview Street Paddington
4. J and T Masters, 14 Glenview Street Paddington
5. Chris Lane and Dave Chaput, 37 Glenview Street Paddington (3 x separate submission emails)
6. Robert Blackman, C/O- Elizabeth Ann Ross, 33 Glenview Street Paddington

7. Roy and Tina Melick, 45 Glenview Street Paddington
8. Suzanne Damms and Eric Papas, 24 Glenview Street Paddington
9. Sarah Uther, 39 Glenview Street Paddington
10. James Murray, No address specified in submission
11. Anne Smith, 25 Glenview Street Paddington
12. The Paddington Society, Juniper Hall Paddington

The issues raised in the submissions have been considered in Section 5.3 of this report.

## **9.2. Replacement Application**

The amended plans noted in Section 4 of this report were not renotified to surrounding residents and previous objectors under the Woollahra Community Participation Plan because it was considered to have no greater cumulative environmental or amenity impact.

## **9.3. Statutory Declaration**

The applicant has completed the statutory declaration dated 16 July 2020 declaring that the site notice for DA198/2020/1 was erected and maintained during the notification period in accordance with the Woollahra Community Participation Plan.

## **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.

As the site has a long history of residential use, it is considered that the land does not require further consideration under Clause 7 (1) (b) and (c) of SEPP 55. The proposal is therefore acceptable with regard to SEPP 55: Remediation of Land.

## **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 No. A378903 demonstrating compliance with the SEPP. These requirements are imposed in **Conditions C.3, H.1 and I.1.**

## **12. STATE ENVIRONMENTAL PLANNING POLICY (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 consistent with the aims in Part 1.2(2) of the Woollahra LEP 2014.

#### **14.2. Land Use Table**

The proposal is defined as alterations and additions to a terrace dwelling house and is permitted and is consistent with the objectives of the R2 Low Density Residential zone.

#### **14.3. Part 4.3: Height of Buildings**

Part 4.3 limits development to a maximum height of 9.5m.

	Existing	Proposed	Control	Complies
Maximum Building Height	10.9m	10.9m	9.5m	No*

*\*Clause 4.6 written request submitted*

The proposal does not comply (departure of 1.4m or 14.73%) with Part 4.3 of Woollahra LEP 2014 as detailed and assessed in Section 14.4 of this report.

#### **14.4. Part 4.6: Exceptions to Development Standards**

##### **14.4.1 Departure**

The proposal involves the following non-compliance with the Woollahra LEP 2014:

- Non-compliance with the maximum building height development standard under Part 4.3, as detailed in Section 14.3 of this report.

A Clause 4.6 request has been received for the development standard for which a variation is sought.



#### 14.4.2 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.

#### 14.4.3 Written Request

Part 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.

The applicant has provided the following written request in relation to the departure from the maximum building height limit development standard (Clause 4.4):

##### **THE DEVELOPMENT STANDARD:**

- *The applicable planning instrument which specifies the development standard: Woollahra Local Environmental Plan 2014 (WLEP 2014)*
- *The number of the relevant clause: Clause 4.3 – Height of buildings.*
- *The provisions of the relevant clause: Clause 4.3 – Height of buildings. The development standard to which this request for contravention relates is Clause 4.3(2) of WLEP 2014 – Height of buildings, which specifies that: 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 nominated height on the map is 9.5.*

##### **THE CONTRAVENTION SOUGHT:**

- *Description of the contravention: The proposed development would contravene the development standard as follows:*
- *Maximum height of building: 9.5m*
- *Existing Contravention: The existing building height is 11.6m which contravenes the development standard by 2.1m (22%)*



Figure 1: Illustration of existing contravention.

- *Proposed height of building: The proposed height of the additions is 10.9m which would contravene the development standard by 1.4m (15%).*





Figure 2: Illustration of proposed contravention in cross section.

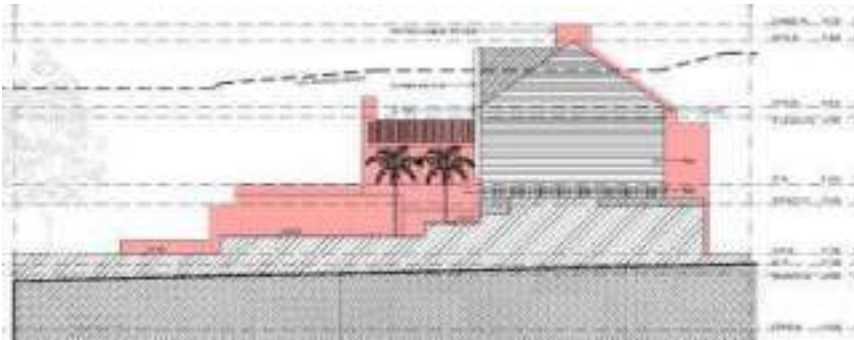


Figure 3: Illustration of proposed contravention on the northern elevation.

- *Cause of the contravention: The contravention would result from the adoption of a ridge line for the side addition to match that of the existing roof ridge.*

#### **PROVISIONS OF CLAUSE 4.6**

- *Cl. 4.6(1): Objectives*  
*Clause 4.6 seeks 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. The objectives of Clause 4.6 are as follows:*
- *1)(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.*
- *Justification: The proposal contravenes the standard which sets a maximum building height. It seeks to utilise this clause to provide appropriate flexibility in application of the standard to permit approval.*
- *(1)(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- *Justification: The proposal would achieve better outcomes:*
  - *For the development: The contravention would permit:*
    - o *A more useable attic space in the addition;*
    - o *Improved and more unified architectural solution.*
  - *From the development: The contravention would result in:*
    - o *A side addition consistent with the form and scale of the existing principal building form;*
    - o *A consistent streetscape;*
    - o *An appropriate built form in the conservation area.*

- **Cl. 4.6(3): Justification of the Contravention of the Development Standard**

*Under the provisions of clause 4.6(3) – Exceptions to development standards of WLEP 2014, the consent authority must consider a written request from the applicant that seeks to justify the contravention of the development standard. This justification is summarised in the table below:*

- *4.6(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:*
- *Justification: This written request addresses this clause.*
- *4.6(3)(a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- *Justification: Compliance with the development standard is unnecessary given that:*
  - *The objectives of the development standard are met (see below); and*
  - *The objectives of the zone are met; notwithstanding the non-compliance.**Compliance with the development standard is unreasonable given that:*
  - *The contravention is directly associated with an existing contravention.*
- *4.6(3)(b) That there are sufficient environmental planning grounds to justify contravening the development standard.*
- *Justification: The contravention would result in:*
  - *A side addition consistent with the form and scale of the existing contributory dwelling;*
  - *A consistent streetscape;*
  - *An appropriate built form for the conservation area; and*
  - *A more suitable conservation outcome.*

- **Cl. 4.6(4)(a): Objectives of the Zone & Development Standard**

*Under the provisions of clause 4.6(4) – Exceptions to development standards of WLEP 2014, the consent authority must be satisfied that contraventions of development standards are consistent with the objectives of both the development standard itself and the zone in which the development is proposed. This assessment is summarised in the table below:*

- **4.3(1) Height of buildings**
- *(a) to establish building heights that are consistent with the desired future character of the neighbourhood,*
- *Justification: Given that the neighbourhood is a conservation area, the desired future character is to maintain the existing character of heritage significance. The proposal would facilitate this by maintaining a consistent roof form with the existing and surrounding dwellings and consequently a consistent and harmonious streetscape.*
- *(b) to establish a transition in scale between zones to protect local amenity,*
- *Justification: There are no zone transitions in the vicinity of the site.*
- *(c) to minimise the loss of solar access to existing buildings and open space,*
- *Justification: The proposal would only overshadow the blank northern wall of the existing dwelling and, as such, would avoid any loss of solar access.*

- *(d) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*
- *Justification: The proposal would not have adverse impacts upon surrounding properties in respect of view loss, privacy, overshadowing or excessive visual impact.*
- *(e) to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.*
- *Justification: There are no views of the harbour associated with the site.*
- **Zone R2 – Low density residential**
  - *To provide for the housing needs of the community within a low density residential environment.*
  - *Justification: The proposal would maintain the single dwelling density of the site, consistent with the low density residential environment.*
  - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
  - *Justification: This is not applicable given that only residential uses are proposed on this site.*
  - *To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.*
  - *Justification: The proposal, and in particular its height and roof form, would be compatible with the surrounding neighbourhood and the building of the same (and partially greater) height to which it is attached.*
  - *To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.*
  - *Justification: No change to the built form is proposed so the proposal would not alter the height and scale.*
- **Cl. 4.6(4)(b): Concurrence**

*Under the provisions of clause 4.6(4)(b) – Exceptions to development standards of WLEP 2014, the consent authority must be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained before it can exercise the power to grant development consent for development that contravenes the development standard.*

*Under cl 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 cl 4.6, subject to the conditions in the table in the notice.*
- **Cl. 4.6(5): Criteria for Concurrence**

*Under the provisions of clause 4.6(5) – Exceptions to development standards of WLEP 2014, the Council or the Secretary, as the concurrence authority, is required to consider the following matters:*

  - *(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

- *Justification: The contravention of the development standard is not associated with state or regional development. As such, it would not raise any matter of significance for State or regional environmental planning.*
- *(b) the public benefit of maintaining the development standard, and*
- *Justification: There would be no public benefit of maintaining the development standard as it would result in a less satisfactory heritage conservation outcome.*
- *(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- *Justification: The matters requiring consideration are addressed above.*

### **THE FIVE PART TEST**

*In Wehbe v Pittwater Council [2007] NSWLEC 827, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. These are examined below:*

- *1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
- *Discussion: The objectives of the development standard are achieved. See discussion under 3(c) above.*
- *2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*
- *Discussion: The objectives of the standard are relevant to the proposal and an assessment of compliance is provided above. It is considered that the objectives of the standard are achieved more satisfactorily than maintaining the existing subdivision pattern.*
- *3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
- *Discussion: The underlying object of the development would be thwarted if compliance were required given that compliance would result in a less consistent streetscape.*
- *4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable*
- *Discussion: There is no evidence that the development standard has been abandoned under the current planning controls.*
- *5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*
- *Discussion: Not applicable. The zoning of the land is considered appropriate.*

### **CONCLUSION**

*This Clause 4.6 contravention request to clause 4.3 – Height of buildings of Woollahra LEP 2014 should be supported on the basis that strict application of the development standard is unnecessary and unreasonable given that:*

- *(a) The development meets the stated objectives of clause 4.3, specifically:*

- *to establish building heights that are consistent with the desired future character of the neighbourhood,*
  - *to establish a transition in scale between zones to protect local amenity,*
  - *to minimise the loss of solar access to existing buildings and open space,*
  - *to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*
  - *to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.*
- *b) The development meets the zone objectives of the R2 Low Density Residential zone, specifically:*
  - *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.*
- *(c) There are sufficient environmental planning grounds to justify contravening the development standard, in that it would result in:*
  - *A side addition consistent with the form and scale of the existing contributory dwelling;*
  - *A consistent streetscape;*
  - *An appropriate built form for the conservation area; and*
  - *A more desirable conservation outcome.*
- *For the reasons set out above, the development may be granted consent notwithstanding the contravention of the development standard in respect of height of buildings in clause 4.3 of WLEP 2014.*

#### **14.4.4 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 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 demonstrated that the objectives of the height of buildings development standard are achieved, notwithstanding the non-compliance.

In doing so, the applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by Cl 4.6(3)(a). The objectives of the development standard are discussed further in the assessment of Clause 4.6(4)(a)(ii).

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

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

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

S1.3 of the EPA Act 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.*

Comment: The applicant's written request supports the proposed non-compliance with the maximum building height standard. This is in relation to achieving the sustainable management of built heritage, and promoting good design by achieving a contextually appropriate addition that conforms to the height of the existing building, of adjoining properties, and of the heritage conservation area.

In this regard, the applicant's written request has adequately demonstrated that the proposed development promotes the orderly and economic use and development of the land; that the proposal promotes the sustainable management of built and cultural heritage; and that the proposal promotes good design and local amenity, in accordance with the objects 1.3(c), (f) and (g) of the EPA Act. It allows for development that conforms with the controls of Chapter C1 of the Woollahra DCP 2015, thereby ensuring consistency in Council's approach to development within the Paddington Heritage Conservation Area.

The applicant's written request has therefore 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 objectives of the R2 Zone. An assessment against these objectives is provided 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,*

Comment: The maximum height of the existing Victorian terrace dwelling roof exceeds the building height development standard. The alterations and additions to the existing side addition of the principle building will match and continue the height and form of the existing pitched roof. The works will be discernible from the primary streetscape, and will not increase the height or bulk of the existing building, presenting a proposal with the maximum non-compliance of 1.4m, specifically with a new side addition matching the principle roof form. The proposal removes the existing single storey glass-roofed side addition, and updates the residential terrace dwelling with a contemporary design sympathetic to the heritage context, and consistent with the development and form of adjoining dwellings, providing a consistent roofscape to the street in the neighbourhood. The proposal conforms with the provisions of Chapter C1 of the Woollahra DCP 2015, relating to the Paddington Heritage Conservation Area. The proposal is consistent with the desired future

character of the Paddington Heritage Conservation Area, notwithstanding the localised non-compliance with the height limit, and achieves consistency with objective (a).

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

Comment: The maximum height of the building would be unchanged and the building height overall would remain characteristic of the R2 Zoning and the Paddington Heritage Conservation Area. The height of the proposal is consistent with surrounding Victorian-period development in Glenview Street and within the terrace group. The proposal achieves consistency with objective (b).

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

Comment: The proposed alterations and additions to the dwelling comprising the exceedance of the height development standard do not extend beyond the existing height of the principle building, and continue the stepped down form along the slope of the street with adjacent terrace groupings, consistent with adjoining dwellings. The proposal is located within the front portion of the subject site, and will not result in the loss of existing solar access to the adjoining buildings' north-facing habitable room windows and their principal private open space areas. Furthermore, due to the orientation of the site, the proposal would not contribute to the loss of solar access in accordance with the Woollahra DCP 2015. The proposal will therefore achieve 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,*

Comment: The non-compliant element of the proposal comprises of a portion of the attic level of a side addition to match the existing height of the principle building. The side addition is set back behind the existing front and rear building lines of the principle building, maintaining a consistent subservient contemporary built form adjacent to the terrace dwelling. Design elements, including the setbacks, the location of fenestration and privacy screens would not result in any loss of privacy, adverse overshadowing or view loss to adjacent properties. The visual impact of the proposal is acceptable, is consistent with the existing height of the subject dwelling and the adjoining properties, 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.*

Comment: The proposed non-compliance with the height development standard would not result in any adverse amenity impacts to the public domain or any public views of the harbour or the surrounding district, achieving consistency with objective (e).

### **Objectives of the R2 Zone**

The proposal is also considered against the objectives applying to the R2 Zone:

- *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 achieves the relevant objectives of the zone as follows:

- The proposal contributes to providing for the housing needs of the community within a low-density environment, as it updates and enhances the existing building, while retaining its use as a single dwelling;
- The proposed development is compatible with the character of the neighbourhood, as its design is consistent with the provisions of the Woollahra DCP 2015, in relation to the Paddington Heritage Conservation Area;
- The proposal is compatible with the amenity of the surrounding neighbourhood, as the resultant overshadowing, privacy and view impacts are reasonable in the urban context of the locality; and
- The proposed height and scale of the proposal is consistent with the provisions of the Woollahra DCP 2015, in relation to the Paddington Heritage Conservation Area, and therefore achieves the desired future character of the neighbourhood.

#### **Clause 4.6(4)(a)(b) - Assessment**

The Department issued Planning Circular No.PS18-003 (dated 21<sup>st</sup> 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.

#### **14.4.5 Conclusion**

The written submission from the applicant has adequately demonstrated that the variation of the development standard prescribed by *Clause 4.3* is justified pursuant to the relevant matters for consideration prescribed by *Clause 4.6*.

Furthermore, the proposal is in the public interest and is consistent with the objectives of the development standard and those applicable to development within the zone. It is considered that the proposed development satisfies the relevant matters for consideration. This constitutes sufficient environmental planning grounds to allow for a variation of the height limit development standard, which accordingly, is justified in this instance.

The consent authority may be 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.

#### **14.5. Part 5.10: Heritage Conservation**

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

The subject site is located within the Paddington Heritage Conservation Area, and the subject building is considered a contributory item and a significant item. The subject site is not a Heritage Item in the Woollahra Local Environment Plan 2014, and there are no listed Heritage Items in close proximity that would be adversely affected by the proposal. Council's Heritage Officer has provided the following comments:

*The existing building is located within the Paddington Heritage Conservation Area (HCA), and is considered a contributory item and a significant item. The building is significant in that it forms part of the heritage character of Paddington, and contributes to the historic and aesthetic significance of the Paddington HCA.*

*The existing dwelling at No. 35 Glenview Street is a two storey Victorian rendered brick terraced house. The building is part of a group of 3 terraces (Nos. 35 – 31 Glenview Street) that was constructed in the late 19<sup>th</sup> century.*

*The existing side addition on the site's western boundary comprises a single storey rendered brick structure with glass roof and houses a carport with storage behind. Historical photographs of the group indicate the terraces originally featured slate roofs (see No. 33 Glenview Street), and also show that a previous intrusive high brick fence to the street front zone... has since been removed and replaced with the existing palisade fence and gate.*

*A narrow private walkway is located to the west of the existing dwellings on the subject property, which comprises part of what was formerly a nightsoil lane in the locality (Figure 1). Historical photographs indicate that by the 1980s, part of the former nightsoil lane was occupied as a carport to No. 35 Glenview Street. In 2000, approval was granted by Council for construction of the existing covered carport, laundry and other site structures to the west of the principal building form.*

Subject to **Condition C.1**, Council's Heritage Officer is satisfied that the proposal is generally acceptable and a suitable design consistent with the relevant statutory and policy documents, including the relevant objectives and controls of Chapter C1 of the Woollahra Development Control Plan 2015, and would have a satisfactory impact.

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

#### **14.6. Part 6.1: Acid Sulfate Soils**

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

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

#### **14.7. 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 extent of excavation proposed by the development does not involve any significant works other than that to establish new building footings.

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

#### **14.8. 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 proposal is acceptable with regard to Part 6.3 of Woollahra LEP 2014.

### **15. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015**

#### **15.1. Chapter C1: Paddington Heritage Conservation Area**

##### **15.1.1 Section C1.2.4: Desired Future Character**

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

##### **15.1.2 Section C1.2.5: Contemporary Design in Paddington**

The proposal will provide a contemporary design approach that respects the context, scale, form and articulation of buildings that characterise the historic Paddington area. The proposal is therefore supported from a heritage perspective.

##### **15.1.3 Section C1.3.4: Multi-Storey Terrace Style Housing**

The proposal will provide a new two-storey side addition to the existing terrace dwelling, and is supported for the following reasons:

- The principle building form is retained and conserved, as is its contribution in the context of the terrace group, and the proposal maintains the development pattern of the adjoining buildings and the streetscape in which it is located;
- The proposed side addition is an appropriate and sympathetic modern addition, complementing the character of the principle building form, that would remove an uncharacteristic existing single-storey side addition in the street front zone;
- A side addition has similarly been added in the vicinity of the subject site, to No. 45 Glenview Street;
- The side addition complies with Control C3 (a) as it does not exceed the uppermost ridge of the principle building to which it will be attached;
- The side addition complies with Control C5 as it is consistent with the roof form and pitch, modulation, fenestration and articulation of the contributory item and its group;
- The side addition is narrower than the principle building, and will be set behind the front wall building line of the principle building form;
- The proposed material palette for the side addition includes and involves a variety of traditional materials and contemporary interpretations of traditional materials, which will complement the original character of the main dwelling and its group;

- The proposal will maintain the existing on-site, off-street single hardstand parking space, which has been a feature of the site since at least the 1980s; and
- While the proposed shingle roofing does not match the existing metal roofing to the principle building form, historical photographs indicate the original roofing material for the terrace group was slate tiling. The proposed shingle roofing to the side addition therefore provides a contemporary interpretation of the original slate tiling to the group, which complies and is supported in this instance.

The proposal achieves the relevant objectives, and complies with the relevant control of Section C1.3.4 of the Woollahra DCP 2015.

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

The proposal will present to the streetscape as an attached contemporary side addition to the principle building form, and is supported for the following reasons:

- The principle building form of the terrace will be retained;
- The existing single storey side addition will be removed and replaced with a sympathetically designed contemporary side addition, which will appear as recessive to the principle building, and those of the terrace group to which it belongs; and
- The proposed removal of sections of the western side wall of the principle building form at the first floor and attic levels to provide access to the new side addition, which includes the infilling of an existing side window, are localised in nature and supported from a heritage perspective in this instance.

Council's Heritage Officer further advises the following:

- *The proposal includes a new dormer to the rear roof plane of the principal building form. Other items within the group have a rear dormer to the rear roof plane (Nos. 33 and 31 Glenview Street), although the existing dormer to No. 33 Glenview Street does not comply under the current controls and is not considered precedent development. The proposed dormer does not comply with the controls and dimensions specified under Clause 1.5.1. (Refer to this section of the report below).*

These comments are concurred with, and **Condition C.1 a)** will be imposed to ensure that the design of the dormer to the principle building form is compliant.

Subject to **Condition C.1**, the proposal achieves the relevant objectives, and complies with the relevant controls of Section C1.4.1 of the Woollahra DCP 2015.

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

	Existing	Proposed	Control	Complies
C2 Alterations and additions to a building which comprises one of a group	Designed with regard to the overall balance of the group in terms of height, alignment, form, scale, breezeway pattern and architectural character and detail	Designed with regard to the overall balance of the group in terms of height, alignment, form, scale, breezeway pattern and architectural character and detail	Designed with regard to the overall balance of the group in terms of height, alignment, form, scale, breezeway pattern and architectural character and detail	Yes
C5 f) Rear setback	Not extend beyond the predominant rear building setbacks	Not extend beyond the predominant rear building setbacks	Not extend beyond the predominant rear building setbacks	Yes
C5 g) Original chimneys	Retain all original chimneys	Retain all original chimneys	Retain all original chimneys	Yes

The proposed contemporary side addition will be attached to the principle building form. The proposal is supported for the following reasons:

- The proposed rear-facing dormer to the side addition provides a contemporary interpretation of traditional forms that is appropriate to the modern side addition, and is supported from a heritage perspective;
- There is no existing pattern within the terrace group for the rear elevation of the principle building form, where other rear elevation windows to items within the group have been previously modified to become rear balconies. Therefore the enlargement of the existing non-original window at the first floor level of the rear elevation of the principle building form is supported in this instance;
- Furthermore, in regard to control C10, the proposed round-headed timber-framed window is consistent with the overall character of fenestration within the group, and would replace fabric of low significance, therefore the contemporary design is supported in this instance;
- A private narrow walkway, (which historically comprised part of a former nightsoil lane), is located to the west of the existing dwellings on the subject property. The proposal would not result in any additional incursion or impact to the private walkway/former nightsoil lane. It is noted that approval was granted in 2000 for construction of the existing covered carport, laundry and storage structure to the west of the principal building form, and the proposed side addition will be located on top of this existing single storey structure; and
- The overall proposal does not involve any substantial changes to the existing non-original rear wing addition off the principle building form.

Council's Heritage Officer further advises the following:

- *The proposed dormer to the rear roof plane of the principal building form must be designed in accordance with the relevant controls under Clause 1.5.1. (Refer to this section of the report below).*

These comments are concurred with, and **Condition C.1 a)** will be imposed to ensure that the design of the dormer to the principle building form is compliant.

Subject to **Condition C.1**, the proposal achieves the relevant objectives, and complies with the relevant controls of Section C1.4.3 of the Woollahra DCP 2015.

### 15.1.6 Section C1.4.4: Roofs and Roof Forms

	Existing	Proposed	Control	Complies
C6 Roof forms	Consistent with appropriate traditional roof forms, reflect the diminishing scale of roofscapes toward the rear of buildings	Consistent with appropriate traditional roof forms, reflect the diminishing scale of roofscapes toward the rear of buildings	Consistent with appropriate traditional roof forms, reflect the diminishing scale of roofscapes toward the rear of buildings	Yes
C8 Roof cladding	Not clad in materials with profiles that are appropriate to the architectural style of the building	Clad in materials with profiles that are appropriate to the architectural style of the building	Clad in materials with profiles that are appropriate to the architectural style of the building	Yes
C10 Transparent material to rear roof planes	<25%	<25%	Not more than 25% transparent material, including skylights and dormer windows	Yes

The proposed roofing to the new side addition is supported for the following reasons:

- The existing metal roofing to the principle building form will be retained;
- The form of the roof to the side addition is consistent with the principle building form that it will be attached to;
- In regard to control C3 a), subject to **Condition C.1 a)**, the proposed new dormer to the rear slope of the principle roof is supported under clause C1.5.1. (Refer to this section of the report below); and
- It is noted that while the proposed shingle roofing to the side addition does not match the existing metal roofing to the principal building form, historical photographs indicate the original roofing material for the terrace group was slate tiling. The proposed shingle roofing to the side addition therefore provides a contemporary interpretation of the original slate tiling to the group, and is supported in this instance.

Subject to **Condition C.1**, the proposal achieves the relevant objectives, and complies with the relevant controls of Section C1.4.4 of the Woollahra DCP 2015.

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

	Existing	Proposed	Control	Complies
C3 The height, bulk, form and scale of infill and new development	Inconsistent with the predominant height, bulk, form and scale of adjoining buildings	Consistent with the predominant height, bulk, form and scale of adjoining buildings	Consistent with the predominant height, bulk, form and scale of adjoining buildings	Yes
C4 Sunlight provided to the main ground level private open space of adjoining properties	Min 50% (or 35m <sup>2</sup> ) for two hours between 9am and 3pm on 21 June	Min 50% (or 35m <sup>2</sup> ) for two hours between 9am and 3pm on 21 June	Min 50% (or 35m <sup>2</sup> ) for two hours between 9am and 3pm on 21 June	Yes
C5 Sunlight to north-facing windows to habitable rooms of adjoining dwellings	Min 3 hours between 9am and 3pm on 21 June	Min 3 hours between 9am and 3pm on 21 June	Min 3 hours between 9am and 3pm on 21 June	Yes

The proposed height, bulk, form and scale of the side addition is consistent with the subject terrace dwelling, the terrace group to which it belongs, and adjacent development, and is supported under this section.

The proposal achieves the relevant objectives, and complies with the relevant controls of Section C1.4.5 of the Woollahra DCP 2015.

#### 15.1.8 Section C1.4.6: Site Coverage, Setbacks and Levels

	Existing	Proposed	Control	Complies
C1 Proportion of building footprint	Consistent with similar properties in the immediate vicinity	Consistent with similar properties in the immediate vicinity	Consistent with similar properties in the immediate vicinity	Yes
C3 Siting and setbacks	Consistent with the immediate established patterns	Consistent with the immediate established patterns	Continue the immediate established patterns	Yes
C7 Established levels	Consistent with ground floor and first floor levels established by existing buildings and topography in the context of a sloping site	Consistent with ground floor and first floor levels established by existing buildings and topography in the context of a sloping site	Consistent with ground floor and first floor levels established by existing buildings and topography in the context of a sloping site	Yes

The proposed side addition is supported for the following reasons:

- The side addition is positioned adjacent to all levels of the existing terrace;
- It is considered to be supported in this instance as it sits behind the existing front setback of the principle building line, conforms to the existing levels within the terrace dwelling, has a matching maximum roof height relative to the principle roof form, and does not extend beyond the rear building line established by the principle building, and that of the terrace group; and
- The extension to the north-western side boundary is considered to be supported in this instance as it is consistent with the pattern of terrace development and building footprint of the existing dwelling side addition, and in the immediate established vicinity of the streetscape.

The proposal achieves the relevant objectives, and complies with the relevant controls of Section C1.4.6 of the Woollahra DCP 2015.

#### 15.1.9 Section C1.4.7: Excavation

The proposed extent of excavation does not involve any significant works other than that to establish new building footings.

Council's Development Engineer has no objection to the proposal on technical grounds, and considered the proposal satisfactory, subject to standard conditions.

The proposal achieves the relevant objectives, and complies with the relevant controls of Section C1.4.7 of the Woollahra DCP 2015.

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

Site Area: 300.5m <sup>2</sup>	Existing	Proposed	Control	Complies
C4 Minimum unbuilt upon area for allotments greater than 180m <sup>2</sup>	35.9% (108m <sup>2</sup> )	35.9% (108m <sup>2</sup> )	18% (54.09m <sup>2</sup> )	Yes
C4 Principal rear area of private open space on allotments greater than 180m <sup>2</sup> – Principal Area	>35m <sup>2</sup>	>35m <sup>2</sup>	35m <sup>2</sup>	Yes
Minimum Area	>3m	>3m	3m	Yes
C4 Minimum deep soil landscape area for dwelling-house	12.98% (39m <sup>2</sup> )	12.98% (39m <sup>2</sup> )	12% (36.06m <sup>2</sup> )	Yes

The proposal achieves the relevant objectives, and complies with the relevant controls of Section C1.4.8 of the Woollahra DCP 2015.

#### 15.1.11 Section C1.4.9: Views

No public or private views are identified as being impacted upon by the proposal.

The proposal achieves the relevant objectives, and complies with the relevant controls of Section C1.4.9 of the Woollahra DCP 2015.

#### 15.1.12 Section C1.4.10: Acoustic and Visual Privacy

The proposal has been considered against the controls and objectives, and is supported for the following reasons:

- In regard to control C3, due to the elevated height of the new bathroom windows to the side addition (both the south-western and north-eastern elevation) on the First Floor Level, these windows are to be fitted with translucent glazing, and **Condition C.1 b)**, will be applied accordingly;
- The proposed contemporary-styled timber privacy screens and shutters to the new windows are appropriate to the modern addition and are a consistent interpretation of traditional forms and materials, will not impact upon any existing views or solar access to neighbouring properties, and are supported;
- There are no new balconies proposed as part of the works; and
- There will not be direct overlooking of main living areas or private open space from bathrooms or habitable rooms in accordance with the controls, as a result of the alterations and additions.

Subject to **Condition C.1**, the proposal achieves the relevant objectives, and complies with the relevant controls of Section C1.4.10 of the Woollahra DCP 2015.

#### 15.1.13 Section C1.5.1: Dormers and skylights

The proposed dormer window on the rear elevation to the new side addition is contemporary in detailing, provides a modern interpretation of traditional forms, and is supported.

Council's Heritage Officer further advises the following:



- *The proposed addition of a dormer to the rear roof plane of the principal building form could be supported. There is an existing attic level, and other items within the group feature rear dormers. The dormer to the rear roof plane of the principal building form must be designed in accordance with Controls C5, C6, C8, C10, C12, C14, C15 and C16.*

These comments are concurred with, and **Condition C.1 a)** will be imposed to ensure that the design of the dormer to the principle building form is compliant.

Subject to **Condition C.1**, the proposal achieves the relevant objectives, and complies with the relevant controls of Section C1.5.1 of the Woollahra DCP 2015.

#### **15.1.14 Section C1.5.2: Chimneys**

The proposal will retain the existing chimney and its detailing, which is supported.

The proposal achieves the relevant objectives, and complies with the relevant controls of Section C1.5.2 of the Woollahra DCP 2015.

#### **15.1.15 Section C1.5.3: Windows, Doors, Shutters and Security**

The proposal is supported for the following reasons:

- The enlargement of the existing non-original window at first floor level of the rear elevation of the principal building form (existing Bedroom 1 window) is supported as there is no existing pattern within the group, and other rear elevation windows to items within the group have been modified to become rear balconies;
- This proposed round headed timber framed window is consistent with the overall character of fenestration within the group, would replace fabric of low significance and the contemporary design is therefore supported in this instance;
- The new rear window at the First Floor Level of the side addition is vertically proportioned, interprets traditional proportions and patterns, and is supported; and
- The timber privacy screens to the new windows interpret traditional timber shutters and are supported.

The proposal achieves the relevant objectives, and complies with the relevant controls of Section C1.5.3 of the Woollahra DCP 2015.

#### **15.1.16 Section C1.5.5 Fences, Walls and Gates**

There are no works proposed to the existing boundary walls or fencing, and the existing palisade gate to the street front zone is to be retained, which is supported.

The proposal achieves the relevant objectives, and complies with the relevant controls of Section C1.5.5 of the Woollahra DCP 2015.

**15.1.17 Section C1.5.6: On-site Vehicle Parking, Garages, Carports, Driveway Access and Servicing Facilities**

There are no works proposed to the existing single car parking arrangement and vehicular crossover off Glenview Street, aside from new paving to the hardstand surface. The proposal retains the existing single hardstand car parking space, set behind the front alignment of the principle building form.

The proposal achieves the relevant objectives, and complies with the relevant controls of Section C1.5.6 of the Woollahra DCP 2015.

**15.1.18 Section C1.5.8: Materials, Finishes and Details**

The proposed new materials, finishes and details are supported for the following reasons:

- The material palette, comprising painted/bagged brickwork, timber framing to windows, traditional corrugated roofing to match the existing and shingle roofing to the new side addition, provide a combination of sympathetic contemporary and traditional materials that interpret the character of the terrace group, the streetscape and the surrounding HCA;
- The use of contemporary materials that interpret traditional materials will provide a sympathetic contemporary layer within the Paddington HCA, and is supported; and
- The proposed new concrete paving at the Ground Floor Level to the existing car parking space off Glenview Street is consistent with the concrete hardstand, and is supported.

The proposal achieves the relevant objectives, and complies with the relevant controls of Section C1.5.8 of the Woollahra DCP 2015.

**15.1.19 Section C1.5.9: Exterior Colours**

The proposed colour scheme is considered to be acceptable and supported from a heritage perspective.

The proposal achieves the relevant objectives, and complies with the relevant controls of Section C1.5.9 of the Woollahra DCP 2015.

**15.1.20 Section C1.5.10: Gardens and Trees**

Council's Tree and Landscape Officer has no objection to the proposed landscape plan, and has provided standard Conditions in support of the proposal.

The proposal achieves the relevant objectives, and complies with the relevant controls of Section C1.5.10 of the Woollahra DCP 2015.

**15.1.21 Section C1.6.2: Views and Vistas**

The proposal is not identified as impacting upon any existing views, corridors and vistas.

The proposal achieves the relevant objectives, and complies with the relevant controls of Section C1.6.2 of the Woollahra DCP 2015.

## **15.2. Chapter E1: Parking and Access**

The proposal retains the existing parking and access arrangements for the subject site.

The proposal is acceptable with regard to the objectives and controls in Chapter E1 of the Woollahra DCP 2015.

## **15.3. Chapter E2: Stormwater and Flood Risk Management**

Council's Technical Services Engineer supports the proposal, and considers the proposal acceptable in regard to Stormwater Management, subject to standard Conditions.

The proposal is acceptable with regard to the objectives and controls in Chapter E2 of the Woollahra DCP 2015.

## **15.4. Chapter E3: Tree Management**

Council's Tree and Landscape Officer supports the proposal, and considers the proposal acceptable in regard to Tree Management, subject to standard Conditions.

The proposal is acceptable with regard to the objectives and controls in Chapter E3 of the Woollahra DCP 2015.

## **15.5. Chapter E5: Waste Management**

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

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

The requirements are enforced by standard Conditions.

## **16. SECTION 7.12 CONTRIBUTION PLANS**

### **16.1. 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. Refer to **Condition C.2**.

<b>Cost of Works</b>	<b>Rate</b>	<b>Contribution Payable</b>
\$450,000.00	1%	\$4,500.00

## **17. APPLICABLE ACTS/REGULATIONS**

### **17.1. Environmental Planning and Assessment Regulation 2000**

#### **Demolition of Structures**

The development is required to comply with Australian Standard AS 2601-1991: *The demolition of structures*. These requirements are enforced by standard Conditions.

## **Building Code of Australia**

The proposal is required to comply with the relevant provisions of the Building Code of Australia. These requirements are enforced by standard Conditions.

### **18. THE LIKELY IMPACTS OF THE PROPOSAL**

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

### **19. THE SUITABILITY OF THE SITE**

The site is suitable for the proposed development.

### **20. THE PUBLIC INTEREST**

The proposal is considered to be in the public interest.

### **21. CONCLUSION**

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

### **22. 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.

### **23. 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. 198/2020/1 for alterations and additions including a new two-level extension into the side passage with parking and attic space on land at 35 Glenview Street Paddington, 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)
A-DA-00 (Rev 4)	Title Sheet and Location Plan	Sherson Architecture	06/10/2020
A-DA-80 (Rev 4)	Ground Floor Plan		25/09/2020
A-DA-90 (Rev 4)	Mid Level Plan		
A-DA-100 (Rev 4)	First Floor Plan		
A-DA-110 (Rev 4)	Attic Floor Plan		
A-DA-111 (Rev 4)	Roof and Site Plan		
A-DA-120 (Rev 3)	Northern Elevation Plan		02/06/2020
A-DA-130 (Rev 2)	Eastern Elevation Plan		
A-DA-131 (Rev 3)	Southern Elevation Plan		25/09/2020
A-DA-133 (Rev 3)	Western Elevation Plan		
A-DA-140 (Rev 2)	Cross Section 1		02/06/2020
A-DA-150 (Rev 2)	Materials and Colours Sheet		
A-DA-180 (Rev 1)	Waste Management Plan		
A378903	BASIX Certificate	NSW Department of Planning and Environment	03/06/2020
V2Jm	Arboricultural Transplant Method Statement	McArdle Arboricultural Consultancy	10/06/2020
SWMMP	Site Waste Minimisation and Management Plan	Robert Kaufmann	02/06/2020

**Note:** Warning to Accredited Certifiers – You should always insist on sighting the original Council stamped approved plans. You should not rely solely upon the plan reference numbers in this condition. Should the Applicant not be able to provide you with the original copy Council will provide you with access to its files so you may review our original copy of the approved plan.

**Note:** These plans and supporting documentation may be subject to conditions imposed under section 4.17(1)(g) of the *Act* modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)  
Standard Condition: A5 (Autotext AA5)

#### A.4 Ancillary Aspects of Development (section 4.17(2) of the *Act*)

The Owner must procure the repair, replacement or rebuilding of all road pavement, kerb, gutter, footway, footpaths adjoining the site or damaged as a result of work under this consent or as a consequence of work under this consent. Such work must be undertaken to Council's satisfaction in accordance with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012) unless expressly provided otherwise by these conditions at the Owner's expense.

**Note:** This condition does not affect the Principal Contractor's or any sub-contractors obligations to protect and preserve public infrastructure from damage or affect their liability for any damage that occurs.  
Standard Condition: A8 (Autotext AA8)

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

This approval does not give consent to the existing roof terrace (annotated on the architectural plans) or any associated access doors (from the landing and bathroom) on the Mid-Level floor plan.

#### A.6 Tree Preservation and 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>Archontophoenix cunninghamiana</i> (Bangalow palm)	Side – West boundary	10 x 4

• Trees on Council Land

Council Ref No.	Species	Location	Dimension (metres)	Tree Value
2	<i>Jacaranda mimosifolia</i> (Jacaranda)	Front – Council verge	6 x 6	\$1,000

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

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

Council Ref No.	Species	Location	Dimension (metres)
1	<i>Archontophoenix cunninghamiana</i> (Bangalow palm)	Side – West boundary	10 x 4

**Note:** The tree/s required to be retained shall appear coloured yellow on the construction certificate plans.

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)
1	<i>Archontophoenix cunninghamiana</i> (Bangalow palm)	Side – West boundary	Remove fully developed fronds to reduce transpiration during transplantation

**Note:** The tree/s required to be pruned should appear coloured blue on the construction certificate

**B. Conditions which must be satisfied prior to the demolition of any building or construction**

**B.1 Construction Certificate Required Prior to Any Demolition**

Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is "commencement of erection of building" pursuant to section 6.6 of the *Act*.



In such circumstance all conditions in Part C and Part D of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the issue of a Construction Certificate, appointment of a Principal Certifier, and Notice of Commencement under the *Act*.

**Note:** See *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.  
Standard Condition: B1 (Autotext BB1)

## B.2 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)
2	<i>Jacaranda mimosifolia</i> (Jacaranda)	Front – Council verge	1m

**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.

- 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.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
Excavation of root ball Tree 1	Condition of exposed roots – Containment of root ball
Transplantation of Tree 1 to new location	Ensure excavation of transplant location is adequate size. North orientation maintained.
Stabilisation and irrigation of Tree 1 in new location	Ensure stability of transplanted palm. Adequate irrigation and soil treatment for root development
Prior to the issue of a Final Occupation Certificate	Supervise the dismantling of tree protection measures

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.

### B.4 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.5 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

## **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) Dormer to Rear Roof Plane of Principle Building**

The current design of the proposed dormer to the rear roof plane of the principal building form does not comply and is not supported. The dormer window to the rear roof plane of the principal building form is to be vertically proportioned and centrally located, and must be designed in accordance with the following controls:

1. Woollahra DCP 2015, Chapter C1, Clause 1.5.1 *Dormers and Skylights*, Objectives O1 and O2, Controls C5, C6, C8, C10, C12, C14, C15 and C16, Figure 13.

#### **b) New Bathroom Windows on the First Floor Level**

In order to comply with Section C1.4.10 *Acoustic and Visual Privacy*, Objectives O1 and O2, Control C3, of the Woollahra DCP 2015, all new proposed bathroom windows within the side addition on the First Floor Level are to be fitted with translucent glazing.

**Note:** The effect of this condition is that it requires design changes and/or further information to be provided with the Construction Certificate drawings and specifications to address specific issues identified during assessment under section 4.15 of the *Act*.

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

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

Standard Condition: C4 (Autotext CC4)

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

The Certifying Authority must not issue any certificates under section 6.4 of the *Act* until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees prior to the issue of a Construction Certificate, Subdivision Certificate or Occupation Certificate, as will apply.

Description	Amount	Indexed	Council Fee Code
<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</b> – making good any damage caused to any property of the Council	\$12,992.00	No	T115
<b>Tree Damage Security Deposit</b> – making good any damage caused to any public tree	\$1,000.00	No	T114
<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)	\$4,500.00 + Index Amount	Yes, quarterly	T96
<b>INSPECTION FEES</b> under section 608 of the <i>Local Government Act 1993</i>			
Public Tree Management Inspection Fee	\$200.00	No	T45
Security Administration Fee	\$190.00	No	T16
<b>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</b>	\$18,882.00 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.3 BASIX Commitments

The Applicant must submit to the Certifying Authority BASIX Certificate No. A378903 with any application for a Construction Certificate.

**Note:** Where there is any proposed change in the BASIX commitments the Applicant must submit of a new BASIX Certificate to the Certifying Authority and Council. If any proposed change in the BASIX commitments are inconsistent with development consent (see: clauses 145 and 146 of the *Regulation*) the Applicant will be required to submit an amended development application to Council pursuant to section 4.55 of the *Act*.

All commitments in the BASIX Certificate must be shown on the Construction Certificate plans and specifications prior to the issue of any Construction Certificate.

**Note:** Clause 145(1)(a1) of the *Environmental Planning and Assessment Regulation* 2000 provides: "A certifying authority must not issue a Construction Certificate for building work unless it is satisfied of the following matters: (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires".  
Standard Condition: C7

### C.4 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.5 Structural Adequacy of Existing Supporting Structures

A certificate from a professional engineer (structural engineer), certifying the adequacy of the existing supporting structure to support the additional loads proposed to be imposed by the development, must be submitted with the Construction Certificate application.

**Note:** This condition is imposed to ensure that the existing structure is able to support the additional loads proposed.

Standard Condition: C35 (Autotext CC35)

## C.6 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.7 Stormwater Discharge to Existing Stormwater Drainage System

The Construction Certificate plans and specifications required by clause 139 of the *Regulation*, must detail:

- a) the location of the existing Stormwater Drainage System including all pipes, inspection openings, surface drains, pits and their discharge location,
- b) the state of repair of the existing Stormwater Drainage System,
- c) any remedial works required to upgrade the existing Stormwater Drainage System to comply with the BCA,
- d) any remedial works required to upgrade the existing Stormwater Drainage System crossing the footpath and any new kerb outlets,
- e) any new Stormwater Drainage System complying with the BCA,
- f) interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath,
- g) any rainwater tank (see Note below) required by BASIX commitments including their overflow connection to the Stormwater Drainage System, and
- h) general compliance with the Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.

Where any new Stormwater Drainage System crosses the footpath area within any road, separate approval under section 138 of the *Roads Act 1993* must be obtained from Council for those works prior to the issue of any Construction Certificate.

All Stormwater Drainage System work within any road or public place must comply with Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012).

**Note:** Clause F1.1 of Volume 1 and Part 3.1.2 of Volume 2 of the BCA provide that stormwater drainage complying with AS/NZS 3500.3 Plumbing and drainage - Part 3: Stormwater drainage is deemed-to-satisfy the BCA. Council's specifications apply in relation to any works with any road or public place.

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

**Note:** Stormwater Drainage Systems must not discharge to any Sewer System. It is illegal to connect stormwater pipes and drains to the sewerage system as this can overload the system and cause sewage overflows. For more information go to the Sydney Water website [www.sydneywater.com.au/SW/plumbing-building-developing/index.htm](http://www.sydneywater.com.au/SW/plumbing-building-developing/index.htm) or call 1300 082 746.

**Note:** Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* dated January 2003 and the Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management can be downloaded from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)  
Standard Condition: C49

**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 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.3 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.

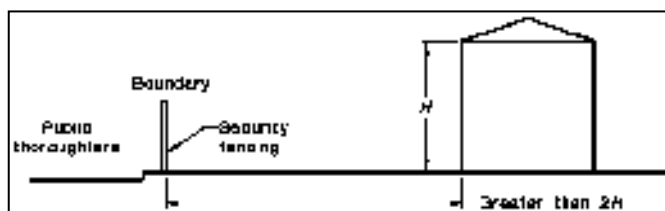
**Note:** The Principal Contractor or Owner must allow not less than four to six weeks (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under the clause 22 of the *Transport Administration (General) Regulation 2000* 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)

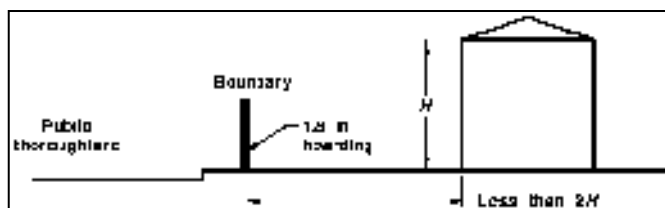
#### D.4 Security Fencing, Hoarding and Overhead Protection

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.



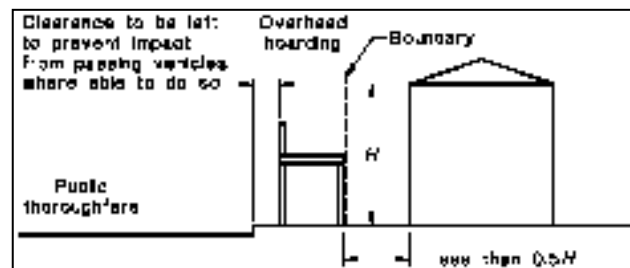
##### Type B Hoarding

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:

- the vertical height above footpath level of the structure being demolished is less than 4.0m; or
- 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:

- extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary,
- have a clear height above the footpath of not less than 2.1m,
- 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
- 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:

- 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.5 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.6 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.7 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.8 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.9 Notification of Home Building Act 1989 requirements**

- a) For the purposes of section 4.17(11) of the *Act*, the requirements of this condition are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the Home Building Act 1989.
- b) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - In the case of work for which a Principal Contractor is required to be appointed:
    - the name and licence number of the Principal Contractor, and
    - the name of the insurer by which the work is insured under Part 6 of that Act,
  - In the case of work to be done by an Owner-builder:
    - the name of the Owner-builder, and
    - if the Owner-builder is required to hold an Owner-builder permit under that Act, the number of the Owner-builder permit.
- c) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- d) This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the *Act*, to comply with the Building Code of Australia.

Standard Condition: D17 (Autotext DD17)

## **E. Conditions which must be satisfied during any development work**

### **E.1 Compliance with BCA and Insurance Requirements under the Home Building Act 1989**

For the purposes of section 4.17(11) of the *Act*, the following condition is prescribed in relation to a development consent for development that involves any building work:

- a) that the work must be carried out in accordance with the requirements of the Building Code of Australia (BCA),
- b) in the case of residential building work for which the 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 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.4 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.5 Hours of Work –Amenity of the Neighbourhood

- a) No *work* must take place on any Sunday or public holiday.
- b) No *work* must take place before 7am or after 5pm any weekday.
- c) No *work* must take place before 7am or after 1pm any Saturday.
- 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 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.6 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.7 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.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 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.10 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.11 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.12 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.13 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.14 Prohibition of Burning

There must be no burning of any waste or other materials. The burning of copper chrome arsenate (CCA) or pentachlorophenol (PCP) treated timber is prohibited in all parts of NSW. All burning is prohibited in the Woollahra local government area.

**Note:** Pursuant to the *Protection of the Environment Operations (Clean Air) Regulation 2010* all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.  
Standard Condition: E22 (Autotext EE22)

### E.15 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.16 Site Waste Minimisation and Management – Demolition**

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

- a) the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,
- b) an area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements),
- c) provide separate collection bins and/or areas for the storage of residual waste,
- d) clearly ‘signpost’ the purpose and content of the bins and/or storage areas,
- e) implement measures to prevent damage by the elements, odour, health risks and windborne litter, and
- f) minimise site disturbance, limiting unnecessary excavation.

When implementing the SWMMP the Applicant must ensure:

- a) footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval,
- b) any material moved offsite is transported in accordance with the requirements of the *Protection of the Environment Operations Act 1997*,
- c) waste is only transported to a place that can lawfully be used as a waste facility,
- d) generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the NSW Environment Protection Authority, and relevant occupational health and safety legislation administered by SafeWork NSW, and
- e) evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained.

**Note:** Materials that have an existing reuse or recycling market should not be disposed of in a land fill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.  
Standard Condition: E31 (Autotext EE31)

## **E.17 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.18 Water Hammer**

All construction of the attic level ensuite shall be undertaken in accordance with the Plumbing Code of Australia and AS/NZS Standard 3500. Particular attention is to be taken to ensure that all pipes:

- a) are installed to minimise noise,
- b) secured and installed so that ‘water hammer’ does not occur, and
- c) the general operation of the ensuite does not create noise nuisance to adjoining residents.

Standard Condition: E38

#### **E.19 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.20 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, Part 1: 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.21 Disposal of Asbestos and Hazardous Waste**

Asbestos and hazardous waste, once classified in accordance with **Condition E.20** 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.22 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.23 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

## **F. Conditions which must be satisfied prior to any occupation or use of the building (Part 6 of the Act and Part 8 Division 3 of the Regulation)**

### **F.1 Occupation Certificate (section 6.9 of the Act)**

A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 6.10 of the *Act*) unless an Occupation Certificate has been issued in relation to the building or part.

**Note:** New building includes an altered portion of, or an extension to, an existing building.  
Standard Condition: F1 (Autotext FF1)

## **F.2 Commissioning and Certification of Systems and Works**

The Principal Contractor or Owner-builder must submit to the satisfaction of the Principal Certifier works-as-executed (WAE) plans, Compliance Certificates and evidence of suitability in accordance with the BCA confirming that the works, as executed and as detailed, comply with the requirement of this consent, the *Act*, the *Regulations*, any relevant construction certificate, the BCA and relevant Australian Standards.

Works-as-executed plans, Compliance Certificates and evidence of suitability in accordance with the BCA must include but may not be limited to:

- a) Certification from the supervising professional engineer that the requirement of the Geotechnical/Hydrogeological conditions and report recommendations were implemented and satisfied during development work.
- b) All flood protection measures.
- c) All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1: *Off-Street car parking*.
- d) All stormwater drainage and storage systems.
- e) All mechanical ventilation systems.
- f) All hydraulic systems.
- g) All structural work.
- h) All acoustic attenuation work.
- i) All waterproofing.
- j) Such further matters as the Principal Certifier may require.

**Note:** This condition has been imposed to ensure that systems and works as completed meet development standards as defined by the *Act*, comply with the BCA, comply with this consent and so that a public record of works as execute is maintained.

**Note:** The PC may require any number of WAE plans, certificates, or other evidence of suitability as necessary to confirm compliance with the *Act*, *Regulation*, development standards, BCA, and relevant Australia Standards. As a minimum WAE plans and certification is required for stormwater drainage and detention, mechanical ventilation work, hydraulic services (including but not limited to fire services).

**Note:** The PC must submit to Council, with any Occupation Certificate, copies of WAE plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA upon which the PC has relied in issuing any Occupation Certificate.

Standard Condition: F7 (Autotext FF7)

## **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 (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. A378903.

**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)

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

### I.1 Maintenance of BASIX Commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. A378903.

**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.2 Outdoor Lighting – Residential

Outdoor lighting must comply with AS/NZS 4282:2019: *Control of the obtrusive effects of outdoor lighting*. The maximum luminous intensity from each luminaire and threshold limits must not exceed the level 1 control relevant under tables in AS/NZS 4282:2019.

**Note:** This condition has been imposed to protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting in public places.

**Note:** This condition has been imposed to control the obtrusive effects of outdoor lighting.  
Standard Condition: I49

## J. Miscellaneous Conditions

Nil.

## K. Advisings

### K.1 Criminal Offences – Breach of Development Consent and Environmental Laws

Failure to comply with this development consent and any condition of this consent is a **criminal offence**. Failure to comply with other environmental laws is also a criminal offence.

Where there is any breach Council may without any further warning:

- a) Issue Penalty Infringement Notices (On-the-spot fines);
- b) Issue notices and orders;
- c) Prosecute any person breaching this consent; and/or
- d) Seek injunctions/orders before the courts to restrain and remedy any breach.

### Warnings as to potential maximum penalties

Maximum penalties under NSW environmental laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

### Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council's policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order.

This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

**Note:** The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of the *Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious.  
Standard Advising: K1 (Autotext KK1)

## **K.2 Dial Before You Dig**



The Principal Contractor, Owner-builder or any person digging may be held financially responsible by the asset owner should they damage underground pipe or cable networks. Minimise your risk and dial 1100 Before You Dig or visit [www.1100.com.au](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 Ms A. Healey, Assessment Officer, on (02) 9391 7162.

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 Recycling of Demolition and Building Material**

It is estimated that building waste, including disposable materials, resulting from demolition, excavation, construction and renovation, accounts for almost 70% of landfill. Such waste is also a problem in the generation of dust and the pollution of stormwater. Council encourages the recycling of demolition and building materials.

Standard Condition: K17 (Autotext KK17)

### **K.12 Owner-builders**

Under the *Home Building Act 1989* any property owner who intends undertaking construction work to a dwelling house or dual occupancy to the value of \$12,000 or over must complete an approved education course and obtain an owner-builder permit from 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.13 Pruning or Removing a Tree Growing on Private Property**

The Woollahra Development Control Plan 2015 (DCP), Chapter E3 –Tree Management, may require that an application be made to Council prior to pruning or removing any tree. The aim is to secure the amenity of trees and preserve the existing landscape within our urban environment.

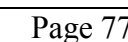
Before you prune or remove a tree, make sure you read all relevant conditions. You can obtain a copy of the Woollahra DCP from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or call Council on 9391 7000 for further advice.

Standard Condition: K19 (Autotext KK19)

## Annexures

1. Plans and Elevations [↓](#) 
2. Heritage Referral Response [↓](#) 
3. Trees & Landscaping Referral [↓](#) 
4. Clause 4.6 Variation Request [↓](#) 







35 Glenview Street Paddington, NSW, 2021  
LOT 1-2 DP 198616



#### ARCHITECTURAL DRAWING LIST

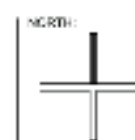
#### DOCUMENT NUMBER

Title sheet and location plan	A-DA-00
Site analysis	A-DA-10
Site images	A-DA-20
Material analysis	A-DA-21
Existing site plan	A-DA-30
Existing lower level plan and ground floor plan	A-DA-40
Existing mid level plan and first floor plan	A-DA-50
Existing upper level plan and roof plan	A-DA-60
Proposed ground floor plan	A-DA-80
Proposed mid level plan	A-DA-90
Proposed first floor plan	A-DA-100
Proposed Attic floor plan	A-DA-110
Combined site and roof plan	A-DA-111
Elevation sheet 1	A-DA-120
Elevation sheet 2	A-DA-130
Elevation sheet 3	A-DA-131
Elevation sheet 4	A-DA-132
Elevation sheet 5	A-DA-133
Cross section sheet 1	A-DA-140
Proposed materials	A-DA-150
Notification Plan	A-DA-160
Shadow Diagrams	A-DA-170
Shadow Diagram 2	A-DA-171
Waste management Plan	A-DA-180

## DEVELOPMENT APPLICATION for the Alterations and Additions To 35 Glenview street Paddington

DATE	REVISION	SCALE	NOTES
17/01/2021	1	1:100	Initial design and site plan
17/01/2021	2	1:100	Revised design and site plan
17/01/2021	3	1:100	Final design and site plan

#### LEGEND:



DRAWING:  
Title sheet and Location  
DRAWING NUMBER:  
A-DA-00  
DATE:  
17/01/2021  
DRAWN:  
AK

PROJECT:  
Paddington House 1 - Kaufmann  
35 Glenview Street, Paddington, NSW

ARCHITECT:  
Sherson Architecture  
11/11/2020  
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Sherson Architecture

NOTES:

Site area = 300sqm

Existing area:

Lower level = 14sqm  
Ground floor = 125sqm  
Mid level plan = 13sqm  
First floor = 43sqm  
Loft = 20sqm

Proposed area:

Lower level = 14sqm  
Ground floor = 125sqm  
Mid level plan = 13sqm  
First floor = 66sqm  
Loft = 40sqm

Existing GFA = 215sqm  
Proposed GFA = 358sqm

Existing building height = 10.08m roof ridge to ground  
Proposed building height = 10.08m

LANDSCAPE AREAS:

Private un built open area = 108sqm / 36%  
Deep soil existing = 30sqm / 13%  
Deep soil proposed = 39sqm / 13%

Existing private open space = 113sqm / 38%  
Proposed private open space = 113sqm / 38%

HOT WESTERLY  
WINDS DURING THE SUMMER

LIVERPOOL STREET



COOLING NORTH EASTERLY  
WINDS DURING THE SUMMER

GLENVIEW LANE

TREE LINED STREETS

BROWN LANE

STREET PARKING

GLENVIEW STREET



35 Glenview Street Paddington, NSW, 2021

DATE	REVISION	ISSUE	NOTES
10/01/2021	1	ISSUE	All works to be in accordance with the approved development application. Verify dimensions on site prior to starting work. Use figure dimensions only. Marked levels are to AHD. Contact the architect if any discrepancies are found.

LEGEND:  
CROSS FALL ON THE SITE  
CITY VIEWS  
STREET NOISE



DRAWING:  
DRAWING NUMBER:  
A-01-10  
DATE:  
June 2020  
SCALE:  
1:100  
DRAWN:  
DS

PROJECT:  
Paddington House 1 - Kaufmann  
35 Glenview Street, Paddington, NSW

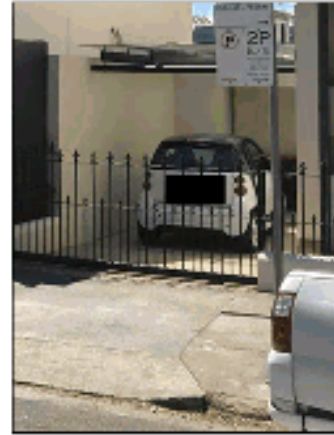
ARCHITECT:  
Sherson Architecture  
E: [info@shersonarchitecture.com.au](mailto:info@shersonarchitecture.com.au) T: 02 9200 6443  
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MID LEVEL TERRACE LOOKING NORTH



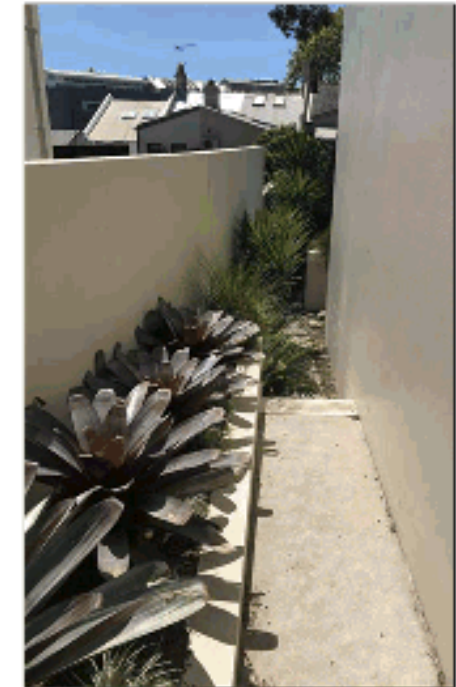
EXISTING OFF STREET PARKING



EXISTING PARKING AND GLASS CARPORT



EXISTING POOL TERRACE AND PRIVATE LANDSCAPING



WESTERN BOUNDARY WALL / FENCE



No. 20 GLENVIEW STREET



No. 45 GLENVIEW STREET



No. 36 GLENVIEW STREET



STREET ELEVATION, LOOKING NORTH EAST ALONG GLENVIEW STREET



No. 30 GLENVIEW LANE RETAINING WALL

DATE	REVISION	SCALE	NOTES
11/01/20	1	1:100	As noted in the conditions of sale and the planning panel order.
11/01/20	2	1:100	Revised to include the proposed landscaping.
11/01/20	3	1:100	Use figures to show area only.
11/01/20	4	1:100	Marked levels are AHD.
11/01/20	5	1:100	Corrected the error of the landscaping area.

LEGEND:

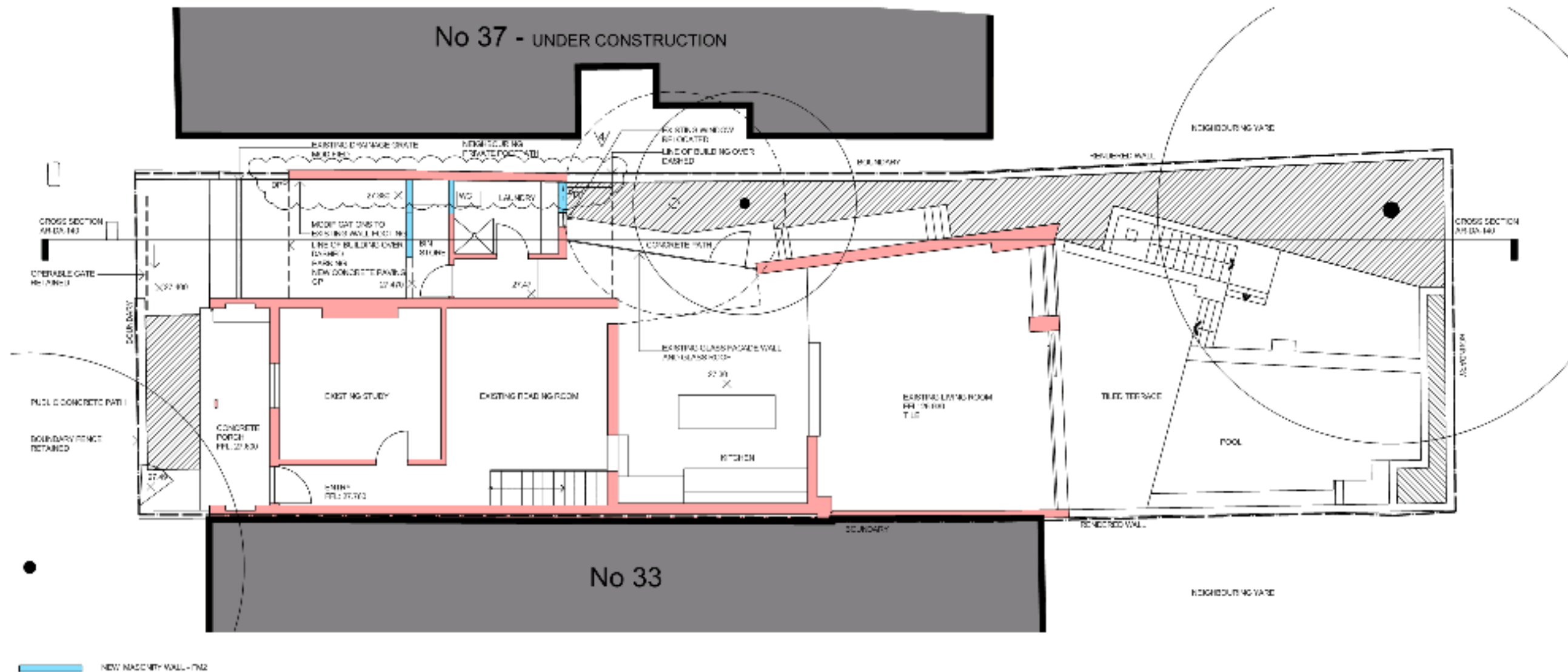
NORTH:

DRAWING:  
Sharon  
DRAWING NUMBER:  
A-0000  
DATE:  
June 2020  
SCALE:  
1:100

PROJECT:  
Paddington House 1 - Kaufmann  
35 Glenview Street, Paddington, NSW

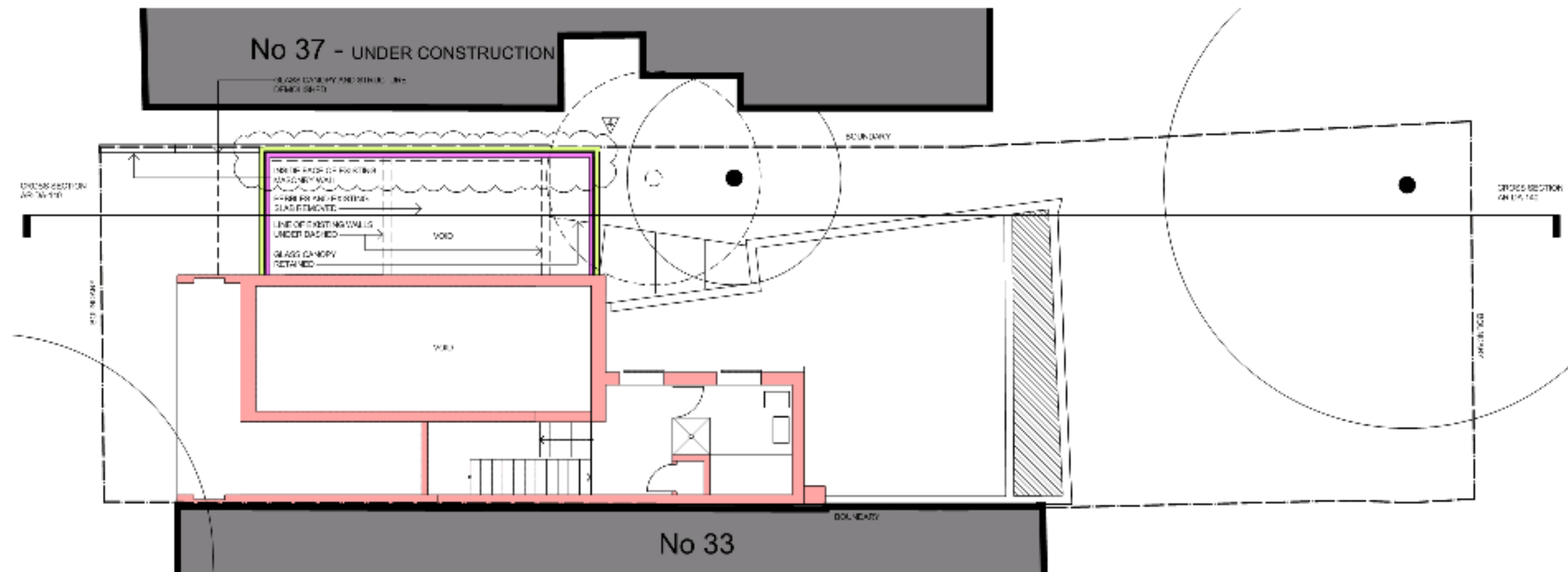
ARCHITECT:  
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31/10/2020  
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### GROUND FLOOR PLAN

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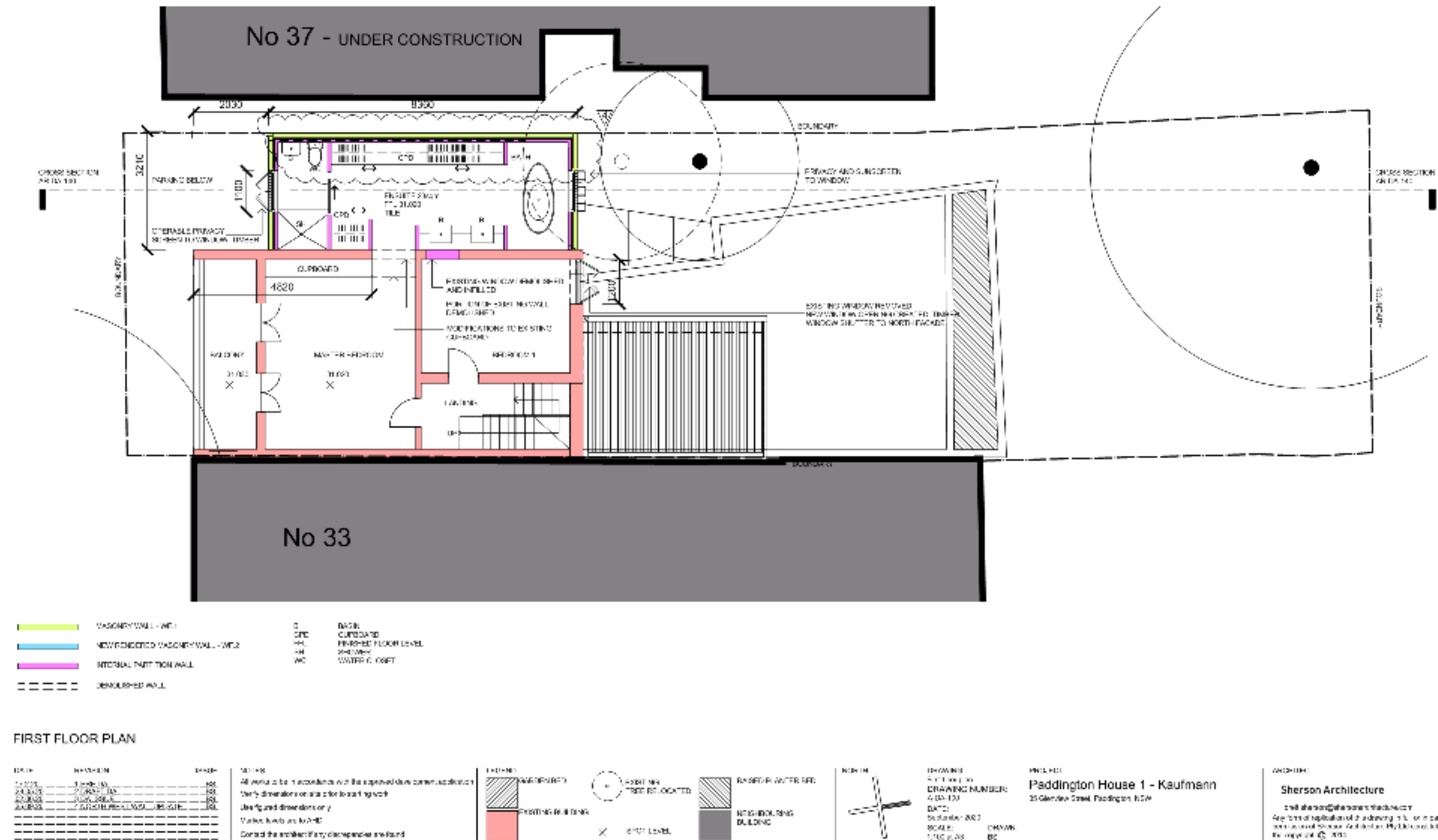


- MASONRY WALL - WP.1
- MASONRY WALL - WP.2
- INTERNAL PARTITION WALL
- GLASS CANOPY WALL

#### MID LEVEL PLAN - MINIMAL WORK

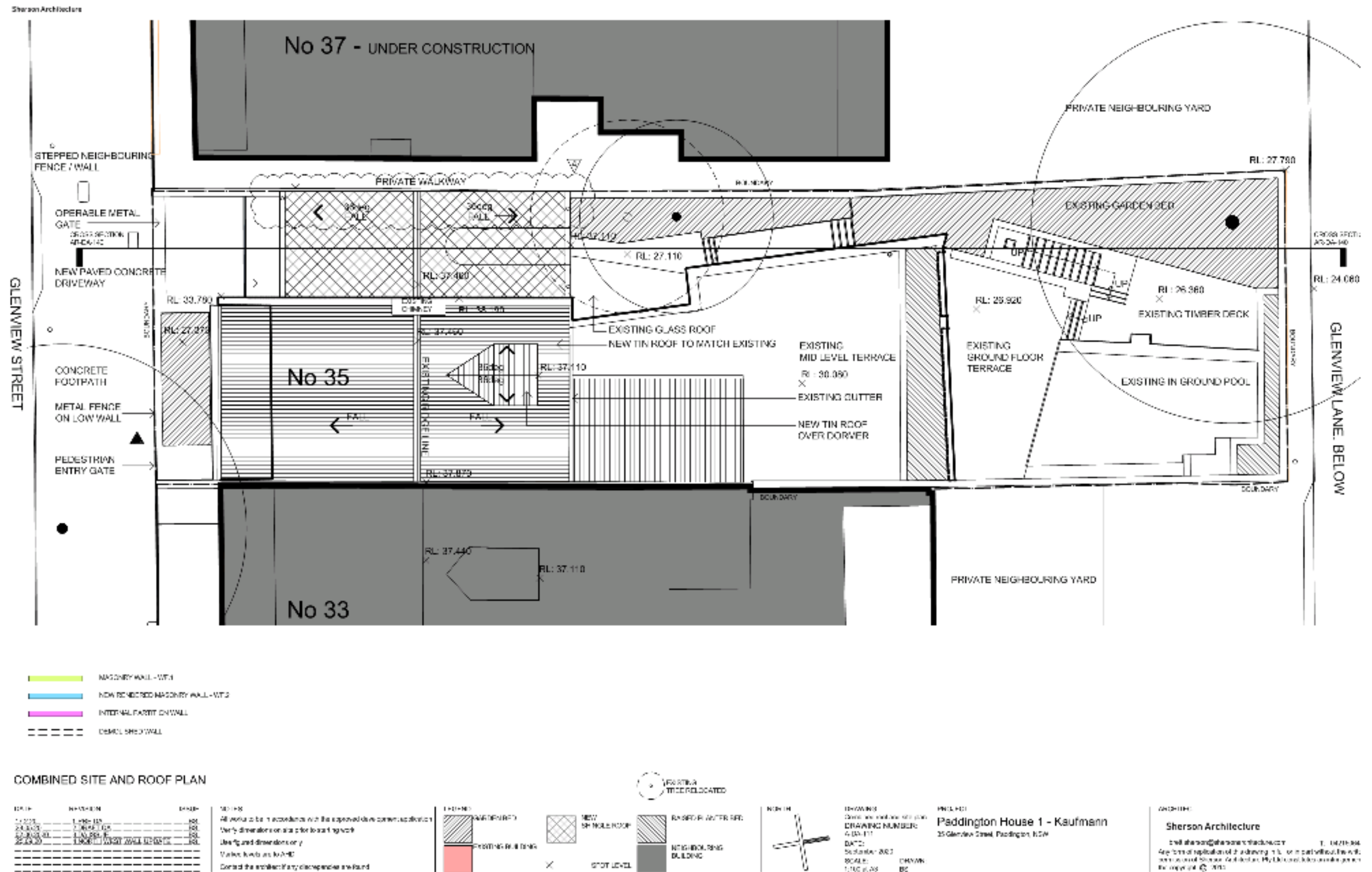
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3.1.2020	3. REVISED	SH	003
4.1.2020	4. REVISED	SH	004
5.1.2020	5. REVISED	SH	005
6.1.2020	6. REVISED	SH	006
7.1.2020	7. REVISED	SH	007
8.1.2020	8. REVISED	SH	008
9.1.2020	9. REVISED	SH	009
10.1.2020	10. REVISED	SH	010
11.1.2020	11. REVISED	SH	011
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21.1.2020	21. REVISED	SH	021
22.1.2020	22. REVISED	SH	022
23.1.2020	23. REVISED	SH	023
24.1.2020	24. REVISED	SH	024
25.1.2020	25. REVISED	SH	025
26.1.2020	26. REVISED	SH	026
27.1.2020	27. REVISED	SH	027
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47.1.2020	47. REVISED	SH	047
48.1.2020	48. REVISED	SH	048
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99.1.2020	99. REVISED	SH	099
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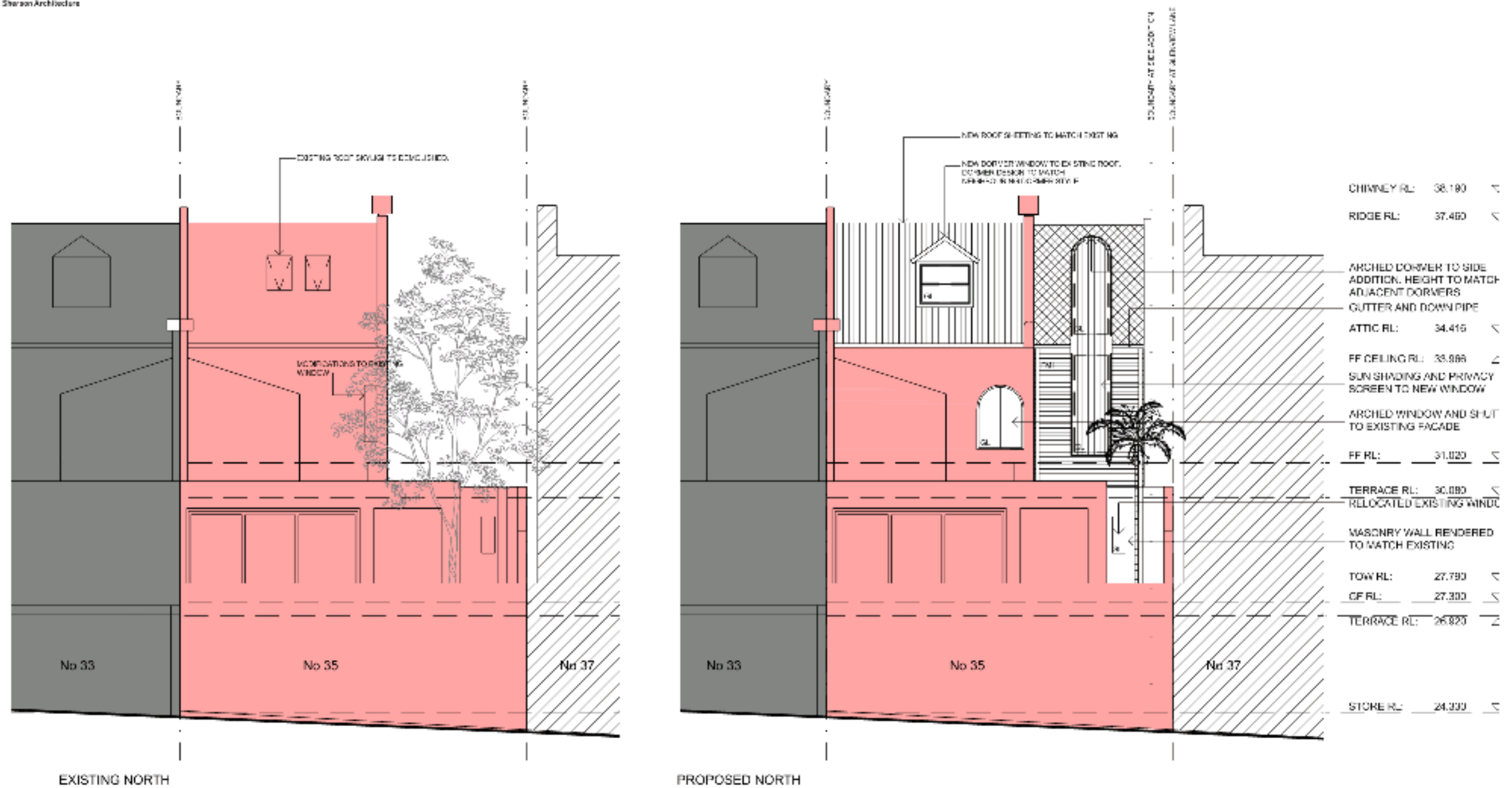








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DATE	REVISION	BY
11/01/20	1.0	SH
24/01/20	2.0	SH
27/01/20	3.0	SH

NOTES

All work to be in accordance with the approved development application.

Verify dimensions on site prior to starting work.

Use fig and dimensions on y.

Vertical levels are to AHD.

Contact the architect if any discrepancies are found.

EXISTING	NEW
EXISTING UNDER CONSTRUCTION	NEW SHINGLE ROOF
EXISTING MASONRY	NEW MASONRY
	GLASS

NOTES

DRAWING

Revised drawing

DRAWING NUMBER

4 (A1-10)

DATE

June 2020

SCALE

1:100 A3

PROJECT

Paddington House 1 - Kaufmann

35 Glenview Street, Paddington, NSW

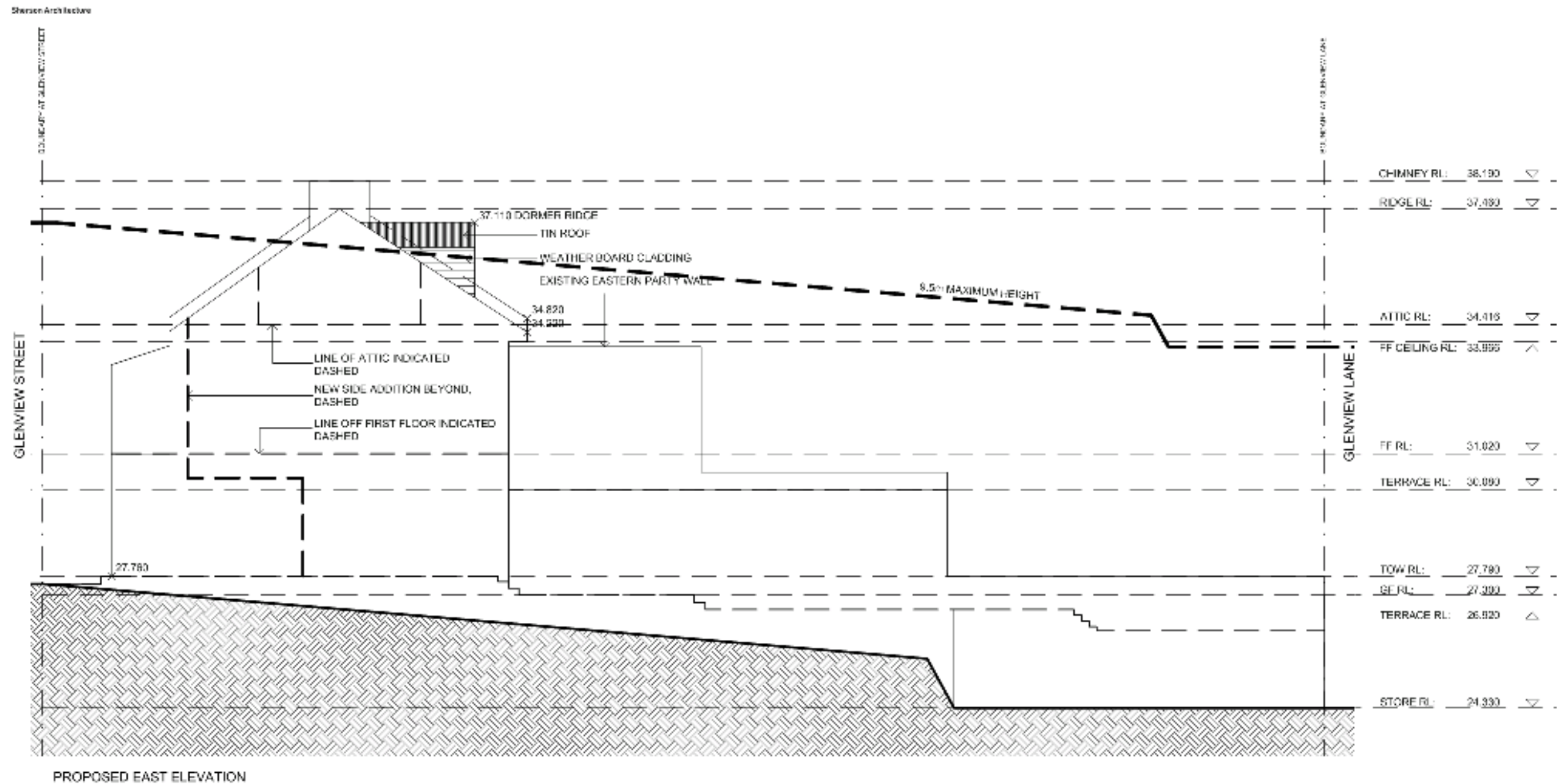
ARCHITECT

Sherson Architecture

g. sherson@shersonarchitects.com.au T. 04215 894

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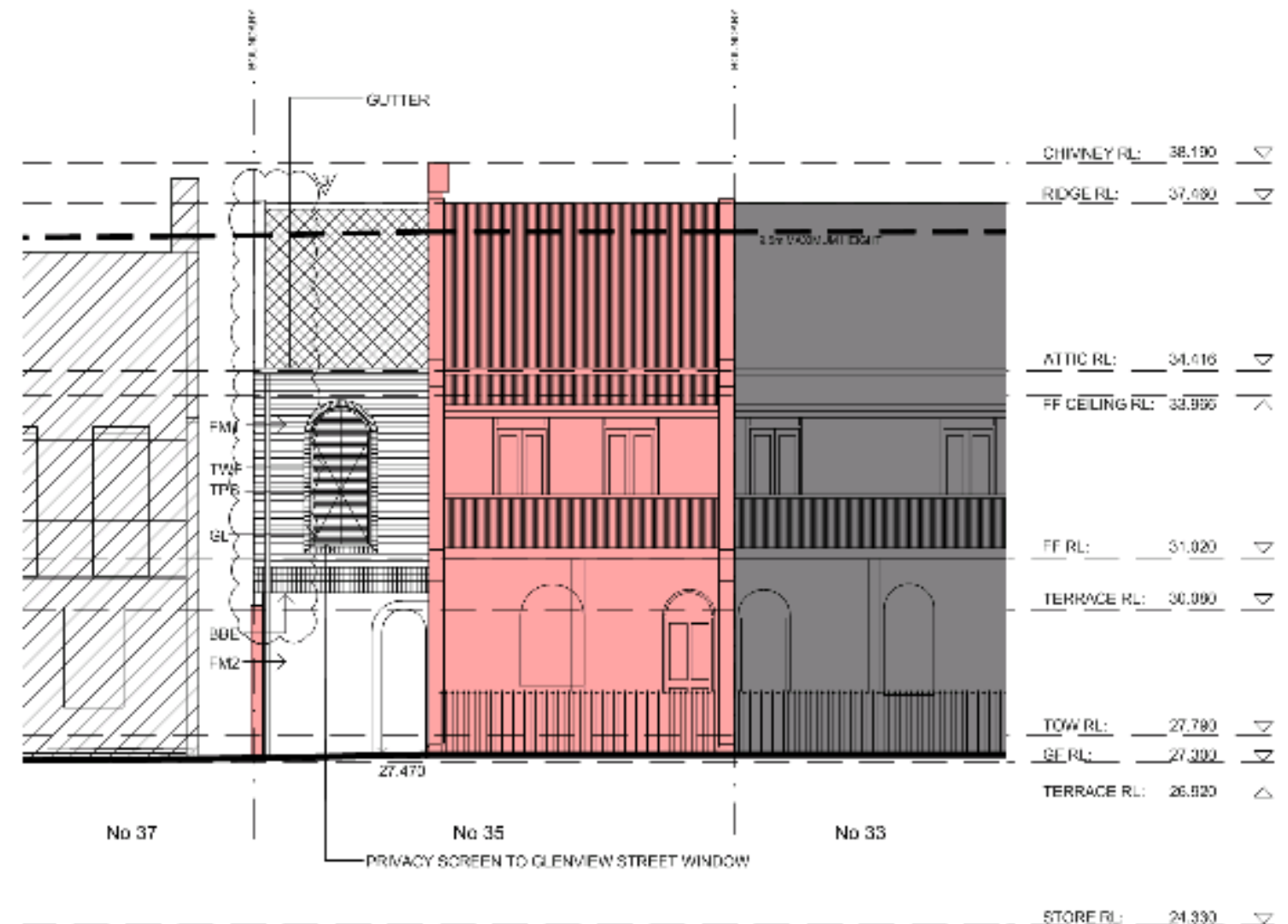


<p>DATE: 18.12.2020</p> <p>BY: [Signature]</p> <p>FOR: [Signature]</p>	<p>REVISION</p> <p>1. 18.12.2020</p> <p>2. 18.12.2020</p>	<p>NOTES</p> <p>1. Refer to the site plan for the proposed development.</p> <p>2. Verify the site plan and the proposed development.</p> <p>3. Use the site plan for the proposed development.</p> <p>4. Check the site plan for the proposed development.</p>	<p>LEGEND</p> <p>EXISTING UNDER CONSTRUCTION</p> <p>EXISTING BUILDING</p>	<p>SPOT LEVEL</p> <p>NEIGHBOURING BUILDING</p>	<p>PROPOSED</p> <p>PROPOSED HOUSE 1 - KAUFMANN</p> <p>25 Glenview Street, Paddington, NSW</p>	<p>SHERSON ARCHITECTURE</p> <p>18.12.2020</p> <p>18.12.2020</p>
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EXISTING SOUTH ELEVATION



PROPOSED SOUTH ELEVATION

DATE	BY	REVISION
24.04.2021	J. KAUFMANN	1. INITIAL DESIGN
17.05.2021	J. KAUFMANN	2. REVISED DESIGN
22.09.2021	J. KAUFMANN	3. FINAL DESIGN

NOTES:  
All work to be in accordance with the approved development application.  
Verify dimensions on site prior to starting work.  
Use fig and dimensions on y.  
Values levels are to AHD.  
Contact the architect if any discrepancies are found.

GL	GLASS
FM1	PACKAGE VASCONRY 1
FM2	PACKAGE VASCONRY 2
FM3	PACKAGE VASCONRY 3
FM4	PACKAGE VASCONRY 4
FM5	PACKAGE VASCONRY 5
FM6	PACKAGE VASCONRY 6
FM7	PACKAGE VASCONRY 7
FM8	PACKAGE VASCONRY 8
FM9	PACKAGE VASCONRY 9
FM10	PACKAGE VASCONRY 10

EXISTING	NEW SHINGLE ROOF	NEW MASONRY
UNDER CONSTRUCTION	NEW SCULPTING BUILDING	

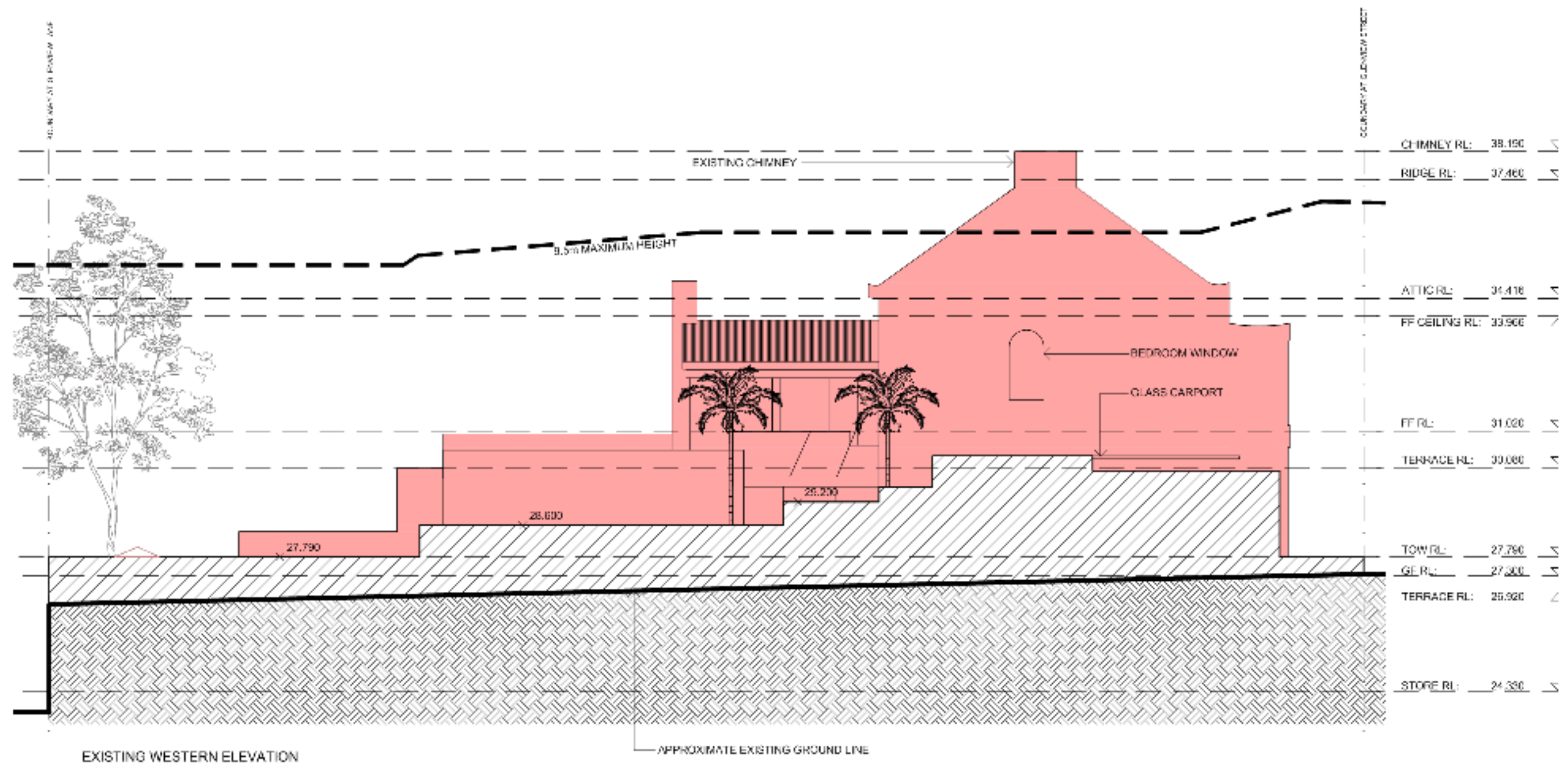
NOTES:  
All work to be in accordance with the approved development application.  
Verify dimensions on site prior to starting work.  
Use fig and dimensions on y.  
Values levels are to AHD.  
Contact the architect if any discrepancies are found.

DRAWING  
Drawing sheet 3  
DRAWING NUMBER  
4.0A.131  
DATE:  
June 2021  
SCALE:  
1:100 A3

PROJECT  
Paddington House 1 - Kaufmann  
35 Glenview Street, Paddington, NSW

ARCHITECT  
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E. info@shersonarchitecture.com.au  
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DATE	REVISION	BY
24/01/2021	1. APPROVAL	SH
25/01/2021	2. REVISED	SH

NOTES:  
All work to be in accordance with the approved development application.  
Verify dimensions on site prior to starting work.  
Use fig and dimensions on y.  
Verify levels on site.  
Contact the architect if any discrepancies are found.

GL	GLASS
HME	HAZARDOUS MATERIAL
TWP	TYPICAL WINDOW FRAME
TSS	TYPICAL WINDOW SCREEN
BSE	BAGGED BRICK ON EDGE
HME	HAZARDOUS MATERIAL
GL	GLASS
HME	HAZARDOUS MATERIAL
TWP	TYPICAL WINDOW FRAME
TSS	TYPICAL WINDOW SCREEN
BSE	BAGGED BRICK ON EDGE
HME	HAZARDOUS MATERIAL

NOTES:

DRAWING  
Drawing sheet 4  
DRAWING NUMBER:  
4-DA-132  
DATE:  
June 2020  
SCALE:  
1:100 A3

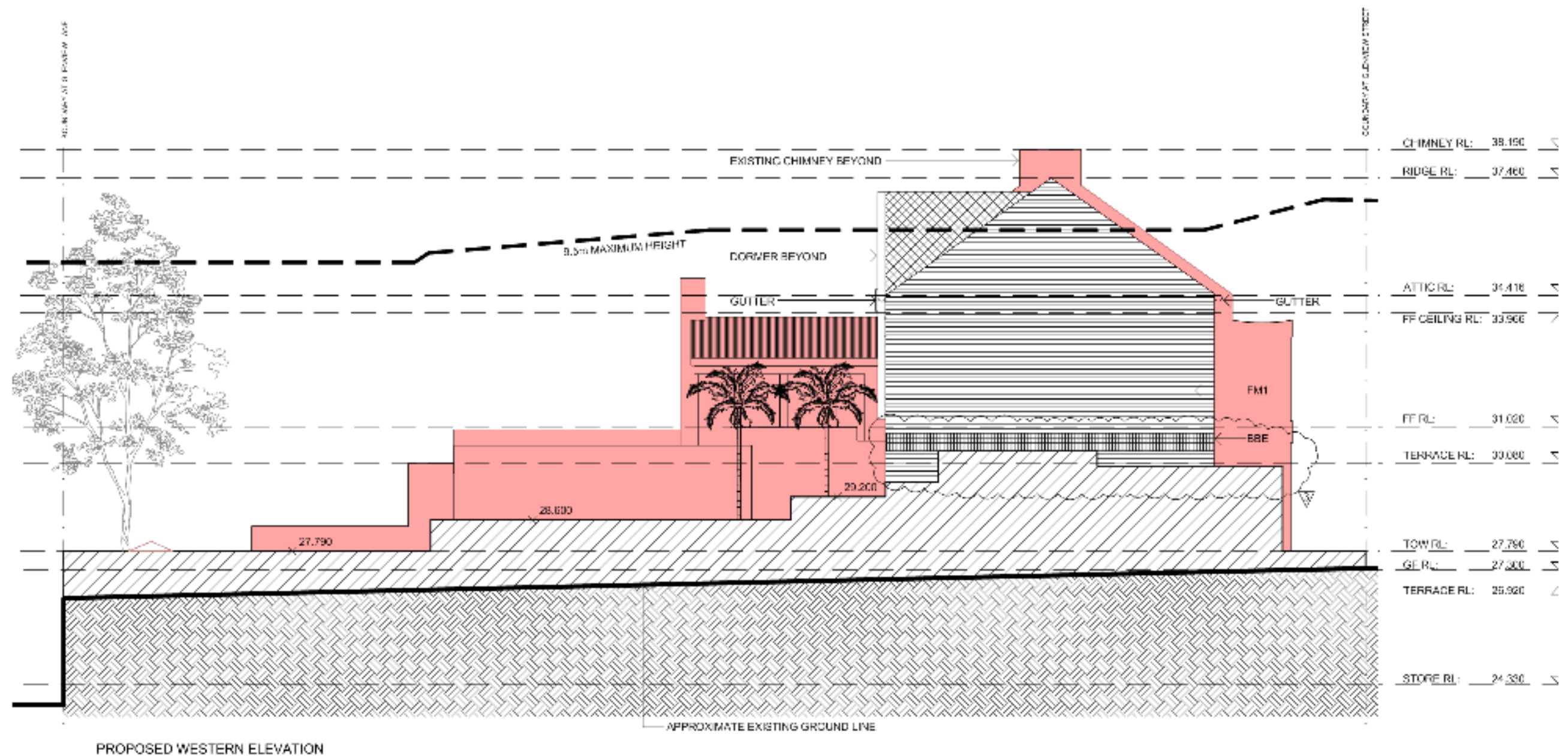
PROJECT  
Paddington House 1 - Kaufmann  
35 Glenview Street, Paddington, NSW

ARCHITECT:

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DATE	REVISION	BY
24.01.2021	1. ISSUED FOR PERMIT	SH
22.02.2021	2. REVISED	SH
22.02.2021	3. REVISED	SH

NOTES:

All work to be in accordance with the approved development application.

Verify dimensions on site prior to starting work.

Use fig and dimensions on y.

Verify levels are to AHD.

Contact the architect if any discrepancies are found.

CL: GLASS  
FM1: FACADE MASONRY 1  
TWP: TYPICAL WINDOW FRAME  
TPO: TYPICAL WINDOW SCREEN  
BBE: BAGGED BRICK ON EDGE  
HME: FACADE MASONRY 2

EXISTING BRICKWORK  
MASONRY WALL + FENCE

EXISTING BLUE TERRAZZO

NEW SHINGLE ROOF

NEW SHINGLE ROOF BUILDING

NEW MASONRY

NEW MASONRY (PART TO MATCH)

DRAWING

Revision 001

DRAWING NUMBER:

4 DA-135

DATE:

September 2020

SCALE:

1:100 A3

DRAWN:

BC

PROJECT:

Paddington House 1 - Kaufmann

25 Glenview Street, Paddington, NSW

ARCHITECT:

Sherson Architects

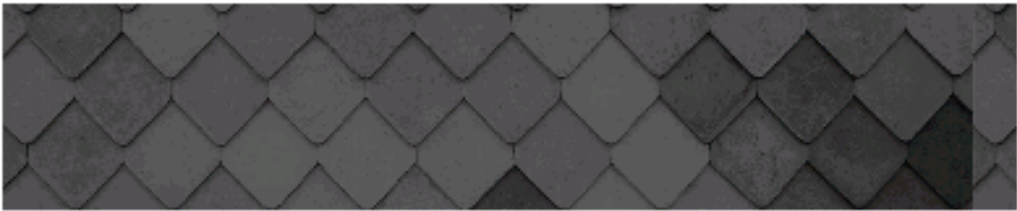
1. 04215 884

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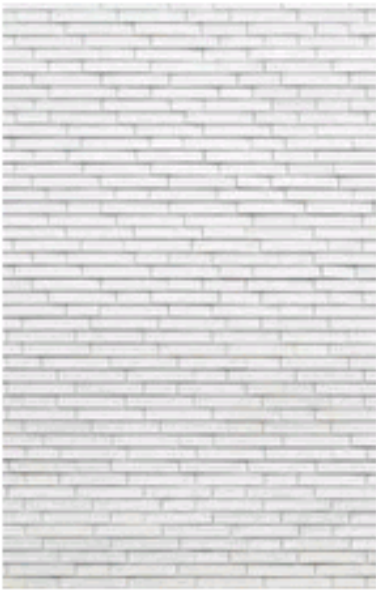




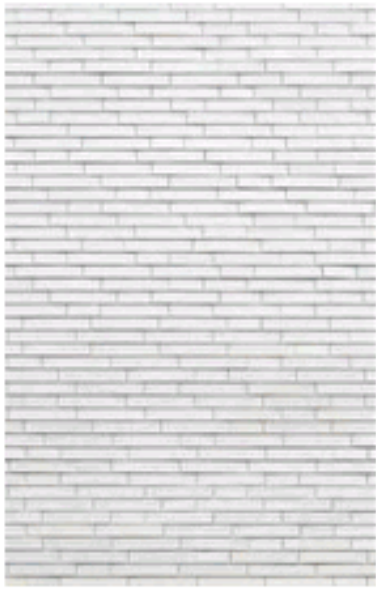
Sherson Architecture



SR



TWF



FM1



TPS



BBE



FM2



CP

CONCRETE PAVING

MATERIAL SELECTION - GLENVIEW STREET

DATE	REVISION	DESCRIPTION	BY
19.11.2020	1	Initial design	SA
19.11.2020	2	Revised design	SA
19.11.2020	3	Final design	SA
19.11.2020	4	Final design	SA
19.11.2020	5	Final design	SA
19.11.2020	6	Final design	SA
19.11.2020	7	Final design	SA
19.11.2020	8	Final design	SA
19.11.2020	9	Final design	SA
19.11.2020	10	Final design	SA

NOTES	REVISION
1. All works to be in accordance with the approved development application.	SR
2. Verify all materials and finishes prior to starting work.	FM1
3. Use figures as a guide only.	TWF
4. Materials to be used as per the approved development application.	TPS
5. Confirm the selected materials and finishes are as shown.	BBE
	FM2

SHINGLE ROOF
FACADE MASONRY TYPE 1
TIMBER WINDOW FRAME - SPOTTED GUM
TIMBER PRIVACY SCREEN - SPOTTED GUM
BAGGED BRICK ON EDGE
FACADE MASONRY 2



SR



TWF

EXAMPLE 'FORM' ONLY



FM1



TPS



BBE

MATERIAL SELECTION - NORTH ELEVATION



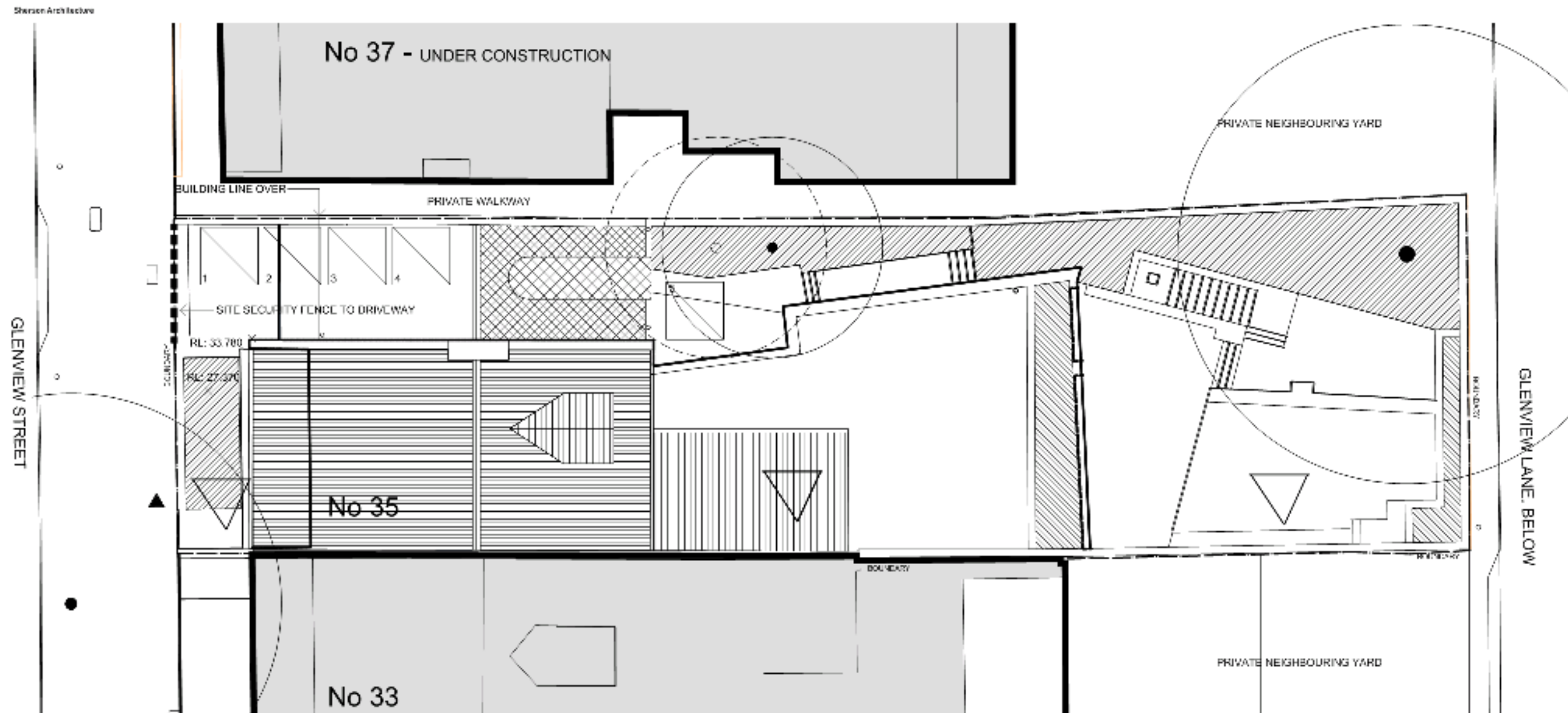
WEATHERBOARD CLADDING  
DORMER WINDOW - PRIMARY DWELLING



CUSTOM ORB ROOF SHEETING  
DORMER WINDOW - PRIMARY DWELLING - TIN ROOF

NOTES	REVISION
1. All works to be in accordance with the approved development application.	SR
2. Verify all materials and finishes prior to starting work.	FM1
3. Use figures as a guide only.	TWF
4. Materials to be used as per the approved development application.	TPS
5. Confirm the selected materials and finishes are as shown.	BBE
	FM2

SHINGLE ROOF
FACADE MASONRY TYPE 1
TIMBER WINDOW FRAME - SPOTTED GUM
TIMBER PRIVACY SCREEN - SPOTTED GUM
BAGGED BRICK ON EDGE
FACADE MASONRY 2



## WASTE MANAGEMENT NOTES

CONDUCTED BY THE PROPERTY CLERK OR ANOTHER EMPLOYEE AND THE NUMBER OF MATTERS TO BE DONE WITHIN THE COURSE OF THE PROPERTY.

VEHICLES TO BE HOLED DOWN TO PREVENT SOIL-SATURATED MATERIAL BEING  
DEPOSITED UNDERWAY

ANY DAMAGE TO THE KEST HORNED TO BE RECTIFIED AT THE OWNERS EXPENSE

WASTE BAYS:

- |    |  |
|----|--|
| B1 | PLASTERBOARD, BRICK, CONCRETE, WASTE DAY |
| B2 | DRIVING, TILES WASTE DAY                 |
| B3 | CONCRETE WASTE DAY                       |
| B4 | METAL WASTE DAY                          |
| B5 | GENERAL WASTE DAY                        |

WASTE BAY 1-4 CONSTRUCTION:

TO REACH THE WASTE STREAM, THE WASTE MUST BE A MIXTURE OF TWO DIFFERENT MATERIALS WHERE THE WASTE STREAM IS MADE UP OF A LIGHT MATERIAL SUCH AS PAPER AND CARDBOARD, THE WASTE DAYS MUST CONSIST OF A CONTAINER FOR STORAGE OF THIS MATERIAL.

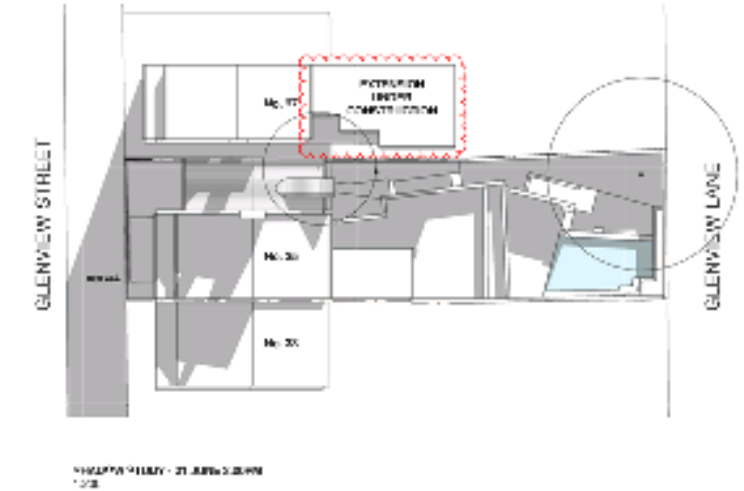
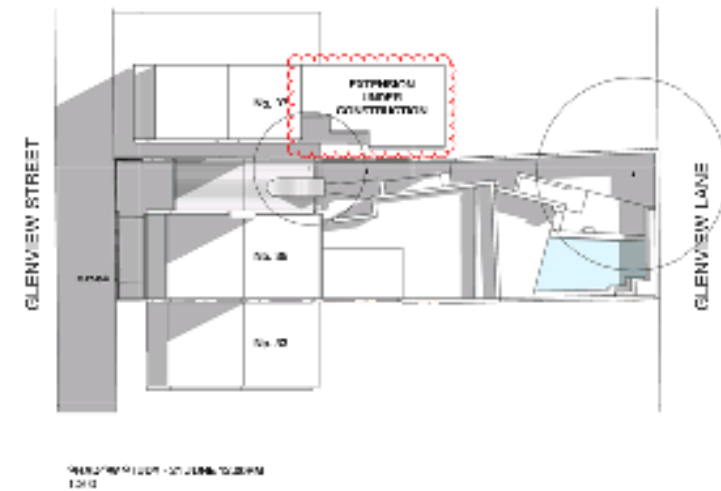
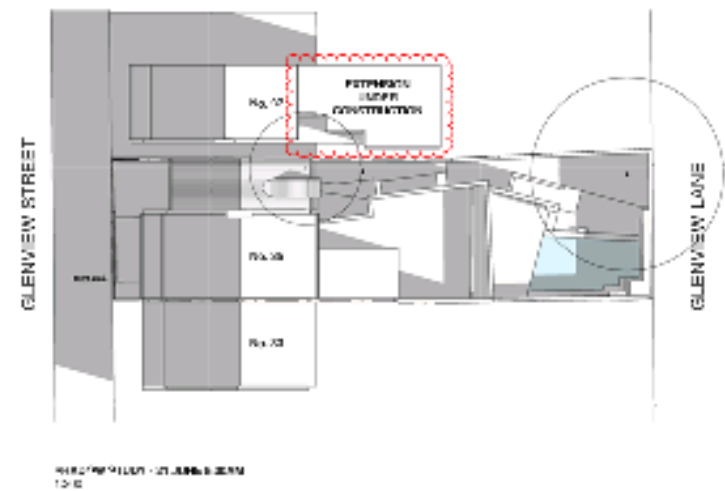
## WASTE BAY 5 CONSTRUCTION:

A METAL WASTE CONTAINER WITH A MINIMUM CAPACITY OF 15 L (40 IMPERIAL GALLONS) IS PROVIDED ON SITE FOR THE STORAGE OF GENERAL WASTE DESIGNATED FOR LANDFILL.

## WASTE MANAGEMENT PLAN

[illegible]





DATE	REVISION	DESCRIPTION
20/10/2020	1	Initial design and development
20/10/2020	2	Revised design and development
20/10/2020	3	Final design and development

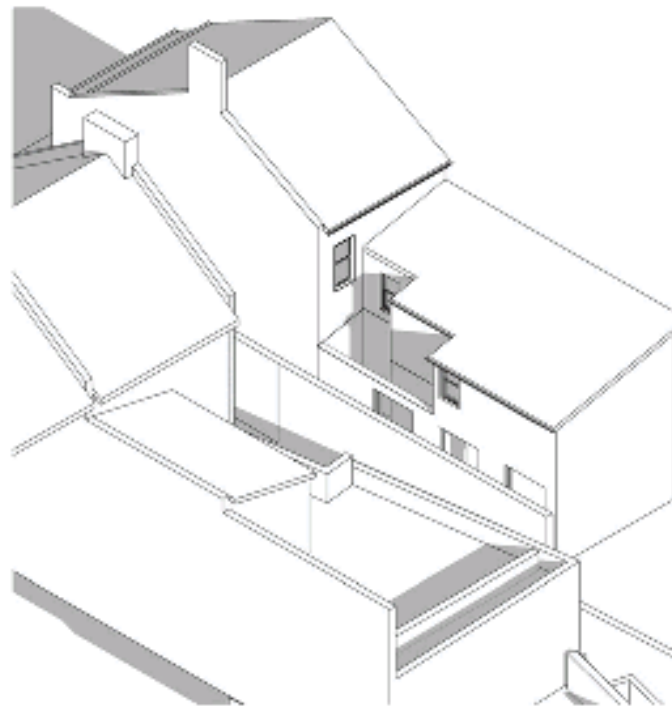
REVISION	DESCRIPTION
1	Initial design and development
2	Revised design and development
3	Final design and development

DATE	REVISION	DESCRIPTION
20/10/2020	1	Initial design and development
20/10/2020	2	Revised design and development
20/10/2020	3	Final design and development

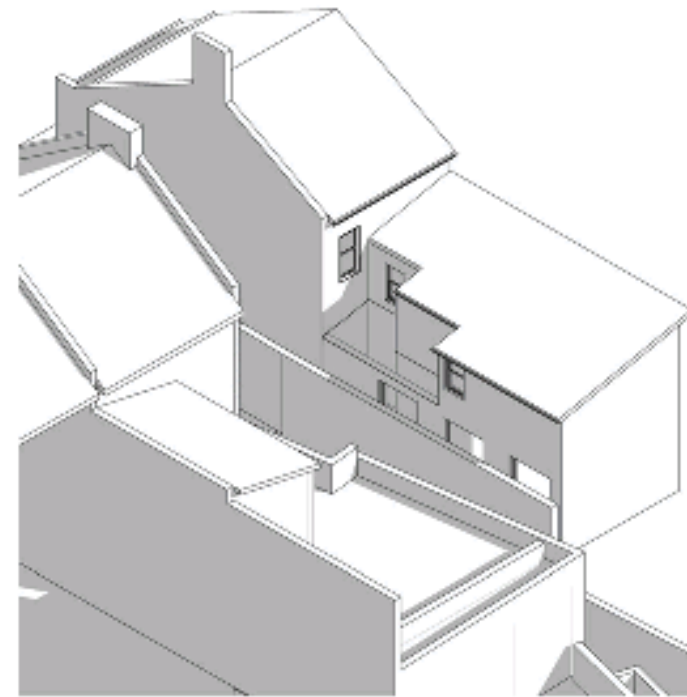
DATE	REVISION	DESCRIPTION
20/10/2020	1	Initial design and development
20/10/2020	2	Revised design and development
20/10/2020	3	Final design and development

DATE	REVISION	DESCRIPTION
20/10/2020	1	Initial design and development
20/10/2020	2	Revised design and development
20/10/2020	3	Final design and development

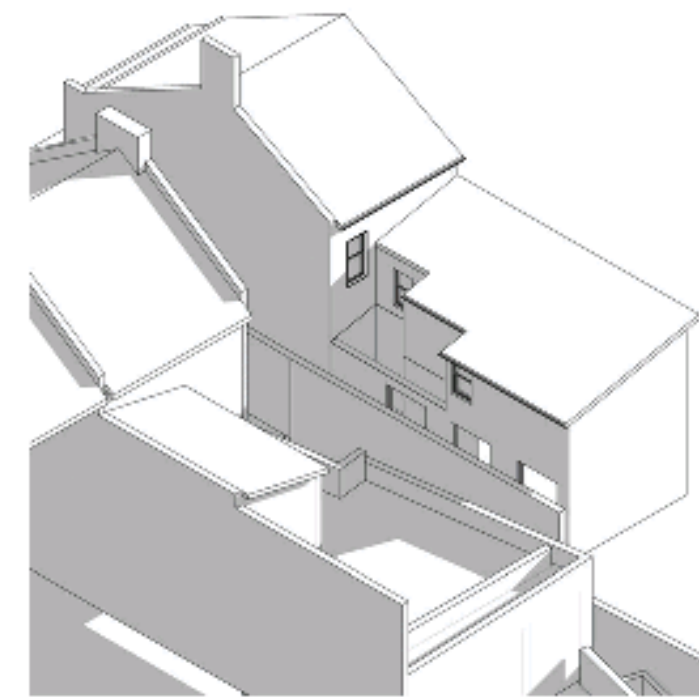




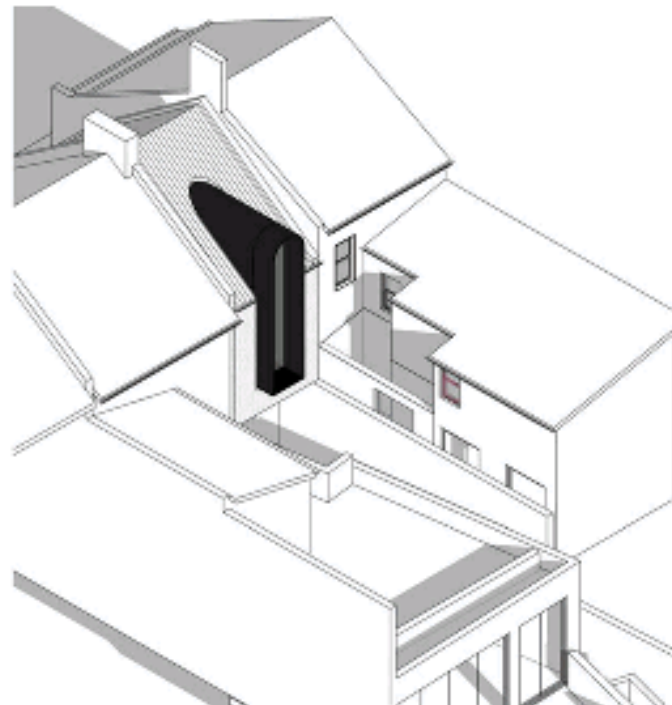
EXISTING 21 JUNE 9:00AM



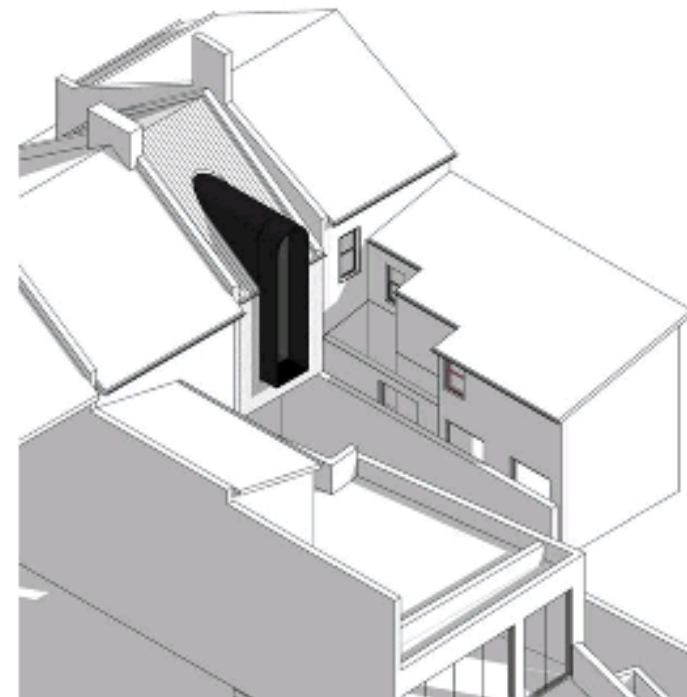
EXISTING 21 JUNE 12:00PM



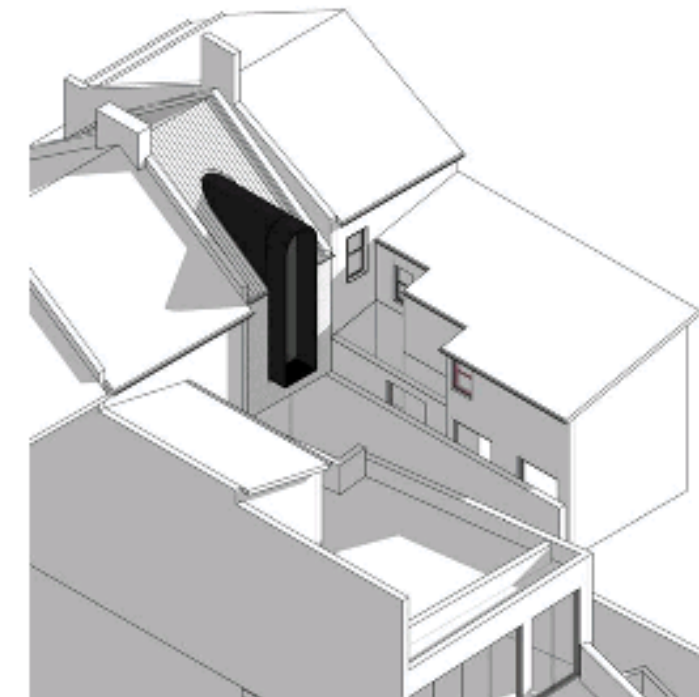
EXISTING 21 JUNE 3:00PM



PROPOSED 21 JUNE 9:00AM



PROPOSED 21 JUNE 12:00PM



PROPOSED 21 JUNE 3:00PM

DATE	REVISION	SCALE	NOTES	LEGEND
21/06/20	01	1:100	1. Aerial photograph used as background. Aerial photograph is not to scale. Aerial photograph is not to scale. Aerial photograph is not to scale.	
			2. Use figure 1:100 as only.	
			3. All dimensions are in meters.	
			4. Contact: [redacted] Tel: [redacted]	

NORTH

DRAWING:  
Shaded perspective  
DRAWING NUMBER:  
A01/19  
DATE:  
21/06/20  
DRAWN:  
AK

PROJECT:  
Paddington House 1 - Kaufmann  
35 Cawston Street, Paddington, NSW

ARCHITECT:  
Shenson Architecture  
[redacted]  
Any use of this drawing without the written permission of Shenson Architecture is prohibited. Copyright © 2014



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16 July 2020

## REFERRAL RESPONSE - HERITAGE

**FILE NO:** Development Applications/ 198/2020/1

**ADDRESS:** 35 Glenview Street PADDINGTON 2021

**PROPOSAL:** Alterations & additions including a new two- level extension into the side passage with parking and attic space

**FROM:** Charlotte Simons - Heritage Officer

**TO:** Ms A Healey

### DOCUMENTATION

The following documentation provided by the applicant has been examined for this referral response:

- Drawing set by Sherson Architecture, dated June 2020, and numbered A-DA-00-180
- Heritage Impact Statement by Weir Phillips, dated June 2020
- Statement of Environmental Effects by Weir Phillips, dated 12 June 2020
- Survey plan by Harrison Friedmann & Associates Pty Ltd, ref 66856 BW, dated 22 April 2020.

### SITE INSPECTION / RESEARCH

The following research was undertaken in the preparation of this assessment:

- The site was inspected on 3 July 2020, including the streetscape 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-DA Heritage Referral Response - dated 9 March 2020
- 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:

- 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

Referral Response - Heritage - DA 2020 198 1 - 35 Glenview Street PADDINGTON



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The existing dwelling at No. 35 Glenview Street is a two storey Victorian rendered brick terraced house. The building is part of a group of 3 terraces (Nos. 35 – 31 Glenview Street) that was constructed in the late 19<sup>th</sup> century.

The existing side addition on the site's western boundary comprises a single storey rendered brick structure with glass roof and houses a carport with storage behind. Historical photographs of the group indicate the terraces originally featured slate roofs (see No. 33 Glenview Street), and also show that a previous intrusive high brick fence to the street front zone (Figure 2) has since been removed and replaced with the existing palisade fence and gate.

A narrow private walkway is located to the west of the existing dwellings on the subject property, which comprises part of what was formerly a nightsoil lane in the locality (Figure 1). Historical photographs indicate that by the 1980s, part of the former nightsoil lane was occupied as a carport to No. 35 Glenview Street. In 2000, approval was granted by Council for construction of the existing covered carport, laundry and other site structures to the west of the principal building form.



Figure 1: Historic 1885-1895 Surveyor General's map of Paddington, note arrow indicating subject property, nightsoil lane outlined.  
(Source: Woollahra Council)



Figure 2: Historical photograph of the subject property in circa 1980s (note carport to side)  
(Source: Woollahra Libraries Local History Digital Archive)

The existing building is located within the Paddington Heritage Conservation Area (HCA), and is considered a contributory item and a significant item. The building is significant in that it forms part of the heritage character of Paddington, and contributes to the historic and aesthetic significance of the Paddington HCA.

#### 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 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

The following consideration against the Paddington HCA DCP is made:





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### **Paddington IICA DCP**

#### **Clause 1.2.5 Contemporary design in Paddington**

- The proposal provides a contemporary design approach that respects the context, scale, form and articulation of buildings that characterise the historic Paddington area, and is supported from a heritage perspective.

#### **Clause 1.3.4 Multi-storey terrace style housing**

##### **Objectives O1, O2, O4, O5, O6, O7**

##### **Controls C1, C2, C3, C5, C6, C7, C12, C13, C14**

- The proposed works would retain and conserve the principal building form and its contribution in the context of its group, which is supported.
- The proposal includes an appropriate sympathetic side addition complementing the character of the principal building form that would remove an existing single storey side addition in the street front zone. It is noted that a side addition has similarly been added in the vicinity to No. 45 Glenview Street.
- The side addition does not exceed the uppermost ridge of the principal building to which it is attached, which complies with Control C3(a) and is supported.
- The proposed side addition is consistent with the roof form and pitch, modulation, fenestration and articulation of the contributory item and its group, which complies with Control C5 and is supported.
- The proposed side addition is set behind the front wall of the principal building form to which it is attached, which complies and is supported.
- The material palette of the proposed side addition involves a variety of traditional materials and contemporary interpretations of traditional materials, which would complement the original character of the main dwelling and its group.
- The proposal maintains an existing hardstand on-site parking space, which has been on the site since at least the 1980s.
- It is noted that while the proposed shingle roofing does not match the existing metal roofing to the principal building form, historical photographs indicate the original roofing material for the terrace group was slate tiling. The proposed shingle roofing to the side addition therefore provides a contemporary interpretation of the original slate tiling to the group, which complies and is supported in this instance.

#### **Clause 1.4.1 Principal building form and street front zone of contributory buildings**

##### **Objectives O1, O3, O4, O6, O7, O8, O10, O11**

##### **Controls C1, C3, C7, C11, C15**

- The proposal would retain the principal building form of the terrace, which is supported.
- The proposed works include removal of the existing single storey side addition and replacement with a sympathetically designed side addition (see above).
- The proposal includes a new dormer to the rear roof plane of the principal building form. Other items within the group have a rear dormer to the rear roof plane (Nos. 33 and 31 Glenview Street), although the existing dormer to No. 33 Glenview Street does not comply under the current controls and is not considered precedent development. The proposed dormer does not comply with the controls and dimensions specified under Clause 1.5.1, see below.
- The proposed removal of sections of the side (west) wall of the principal building form at first floor level and attic level to provide access to the side addition, including infill of an



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existing side window, is localised in nature and is supported.

**Clause 1.4.3 Rear elevations, rear additions, significant outbuildings and yards**

**Objectives O1, O2, O3, O4**

**Controls C2, C5, C10**

- The proposed dormer to the rear roof plane of the principal building form must be designed in accordance with the relevant controls under Clause 1.5.1 (see below).
- The proposed dormer to the side addition provides a contemporary interpretation of traditional forms that is appropriate to the modern side addition, and is supported from a heritage perspective.
- Enlargement of the existing non-original window at first floor level of the rear elevation of the principal building form is supported as there is no existing pattern within the group (other rear elevation windows to items within the group have been modified to rear balconies). The proposed round headed timber framed window is consistent with the overall character of fenestration within the group, would replace fabric of low significance and the contemporary design is therefore supported in this instance on merit.
- A private narrow walkway, which historically comprised part of a former nightsoil lane, is located to the west of the existing dwellings on the subject property. The proposal would not result in any additional incursion or impact to the private walkway/former nightsoil lane. It is noted approval was granted in 2000 for construction of the existing covered carport, laundry and site structures to the west of the principal building form.
- The proposal does not involve any substantial changes to the existing non-original rear addition off the principal building form.

**Clause 1.4.4 Roofs and roof forms**

**Objectives O1, O3**

**Controls C3, C6, C8**

- The proposal retains the existing metal roofing to the principal building form.
- The roof form of the side addition is consistent with the principal building form that it is attached to, and is supported.
- While the proposed shingle roofing to the side addition does not match the existing metal roofing to the principal building form, historical photographs indicate the original roofing material for the terrace group was slate tiling. The proposed shingle roofing to the side addition therefore provides a contemporary interpretation of the original slate tiling to the group, and is supported in this instance.

**Clause 1.5.1 Dormers and skylights**

**Objectives O1, O2, O3**

**Controls C1, C3, C5, C6, C8, C10, C13, C14, C15, C16, Figure 13**

- The proposed dormer window on the rear elevation of the side addition is contemporary in detailing and provides a modern interpretation of traditional forms, and is supported.
- The proposed addition of a dormer to the rear roof plane of the principal building form could be supported. There is an existing attic level, and other items within the group feature rear dormers. The dormer to the rear roof plane of the principal building form must be designed in accordance with Controls C5, C6, C8, C10, C12, C14, C15 and C16.

**Clause 1.5.2 Chimneys**

**Objective O1**

Referral Response - Heritage DA 2020 194 1 35 Glenview Street PADDINGTON



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#### **Control C1**

- The proposal retains the existing chimney and its details, which is supported.

#### **Clause 1.5.3 Windows, doors, shutters and security**

##### **Objectives O1, O2, O3**

##### **Controls C1, C4, C5**

- Enlargement of the existing non-original window at first floor level of the rear elevation of the principal building form is supported as there is no existing pattern within the group (other rear elevation windows to items within the group have been modified to rear balconies). The proposed round headed timber framed window is consistent with the overall character of fenestration within the group, would replace fabric of low significance and the contemporary design is therefore supported in this instance on merit.
- The rear window at first floor level of the side addition is vertically proportioned, interprets traditional proportions and patterns, and is supported.
- The timber privacy screens to new windows interpret traditional timber shutters and are supported.

#### **Clause 1.5.5 Fences, walls and gates**

##### **Objective O2**

##### **Control C8**

- The proposal retains the existing palisade gate to the street front zone, which is supported.

#### **Clause 1.5.6 On-site vehicle parking, garages, carports, driveway access and servicing facilities**

##### **Objective O2**

##### **Control C7**

- The proposal retains the existing on site car parking space off Glenview Street, which is set behind the front alignment of the principal building form.

#### **Clause 1.5.8 Materials, finishes and details**

##### **Objectives O1, O2, O3**

##### **Controls C1, C4, C5, Table 8**

- The proposed material palette, comprising painted/bagged brickwork, timber framing to windows, traditional corrugated roofing to match existing and shingle roofing to the new addition, provides a combination of sympathetic contemporary and traditional materials that interpret the character of the terrace group and surrounding HCA, which is supported. The use of contemporary materials that interpret traditional materials would provide a sympathetic contemporary layer within the Paddington HCA and is supported.
- The proposed new concrete paving at ground floor level to the car space off Glenview Street is consistent with the existing concrete hardstand, and is supported.

## **CONCLUSION**

### 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 conservation area will be neutral.
- Clause 4 This referral constitutes an assessment under this clause.

Referral Response - Heritage DA 2020 194 1 35 Glenview Street PADDINGTON



## **RECOMMENDATION**

The proposal is generally acceptable, subject to conditions, as it complies with the relevant statutory and policy documents and would have a satisfactory impact.

Consent, subject to the following heritage condition:

1. The current design of the proposed dormer to the rear roof plane of the principal building form does not comply and is not supported. The dormer window to the rear roof plane of the principal building form is to be vertically proportioned and centrally located, and must be designed in accordance with the following controls:
  - a) Woollahra DCP 2015, Chapter C1, Clause 1.5.1, Objectives O1, O2, Controls C5, C6, C8, C10, C12, C14, C15, C16, Figure 13.

Charlotte Simons - Heritage Officer



1 September 2020

## REFERRAL RESPONSE – TREES & LANDSCAPING

**FILE NO:** DA 198/2020/1  
**ADDRESS:** 35 Glenview Street PADDINGTON 2021  
**PROPOSAL:** Alterations & additions including a new two- level extension into the side passage with parking and attic space  
**FROM:** David Grey - Tree & Landscape Officer  
**TO:** Ms A Heuley

### I refer to the following documents received for this report:

- Statement of Environmental Effects, prepared by Weir Phillips, dated 12 June 2020
- Survey Plan No. 66856 BW, drafted by Harrison Friedmann, dated 22 April 2020
- Architectural Drawing No. DA-30, DA-40, DA-50, DA-60, DA-80, DA-90, DA-100, DA-110, DA-111, DA-120, DA-130 to DA-133, DA-140, drawn by Sherson Architecture , dated 2 June 2020
- Transplantation Method Statement, written by McArdle Arboricultural Consultancy, dated 10 June 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

### SUMMARY

No major landscape issues. One Palm tree to be transplanted.

### COMMENTS

There are no major landscape issues associated with this proposal. The transplantation of one Bangalow Palm tree is proposed. As the palm tree is to be located only 1.5 metres from its

current location, the transplanting can be completed in a single operation. This makes the likelihood of a successful transplanting high.

## 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 Private Land

Council Ref No.	Species	Location	Dimension (metres)
1	<i>Archontophoenix cunninghamiana</i> (Beanglow palm)	Side – West boundary	10 x 4

- Trees on Council Land

Council Ref No.	Species	Location	Dimension (metres)	Tree Value
2	<i>Jacaranda mimosifolia</i> (Jacaranda)	Front – Council verge	6 x 6	\$1,000

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

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

Council Ref No.	Species	Location	Dimension (metres)
1	<i>Archontophoenix cunninghamiana</i> (Beanglow palm)	Side – West boundary	10 x 4

**Note:** The tree/s required to be retained shall appear coloured yellow on the construction certificate plans.

- 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)
1	<i>Archonaphoenix cunninghamiana</i> (Bangalow palm)	Side West boundary	Remove fully developed fronds to reduce transpiration during transplantation

**Note:** The tree/s required to be pruned should appear coloured blue on the construction certificate

## A.2 Approved Plans and supporting documents

Reference	Description	Author/Drawn	Date(s)
	Arboricultural Transplant Method Statement	McAniff Arboriculture	10 June 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)
2	<i>Jacaranda mimosifolia</i> (Jacaranda)	Front Council verge	1m

**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.

- 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 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:

<b>Stage of arboricultural inspection</b>	<b>Compliance documentation and photos shall be included</b>
Installation of tree protection fencing	Compliance with tree protection measures
Excavation of root hall Tree 1	Condition of exposed roots    Containment of root hall
Transplantation of Tree 1 to new location	Ensure excavation of transplant location is adequate size. North orientation maintained.
Stabilisation and irrigation of Tree 1 in new location	Ensure stability of transplanted palm. Adequate irrigation and soil treatment for root development
Prior to the issue of a Final Occupation Certificate	Supervise the dismantling of tree protection measures

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 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.	\$1,000.00	No	1114
<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.

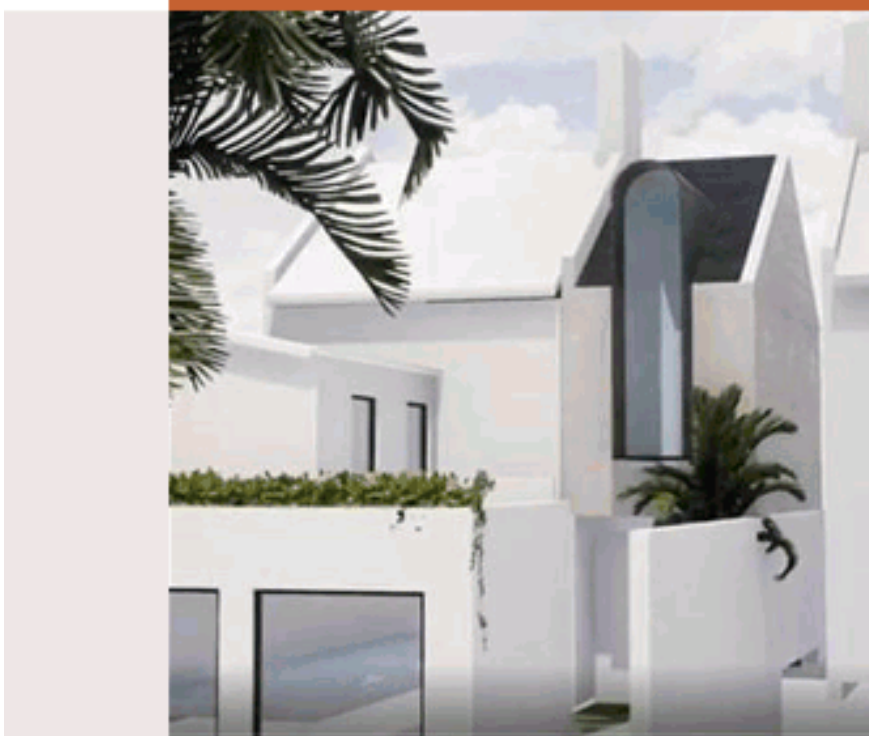
**General Protection Requirements**

- 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*.

# REQUEST TO CONTRAVENE A DEVELOPMENT STANDARD UNDER CLAUSE 4.6

Cl 4.3, Woollahra LEP 2014: Height of buildings



25 Glenview Street, Paddington NSW

Alterations and Additions to Attached Dwelling

12 June 2020 | P252

**Weir  
Phillips**  
Heritage  
and Planning

Level 19, 100 William Street, Sydney, NSW 2011  
Phone: (02) 8076 5317

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Report Preparation	
Associate Director	Philip North, B.App.Sc.(Env.Des.), B.Arch, M.U.R.P. RAIA RIBA MPFA CPP
Consultant	-

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**1.0 INTRODUCTION**

This request to contravene a development standard in respect of height of buildings under Clause 4.3 of Woollahra LEP 2014 is submitted to accompany a development application for:

*alterations and additions to an existing attached dwelling*

at 35 Glenview Street, Paddington NSW.

It has been prepared with particular reference to the decisions of the Court in respect of:

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 90;
- *Wehbe v Pittwater Council* [2007] NSWLEC 927;

and other relevant case law.

**2.0 THE DEVELOPMENT STANDARD**

**2.1 The applicable planning instrument which specifies the development standard:**

Woollahra Local Environmental Plan 2014 (WLEP 2014)

**2.2 The number of the relevant clause:**

Clause 4.3 – Height of buildings.

**2.3 The provisions of the relevant clause:**

Clause 4.3 – Height of buildings.

The development standard to which this request for contravention relates is Clause 4.3(2) of WLEP 2014 – Height of buildings, which specifies that:

*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 nominated height on the map is 9.5.

**3.0 THE CONTRAVENTION SOUGHT:**

**3.1 Description of the contravention:**

The proposed development would contravene the development standard as follows:

**3.1.1 Maximum height of building:**

9.5m



### 3.1.2 Existing Contravention:

The existing building height is 11.6m which contravenes the development standard by 2.1m (22%).

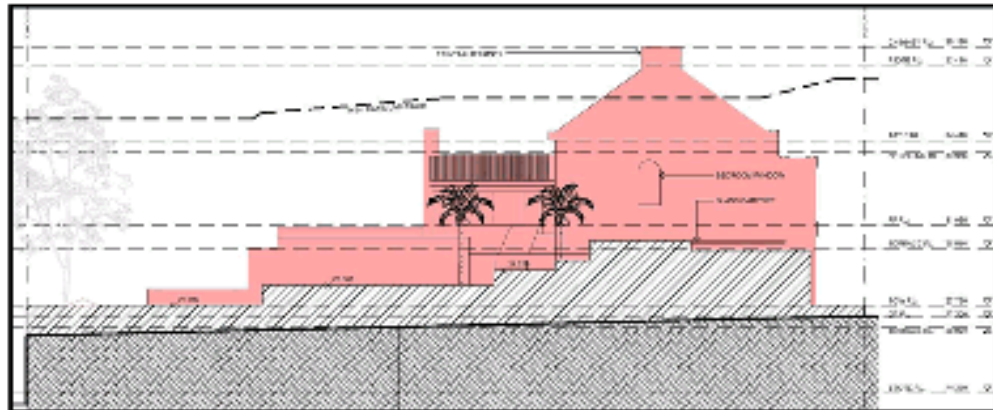


Figure 1: Illustration of existing contravention.

### 3.1.3 Proposed height of building

The proposed height of the additions is 10.9m which would contravene the development standard by 1.4m (15%).

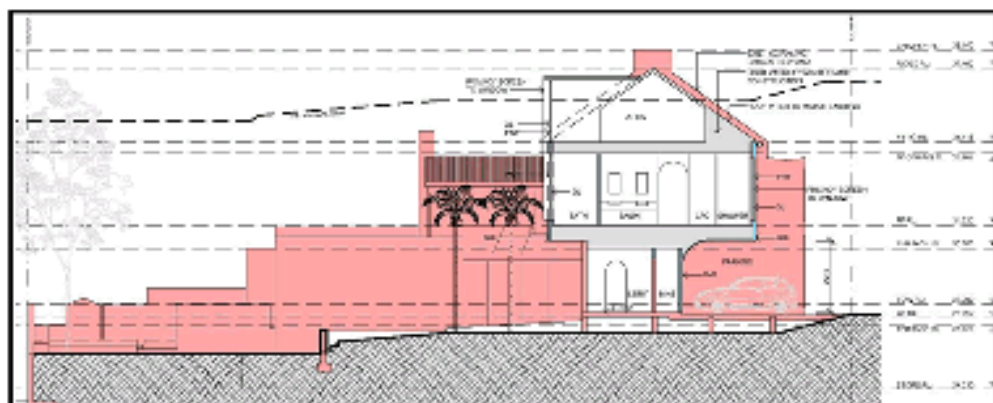


Figure 2: Illustration of proposed contravention in cross section.

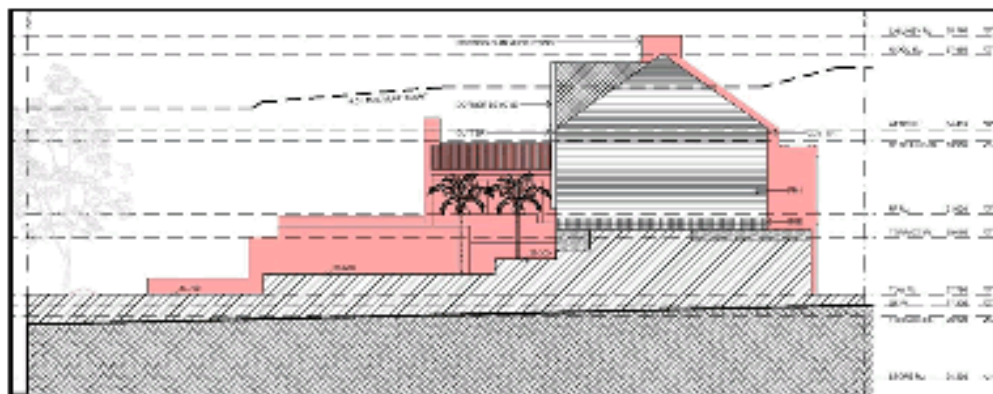


Figure 3: Illustration of proposed contravention on the northern elevation.

### 3.1.4 Existing contravention compared to proposed contravention:

- Existing contravention: 2.1m [22%]
- Proposed contravention: 1.4m [15%]

The proposed contravention is, consequently, less than that which currently exists.

### 3.1.5 Cause of the contravention:

The contravention would result from the adoption of a ridge line for the side addition to match that of the existing roof ridge.

## 4.0 PROVISIONS OF CLAUSE 4.6

### 4.1 Cl. 4.6(1): Objectives

Clause 4.6 seeks 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. The objectives of Clause 4.6 are as follows:

Cl. 4.6(1) Objectives of Clause		
Clause	Control	Justification
(1)(a)	to provide an appropriate degree of flexibility in applying certain development standards to particular development	The proposal contravenes the standard which sets a maximum building height. It seeks to utilise this clause to provide appropriate flexibility in application of the standard to permit approval.
(1)(b)	to achieve better outcomes for and from development by allowing flexibility in particular circumstances	The proposal would achieve better outcomes: <ul style="list-style-type: none"> <li><b>For the development:</b> The contravention would permit: <ul style="list-style-type: none"> <li>A more useable attic space in the addition;</li> <li>Improved and more unified architectural solution.</li> </ul> </li> <li><b>From the development:</b> The contravention would result in: <ul style="list-style-type: none"> <li>A side addition consistent with the form and scale of the existing principal building form;</li> <li>A consistent streetscape;</li> <li>An appropriate built form in the conservation area.</li> </ul> </li> </ul>

### 4.2 Cl. 4.6(3): Justification of the Contravention of the Development Standard

Under the provisions of clause 4.6(3) – Exceptions to development standards of WLEP 2014, the consent authority must consider a written request from the applicant that seeks to justify the contravention of the development standard. This justification is summarised in the table below:

Cl. 4.6(3) Justification of Contravention		
Clause	Control	Justification
4.6(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:	This written request addresses this clause.
4.6(3)(a)	That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	Compliance with the development standard is unnecessary given that: <ul style="list-style-type: none"> <li>The objectives of the development standard are met (see below); and</li> <li>The objectives of the zone are met; notwithstanding the non-compliance.</li> </ul>

		Compliance with the development standard is unreasonable given that: <ul style="list-style-type: none"> <li>The contravention is directly associated with an existing contravention.</li> </ul>
4.6(3)(b)	That there are sufficient environmental planning grounds to justify contravening the development standard.	The contravention would result in: <ul style="list-style-type: none"> <li>A side addition consistent with the form and scale of the existing contributory dwelling;</li> <li>A consistent streetscape;</li> <li>An appropriate built form for the conservation area; and</li> <li>A more suitable conservation outcome.</li> </ul>

#### 4.3 Cl. 4.6(4)(a): Objectives of the Zone & Development Standard

Under the provisions of clause 4.6(4) – Exceptions to development standards of WLEP 2014, the consent authority must be satisfied that contraventions of development standards are consistent with the objectives of both the development standard itself and the zone in which the development is proposed. This assessment is summarised in the table below:

Cl. 4.6(4): Justification of contravention against development standard and zone objectives		
Clause	Objectives	Justification
4.3(1)	Height of buildings	
(a)	to establish building heights that are consistent with the desired future character of the neighbourhood;	Given that the neighbourhood is a conservation area, the desired future character is to maintain the existing character of heritage significance. The proposal would facilitate this by maintaining a consistent roof form with the existing and surrounding dwellings and consequently a consistent and harmonious streetscape.
(b)	to establish a transition in scale between zones to protect local amenity,	There are no zone transitions in the vicinity of the site.
(c)	to minimise the loss of solar access to existing buildings and open space,	The proposal would only overshadow the blank northern wall of the existing dwelling and, as such, would avoid any loss of solar access.
(d)	to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,	The proposal would not have adverse impacts upon surrounding properties in respect of view loss, privacy, overshadowing or excessive visual impact.
(e)	to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.	There are no views of the harbour associated with the site.
2.3	Zone R2 – Low density residential	
	To provide for the housing needs of the community within a low density residential environment.	The proposal would maintain the single dwelling density of the site, consistent with the low density residential environment.
	To enable other land uses that provide facilities or services to meet the day to day needs of residents.	This is not applicable given that only residential uses are proposed on this site.
	To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.	The proposal, and in particular its height and roof form, would be compatible with the surrounding neighbourhood and the building of the same (and partially greater) height to which it is attached.
	To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.	No change to the built form is proposed so the proposal would not alter the height and scale.

#### 4.4 cl. 4.6(4)(b): Concurrence

Under the provisions of clause 4.6(4)(b) – Exceptions to development standards of WLEP 2014, the consent authority must be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained before it can exercise the power to grant development consent for development that contravenes the development standard.

Under cl. 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 cl. 4.6, subject to the conditions in the table in the notice.

#### 4.5 Cl. 4.6(5): Criteria for Concurrence

Under the provisions of clause 4.6(5) – Exceptions to development standards of WLEP 2014, the Council or the Secretary, as the concurrence authority, is required to consider the following matters:

Cl. 4.6(5) Criteria for Concurrence		
Clause	Control	Justification
(a)	whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and	The contravention of the development standard is not associated with state or regional development. As such, it would not raise any matter of significance for State or regional environmental planning.
(b)	the public benefit of maintaining the development standard, and	There would be no public benefit of maintaining the development standard as it would result in a less satisfactory heritage conservation outcome.
(c)	any other matters required to be taken into consideration by the Secretary before granting concurrence.	The matters requiring consideration are addressed above.

#### 5.0 THE FIVE PART TEST

In *Wehbe v Pittwater Council* [2007] NSWLEC 927, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. These are examined below:

The Five Part Test: (in accordance with Preston CJ in <i>Wehbe v Pittwater Council</i> [2007] NSW LEC 927)		
Part	Test	Discussion
1.	The objectives of the standard are achieved notwithstanding non-compliance with the standard.	The objectives of the development standard are achieved. See discussion under 3(c) above.
2.	The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.	The objectives of the standard are relevant to the proposal and an assessment of compliance is provided above. It is considered that the objectives of the standard are achieved more satisfactorily than maintaining the existing subdivision pattern.
3.	The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.	The underlying object of the development would be thwarted if compliance were required given that compliance would result in a less consistent streetscape.
4.	The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.	There is no evidence that the development standard has been abandoned under the current planning controls.
5.	the zoning of the particular land is unreasonable or inappropriate so that a	Not applicable. The zoning of the land is considered appropriate.

development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.
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#### 6.0 CONCLUSION

This Clause 4.6 contravention request to clause 4.3 – Height of buildings of Woollahra LEP 2014 should be supported on the basis that strict application of the development standard is unnecessary and unreasonable given that:

- a) The development meets the stated objectives of clause 4.3, specifically:
  - 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.
- b) The development meets the zone objectives of the R2 Low Density Residential zone, specifically:
  - 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.
- c) There are sufficient environmental planning grounds to justify contravening the development standard, in that it would result in:
  - A side addition consistent with the form and scale of the existing contributory dwelling;
  - A consistent streetscape;
  - An appropriate built form for the conservation area; and
  - A more desirable conservation outcome.

For the reasons set out above, the development may be granted consent notwithstanding the contravention of the development standard in respect of height of buildings in clause 4.3 of WLEP 2014.

**LOCAL PLANNING PANEL**  
**SECTION 4.55 APPLICATION ASSESSMENT REPORT**

<b>ITEM No.</b>	D2
<b>FILE No.</b>	DA621/2017/3
<b>ADDRESS</b>	2-8 Elizabeth Street PADDINGTON (aka Barbetta)
<b>WARD</b>	Paddington
<b>SITE AREA</b>	714.8m <sup>2</sup>
<b>ZONING</b>	B1 Neighbourhood Centre
<b>EXISTING CONSENT</b>	Change of use from a food and drink premises to a licensed restaurant including a liquor license
<b>DATE OF CONSENT</b>	19/04/2018
<b>TYPE OF CONSENT</b>	Local development
<b>CONSENT AUTHORITY</b>	Woollahra Council
<b>PROPOSED MODIFICATION</b>	Modification of <b>Conditions A.2, F.4 and I.2</b> (including the extension of trading hours)
<b>DATE S4.55 LODGED</b>	06/07/2020
<b>APPLICANT</b>	Mr G Cipri
<b>OWNER</b>	Ashdel Properties Pty Ltd
<b>AUTHOR</b>	Mrs L Holbert
<b>TEAM LEADER</b>	Mr T Wong
<b>SUBMISSIONS</b>	21
<b>RECOMMENDATION</b>	Approval, subject to <b>Conditions I.2 and F.4</b> (being amended) and the originally approved trading hours being retained

**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 approval because:

- The development consent as proposed to be modified, is considered to be substantially the same as the originally approved development
- The proposal satisfies section 4.55 of the Environmental Planning and Assessment Act 1979



- It is considered to be satisfactory with all relevant planning policies including the objectives of WLEP 2014 and WDCP 2015, subject to **Conditions I.2** and **F.4** (being amended) and the originally approved trading hours being retained.
- It will not have adverse effects on the local built and natural environment nor any adverse social and economic impacts in the locality, subject to **Conditions I.2** and **F.4** (being amended) and the originally approved trading hours being retained.
- All likely impacts to adjoining properties including any submissions made have been addressed in the report, or are considered to be satisfactory, subject to **Conditions I.2** and **F.4** (being amended) and the originally approved trading hours being retained.
- The site is suitable for the proposed development, subject to **Conditions I.2** and **F.4** (being amended) and the originally approved trading hours being retained.
- The proposed modifications are in the public interest, subject to **Conditions I.2** and **F.4** (being amended) and the originally approved trading hours being retained.

### 3. LOCALITY PLAN



Joann Wood (address not specified) Ken Kenilworth (address not specified) Samuel Senior (address not specified)

#### 4. SUMMARY OF APPROVED DEVELOPMENT

The approved development was for the change of use of the ground floor premises from a food and drink premises to a licensed restaurant including a liquor license. The full set of conditions of consent in in **Annexure 6. Condition C.1** was imposed requiring the following modifications:

##### ***C.1 Modification of details of the development (Section 80A(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 proposed business identification sign***

*In order to comply with Assessment Criteria 7 & 8 of Schedule 1 of State Environmental Planning Policy No. 64 – Advertising and Signage, and Control C18b of Section E7.2.1 Building Identification Signs and Business Identification Signs of Chapter E7 Signage of Woollahra Development Control Plan 2015, the proposed business identification sign must be 2.6m above the level of the footpath immediately below and the **sign is not to be illuminated**.*

***b) The proposed bench is to be deleted***

*As no owners consent by Council is given to the proposed bench upon the Elizabeth Street footpath, the bench is to be deleted.*

*This condition has been imposed in order to protect the amenity of the neighbourhood.*

***c) The proposed furniture plan must provide seating for no more than 50 patrons***

*The proposed furniture plan approved by Condition A.2 must be amended to provide for a maximum of 50 patrons.*

*This condition has been imposed to ensure that the built furniture of the Licensed Restaurant reflects the maximum capacity approved by **Condition I.3**.*

***d) Loading dock***

*The existing loading dock within the building is to be utilised for all deliveries.*

***e) Garbage room***

*The existing garbage room is to be utilised for the storage and collection of all waste (including glass).*

***f) Restaurant entry (Elizabeth Street, Paddington)***

*The entrance to the restaurant after 6 pm must be limited to the central entry off Elizabeth Street, Paddington and an air lock must be constructed and located internally to prevent the transmission of noise. The northern entry off Elizabeth Street, Paddington may be used as a disabled access after 6pm.*



## 5. SUMMARY OF PREVIOUS SECTION 4.55 MODIFICATIONS

A Section 4.55 application (DA621/2018/2) for *relocation of the air-lock door from existing central door to another door* was approved on 7/8/2018. As a consequent, **Condition C.1(f)** was amended and a new part (g) was added. They are as follows:

**f) Restaurant entry (Elizabeth Street Paddington)**

*The entrance to the restaurant after 6 pm must be limited to the northern entry off Elizabeth Street, Paddington and an air lock must be constructed and located internally to prevent the transmission of noise. The southern entry off Elizabeth Street, Paddington may be used as a disabled access after 6pm.*

**g) Airlock Entry**

*The airlock shall be designed to achieve the following:*

- a) The airlock doors shall be equipped with self-closing devices;*
- b) The airlock shall be designed so that in passing through the airlock **it is impossible for the interior and exterior doors to open at the same time;***
- c) The airlock doors are to be designed to assist in reducing noise emission from the premises; &*
- d) Airlock Doorways are to be acoustically sealed.*

## 6. SUMMARY OF PROPOSED MODIFICATION

The proposed modification seeks to modify **Conditions A.2, F.4 and I.2** of the approved development. The proposed changes are as follows:

- **Condition A.2** is proposed to be modified to allow for an amended of Plan of Management and a new Acoustic Report.
- **Condition F.4** is proposed to be modified.

**Condition F.4** states the following:

- *Compliance with **Conditions I.1, I.2, I.3, I.4 & I.7.***
- *After 6pm, entry to the premises by patrons must be limited to the central entry off Elizabeth Street, Paddington. The northern entry off Elizabeth Street may continue to be used for disabled access after 6pm.*
- *Staff are to enter and exit the premises via Victoria Street, Paddington only.*
- *All patrons are to exit the premises via Victoria Street, Paddington after 8pm.*
- *All patrons (including staff) must leave the premises within 30 minutes of closing time.*
- *No noise generating activities after closing time, management to usher patrons from the site and adjacent footpath.*
- *Lights in the restaurant shall not cause a nuisance to the surrounding area.*
- *A complaints system, which includes the name and mobile number of the licensee/on site manager.*

*The revised Plan of Management must be approved by Council's Manager, Development Control, and the premises operated in accordance with the approved Plan of Management and must be filed with Licensing at the Eastern Suburbs Police Area Command prior to the commencement of the operations of the Licensed Restaurant.*

**Condition F.4** is proposed to be modified as follows:

- *Compliance with Conditions I.1, I.2, I.3, I.4 & I.7.*
- *After 6pm, entry to the premises by patrons must be limited to the central entry off Elizabeth Street, Paddington. The northern entry off Elizabeth Street may continue to be used for disabled access after 6pm.*
- ~~*Staff are to enter and exit the premises via Victoria Street, Paddington only.*~~
- ~~*All patrons are to exit the premises via Victoria Street, Paddington after 8pm.*~~
- *All patrons (including staff) must leave the premises within 30 minutes of closing time.*
- *All Staff must leave the premises within 1 hour after closing time;*
- *No noise generating activities after closing time, management to usher patrons from the site and adjacent footpath.*
- *Lights in the restaurant shall not cause a nuisance to the surrounding area.*
- *A complaints system, which includes the name and mobile number of the licensee/on site manager.*

*The revised Plan of Management must be approved by Council's Manager, Development Control, and the premises operated in accordance with the approved Plan of Management and must be filed with Licensing at the Eastern Suburbs Police Area Command prior to the commencement of the operations of the Licensed Restaurant.*

**Condition I.2** is proposed to be modified. **Condition I.2** states the following:

*The hours of operation for the licensed premises are extended as follows:*

- a) Monday, Tuesday, Wednesday and Sunday – between 8.00pm and 9.30pm*
- b) Thursday, Friday and Saturday – between 8.00pm and 10.00pm*

*This condition is a reviewable condition as referred to under the Act, s.80A (10B-10D). The extended trading hours will be reviewed in accordance with **Condition I.3**.*

*This condition has been imposed to mitigate amenity impacts upon the neighbourhood.*

It is proposed to modify **Condition I.2** as follows:

*The hours of operation for the licensed premises are extended as follows:*

- a) Monday, Tuesday, Wednesday ~~and Sunday~~ – between 8.00pm and ~~9.30pm~~ **11pm***
- b) Thursday, Friday and Saturday – between 8.00pm and ~~10.00pm~~ **11:30pm***
- c) **Sunday 8pm to 10pm***

*This condition is a reviewable condition as referred to under the Act, s.80A (10B-10D). The extended trading hours will be reviewed in accordance with **Condition I.3**.*

*This condition has been imposed to mitigate amenity impacts upon the neighbourhood.*

## 7. ISSUES

### 7.1. Primary Issues

Issue	Conclusion	Section
Noise	The proposed extension of the existing extended trading hours and changes to the patron exiting arrangements have not been supported. The remaining elements are considered acceptable, subject to <b>Condition F.4</b> which will be discussed further in Section 16.1.	16.1
Residential Amenity	The proposed extension of the existing 'extended trading' hours and changes to the patron exiting arrangements have not been supported. The remaining elements are considered acceptable, subject to <b>Condition F.4</b> which will be discussed further in Sections 16.1 and 16.4.	16.1, 16.4
Breaches of current development consent	The proposed extension of the existing extended trading hours and changes to the patron exiting arrangements have not been supported. The remaining elements proposed by this S.4.55 application are considered acceptable, subject to <b>Condition F.4</b> and is discussed below in Sections 16.1 and 16.4. Other breaches that are not covered by this application, are compliance matters outside of the scope of this application process.	16.1, 16.4
Reviewable Condition	It is acknowledged that Council did not undertake a formal review of the existing 'extended trading hours' 12 months after granting development consent, under <b>Condition I.3</b> of the approved development. However Council has not considered that the consent breaches to date, have warranted the removal of the 'extended trading hours'. It should be noted that this review process is on-going, and should Council receive serious and/or continual substantiated complaints relating to consent breaches, Council is able to revoke the 'extended trading hours'.	16.4

### 7.2. Summary of Submissions

Issue	Conclusion	Section
Noise	The proposed extension of the existing extended trading hours and changes to the patron exiting arrangements have not been supported. The remaining elements are considered acceptable, subject to <b>Condition F.4</b> which will be discussed further in Section 16.1.	12.1,16.1
Residential Amenity	The proposed extension of the existing 'extended trading hours' and changes to the patron exiting arrangements have not been supported. The remaining elements are considered acceptable, subject to <b>Condition F.4</b> which will be discussed further in Section 16.1 and 16.4.	12.1,16.1, 16.4
Breaches of current development consent	The proposed extension of the existing extended trading hours and changes to the patron exiting arrangements have not been supported. The remaining elements proposed by this S.4.55 application are considered acceptable, subject to <b>Condition F.4</b> which will be discussed further in Sections 16.1 and 16.4. Other breaches that are not covered by this application, are compliance matters and are outside the scope of this application.	12.1,16.1, 16.4
Reviewable condition	It is acknowledged that Council did not undertake a formal review of the existing 'extend trading hours' 12 months after granting development consent, under <b>Condition I.3</b> of the approved development. However Council has not considered that the consent breaches to date, have warranted the removal of the 'extended trading hours'. It should be noted that this review process is on-going, and should Council receive serious and/or continual substantiated complaints relating to consent breaches, Council is able to revoke the 'extended trading hours'.	12.1,16.4
Parking/Traffic	No changes to the parking demand and traffic generation were considered to be created by the proposal, as the extension of the existing extended trading hours have not been supported. No changes to patron numbers has been proposed.	12.1, 16.2

## PROPERTY DETAILS AND REFERRALS

### 8. SITE AND LOCALITY

<b>Physical features</b>
The subject site is located on the western side of Elizabeth Street Paddington. The site is dog-legged in shape and is approximately 713m <sup>2</sup> in size. The Elizabeth Street frontage is 22.7m in length and the Victoria Street frontage 22.77m.
<b>Topography</b>
The site is largely flat at the ground floor, with sloping ramps from the footpath to the two front doors at the northern end of the Elizabeth Street frontage.
<b>Existing buildings and structures</b>
Currently on the site is an infill development, which incorporates a retained two storey terrace and two original shopfronts. The subject of the current application relates to the ground floor tenancy operated as a restaurant named 'Barbetta', which fronts Elizabeth Street and is approximately 166m <sup>2</sup> in floor area.
<b>Surrounding Environment</b>
<p>The subject site is located at the interface of the commercial precinct of Oxford Street with the predominantly residential area of Paddington.</p> <p>Shop top housing and commercial premises are located to the south along Oxford Street. A commercial building, which includes a licensed restaurant, adjoins to the north at No.10-12 Elizabeth Street. A gallery is located at No.16 Elizabeth Street. A large commercial building also adjoins to the west of the subject site at No.52 Victoria Street.</p> <p>The eastern side of Elizabeth Street is lined with residential terrace housing.</p> <p>The immediate environment is otherwise characterised by residential buildings, comprising largely of multi-storey terrace housing.</p>



**Photo 1:** Existing restaurant fronting Elizabeth Street



**Photo 2:** Existing restaurant showing the main and the northern entrance



*Photo 3: Existing northern entrance and side service entrance*



*Photo 4: Existing entry off Victoria Street*



*Photo 5: Aerial photo*



## 9. RELEVANT PROPERTY HISTORY

<b>Current use</b>
Restaurant
<b>Relevant Application History</b>
<ul style="list-style-type: none"> <li>DA621/2017/2 – Relocation of the air-lock door from the existing central door to another door – Approved – 07/08/2018;</li> <li>DA2017/621/1 - Change of use from a food and drink premises to a licensed restaurant including a liquor license - Approved – 07/08/2018;</li> <li>DA2008/829/3 - Changing the approved use of the plant room/storage room to an office premises - Approved - 15/11/2016;</li> <li>DA2008/829/2 - Simplification of roof form, extension of atrium &amp; retention of existing floor levels - Approved - 05/07/2011;</li> <li>DA2008/829/1 - DA approved for the adaption and re-use of existing buildings and new infill buildings, including car parking, amalgamation of 4 lots for commercial/retail use and remediation of the site.</li> <li>CDC-17/1417 - Issued by Steve Watson &amp; Partners for carrying out of work, including the internal fit-out and change of use of the existing ground floor retail tenancy for use as a 'Barbetta' food and drink premises with a proposed seating capacity of 50 patrons maximum.</li> </ul>
<b>Relevant Compliance History</b>
<ul style="list-style-type: none"> <li>Notices/Orders 46/2018: Notice of Intention to Give an Order given to the property owner, Ashdel Properties Pty Ltd, on 26 February 2018. The terms of the proposed order are: <ul style="list-style-type: none"> <li><i>Demolish the unauthorised air-conditioning condenser units and associated brackets and the awning that have been installed on the external northern side wall of the subject premises at the ground floor level.</i></li> </ul> </li> <li>CRM3960/2018: Complaint about Barbetta trading at 8AM on Sunday 25 February 2018, in breach of the approved hours under DA2008/829/1. Rangers gave a verbal warning in respect of the breach.</li> <li>Emails to Compliance dated 26 March 2018 (HPE Doc 18/47208) and 27 March 2018 (HPE Doc 18/47806) raised a number of issues and concerns about the operation of the café between 11 - 27 March 2018 as follows: <ul style="list-style-type: none"> <li>Take away coffee served before official opening time</li> <li>Table service provided before official opening time</li> <li>Patrons queuing and congregating on the footpath, blocking pedestrians</li> <li>Patrons smoking on the street outside</li> <li>Deliveries made from Elizabeth Street (cartons delivered at 6am on 15th March, the small car blocked the street to through traffic)</li> <li>Lack of privacy from our property. Patrons have a direct line of sight to our terrace.</li> <li>Noise of crockery, cutlery, espresso machine and voices particularly at busy lunchtime service. This seems to be Thursday to Sunday most weeks.</li> </ul> </li> </ul> <p>Evidence obtained by Compliance staff during the week ending 30 March 2018 confirmed that the café was trading as early as 7.00am, in breach of the trading hours specified under DA 829/2008 and the associated CDC.</p> <ul style="list-style-type: none"> <li>A Breach of development consent letter (DA829/2008 and DA621/2017) was sent to the property owner, Ashdel Properties Pty Ltd, on 05 October 2018. The following item was identified in this letter, refer to <b>Annexure 8</b>: <ul style="list-style-type: none"> <li>Delivery vehicles double parking and illegally stopping on Elizabeth Street in breach of <b>Condition C.1(f)</b> of DA829/2008 and <b>Condition I.9</b> of DA2017/621.</li> </ul> </li> <li>On 14 March 2019 Council Officers had an on-site meeting with the applicant and conducted an inspection of the premises. This inspection and meeting confirmed the concerns of residents and revealed breaches of the development consent and potential noise impacts on residents. Since this meeting it has been reported to Council that a bread delivery occurred on 16/03/2020 from Elizabeth Place and two vehicles on 30/03/2020 undertook deliveries from Elizabeth Street.</li> </ul>



<ul style="list-style-type: none"> <li>A Breach of Development Consent letter (DA621/2017) was sent to the property owner, Ashdel Properties Pty Ltd, on 3<sup>rd</sup> April 2019. The following items were identified in this letter, refer to <b>Annexure 9</b>: <ul style="list-style-type: none"> <li>Light spill from 5:15am</li> <li>Staff using the Elizabeth Street entrance</li> <li>The kitchen door is permanently open</li> <li>Staff onsite regularly past 10:30pm</li> <li>Patron congregation on Elizabeth Street</li> <li>Seating capacity exceeding 50 patrons</li> <li>Loading dock not being utilised for deliveries</li> <li>The garbage room not been utilised for storage and collection of waste, including glass bottles</li> <li>Permanent storage of waste in Vials Lane and transfer of waste and glass bottles in Vials Lane</li> </ul> </li> <li>Complaints from residents are as follows, refer to <b>Annexure 9</b>: <ul style="list-style-type: none"> <li>26/05/2019 - Cleaning activities after 10pm/staff access</li> <li>03/06/2019 - Cleaning activities after 10pm/staff access</li> <li>30/06/2019 - Cleaning activities after 10pm</li> <li>02/08/2019 - Cleaning activities after 10pm</li> <li>23/08/2019 - Patron numbers/cleaning activities after 10pm</li> <li>25/08/2019 - Noisy function/trading hours</li> <li>12/09/2019 - Deliveries</li> </ul> </li> <li>Council issued Mr Cipri a Notice (Notice No.62/2019) on 17/09/2019 in relation to breaches to DA621/2019 in relation to <b>Condition F.4, I.2, I.4, I.6, I.8, I.21</b>, refer to <b>Annexure 10</b>.</li> <li>Representations on behalf of Mr Cipri was received on 13/11/2019 in response to the notice, refer to <b>Annexure 11</b>.</li> <li>Additional complaints from residents are as follows: <ul style="list-style-type: none"> <li>09/01/2020 - Noise from mechanical plant equipment</li> <li>02/08/2020 - Group congregation on the street/vehicles blocking Elizabeth Street picking up/dropping off patrons</li> <li>16/08/2020 - Central door open and groups congregating on the street</li> <li>22/08/2020 - Delivery vehicle illegally parked</li> <li>31/08/2020 - Central and side doors off Elizabeth Street being opened all day</li> <li>14/09/2020 - Cleaning outside of premise late at night</li> <li>14/09/2020 - Central door off Elizabeth Street open</li> <li>20/09/2020 - Deliveries made via Elizabeth Street</li> <li>23/09/2020 - Central door left open/staff using Elizabeth Street door</li> <li>14/08/2020 - Groups congregating on the street/central door left open and staff using the central door;</li> <li>03/11/2020 - Deliveries made via Elizabeth Street</li> <li>12/11/2020 - Airlock doors not activated all night/patrons leaving via Elizabeth Street after 8pm.</li> </ul> </li> </ul>
<b>Pre-DA</b>
N/A
<b>Requests for Additional Information and Replacement Applications</b>
N/A
<b>Land and Environment Court Appeal(s)</b>
N/A

## 10. REFERRALS

Referral	Summary of Referral Response	Annexure
Environmental Health	Satisfactory, subject to Conditions.	1
Compliance	<p><i>The modification of condition I.2 to extend the trading hours is not supported.</i></p> <p><i>It is recommended that the POM approved by condition A.2 be modified as follows:</i></p> <p><b>F.4 Filing of an amended Plan of Management (POM)</b></p>	2

Referral	Summary of Referral Response	Annexure
	<p><i>The POM prepared by GSA Planning, approved by <b>Condition A.2</b>, is to be modified to include the following:</i></p> <ul style="list-style-type: none"> <li>• <i>Compliance with <b>Conditions I.1, I.2, I.3, I.4 &amp; I.7</b>.</i></li> <li>• <i>After 6pm, entry to the premises by patrons <b>and staff</b> must be limited to the northern entry off Elizabeth Street, Paddington. The southern entry off Elizabeth Street may continue to be used for disabled access after 6pm.</i></li> <li>• <i>Staff are to enter and exit the premises via Victoria Street, Paddington <b>after 8pm</b>.</i></li> <li>• <i>All patrons are to exit the premises via Victoria Street, Paddington after 8pm.</i></li> <li>• <i>All staff must leave the premises within <b>1 hour</b> after closing time</i></li> <li>• <i>All patrons must leave the premises within 30 minutes of closing time.</i></li> <li>• <i>No noise generating activities after closing time, management to usher patrons from the site and adjacent footpath.</i></li> <li>• <i>Lights in the restaurant shall not cause a nuisance to the surrounding area.</i></li> <li>• <i>A complaints system, which includes the name and mobile number of the licensee/on site manager.</i></li> <li>• <i>A staff member is to remind patrons to leave quietly</i></li> <li>• <i>Adequate signage is prominently displayed at each exit asking patrons to leave quietly and not to congregate outside the venue or in the local area.</i></li> <li>• <i>The side service door to Elizabeth Street will be kept closed during cleaning activities.</i></li> </ul>	
NSW Police	<p>Unsatisfactory:</p> <p><i>There is a likely adverse social impact to the local community based on proposal by the applicant. Detriment to the wellbeing of the local and broader communities is not adequately ameliorated by the applicant. If Council is of the mind however to discount Police concerns and grant this application, Licensing Police would request that appropriate conditions be imposed to address the likelihood of negative social impact.</i></p>	3

## ASSESSMENT UNDER SECTION 4.55

The application is assessed under Section 4.55 of the Environmental Planning and Assessment Act 1979.

### 11. SECTION 4.55(2): OTHER MODIFICATIONS

Section 4.55(2) relates to the modification of a development consent for all other modifications. The application proposes to modify **Conditions A.2, F.4 and I.2** including the extension of the existing extended trading hours.

The considerations in Section 96(2) require Council to consider the following:

- 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)*

Yes. As the modification relates to the modification of approved conditions of consent.

- 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*

N/A

- 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*

Yes.

- 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*

Yes, refer to Section 12.1 of this report.

## **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

## **12. ADVERTISING AND NOTIFICATION**

### **12.1. Submissions**

The application was advertised and notified from 22/07/2020 to 05/08/2020 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. 21 Objections were received from (A petition of support was also submitted containing 189 signatures):

1. Frank & SN Davison, 23 Elizabeth Street, Paddington
2. Guillaume Roger, 39 Elizabeth Street, Paddington

3. Joann Wood, No address specified
4. Kathleen Johnson, 146A Underwood Street, Paddington
5. Natasha Meuli & Michael Sheika, 19 Elizabeth Street, Paddington
6. Audette Benson, 10 Elizabeth Place, Paddington
7. Ann-Maree Cook & Adrian Kendell, 11 Elizabeth Place, Paddington
8. George & Carol Sarakiniotis, 15 Elizabeth Street, Paddington
9. John & Jan Eggleshaw, 57 Elizabeth Street, Paddington
10. John Turner, 184 Underwood Street, Paddington
11. Ken Kenilworth, No address specified
12. Richard, Ellie & Camilla Weekes, 40 Elizabeth Street, Paddington
13. Roberta Lauchlan & Barry Thompson, 21 Elizabeth Street, Paddington
14. John & Robyn Durack, 444 Oxford Street, Paddington
15. Julianne O'Connell & David Lockart, 140 Underwood Street, Paddington
16. Peter & Amy Dutton, Owner of 27 Elizabeth Street
17. Ivan Gunarajan & Lesley Greenwell, 25 Elizabeth Street, Paddington
18. Jaime & Rosa Bernardo, 17 Elizabeth Street, Paddington
19. Samuel Senior, No address specified
20. Max Swadling, 7 Victoria Street, Paddington
21. Marina Olivier, 37 Elizabeth Street, Paddington

The submissions raised the following issues:

- **Barbetta would be the only venue trading till 12:30am.**

**Comment:** This application has only sought trading until 11:30pm, notwithstanding this, the extension to the trading hours has not been supported.

- **Extending the trading hours will create additional noise in the area and impacts on the residential amenity.**

**Comment:** The extension to the trading hours has not been supported.

- **Disposal of glass bottles/collection outside of conditions of consent.**

**Comment:** No changes to the approved waste management arrangements have been proposed. This is a compliance matter outside the scope of this application.

- **Patron numbers greater than the approved numbers.**

**Comment:** No changes to the approved patron numbers have been proposed. This is a compliance matter outside the scope of this application.

- **Queues not managed. Ignoring conditions of consent.**

**Comment:** No changes to the patron management arrangements have been proposed. This is a compliance matter outside the scope of this application.

- **Patrons exiting from doors not permitted on condition of consent.**

**Comment:** The applicant has sought to delete the requirement for all patrons to exit the premise via Victoria Street after 8pm. This requirement has not been supported for reasons stated below in Section 16.1.

- **Cleaning the premise prior to the hours stipulated in the conditions of consent.**

**Comment:** The hours stipulated in the consent relate to 'trading hours' and the only other restriction relates to staff having to leave the premises 30min after closing time. The cleaning of the premises conducted by private contractors does not breach any condition of consent.

- **Constant deliveries by vehicles illegally parking, in Vials Lane, Elizabeth Street, Victoria Street.**

**Comment:** No changes to the approved delivery arrangements have been proposed. This is a compliance matter outside the scope of this application.

- **Congregation of patrons on the footpath, obstructing the footpath and creating noise and disturbance to residents.**

**Comment:** The extension of the trading hours and proposed change to the patrons exiting arrangements have not been supported.

- **Additional parking demand and traffic generation.**

**Comment:** No changes to the parking demand and traffic generation is considered to be created by the proposal, as the extension of the trading hours has not been supported. No change to the patron numbers has been proposed.

- **Patrons are loitering out the front for extended periods after close, thereby creating noise disturbance and impacts from smoking patrons.**

**Comment:** The extension of trading hours and changes to the patron exiting arrangements have not been supported. Compliance with patron management arrangements is a matter for Council's Compliance Department.

- **Patrons remain inside well after the specified close time.**

**Comment:** The extension of the trading hours has not been supported. Compliance with the trading hours is a matter for Council's Compliance Department.

- **The existing business is trading under a reviewable condition, which is the source of neighbourhood disturbance, noise, nuisances and anti-social behaviour. Council's failure to conduct a review in accordance with Condition I.3, given Council had satisfactory evidence to suggest the extended trading hours are unduly impacting on the amenity of the neighbourhood. Any review of the extended trading hours must be conducted by Woollahra Local Planning Panel.**

**Comment:** It is acknowledged that Council did not undertake a formal review of the existing 'extend trading hours' 12 months after granting development consent, under **Condition I.3** of the approved development. However Council has not considered that the consent breaches to date, have warranted the removal of the 'extended trading hours'. It should be noted, that this review process is on-going, and should Council receive serious and/or continual substantiated complaints relating to consent breaches, Council is able to revoke the existing 'extended trading hours'.

- **The proposal fails to comply and address Objective O6 of Chapter F3.3 of the WDCP, 2015.**

**Comment:** The proposed extension of the trading hours and changes to the patron exiting arrangements have not been supported. The remaining elements are considered to be consistent with Objective O6 and are acceptable in this regard.

- **The proposal is inconsistent with Objective O1 and Control C1 of Part F3.3 of the WDCP, 2015.**

**Comment:** The proposed extension of the trading hours and changes to the patron exiting arrangement have not been supported. The remaining elements are considered to be consistent with Objective O1 and Control C1 and are acceptable in this regard.

- **The proposal and current operation is inconsistent with Objective O4 and O5 of Part F3.3 of the WDCP, 2015.**

**Comment:** The proposed extension of the trading hours and changes to the patron exiting arrangements have not been supported. The remaining elements are considered to be consistent with Objective O4 and O5 and are acceptable in this regard. Compliance with the Plan of Management is a matter for Council's Compliance to enforce.

- **The direct correlation between the saturation of licensed premises within a limited geographical space and concerns from local residents is unchallenged. There has been numerous complaints regarding late night disturbances to Council.**

**Comment:** The proposed extension of the trading hours has not been supported and no increase to the patron numbers have been proposed, thus there is no intensification to the existing licensed premises.

- **The existing hours are excessive and is an intensification use of the site, which is supposed to be small scale retail operation to serve the local community.**

**Comment:** The proposed extension of the trading hours has not been supported and no increase to the patron numbers have been proposed, thus there is no intensification to the existing licensed premises.

- **COVID cleaning is not a valid reason to extend hours. The kitchen shuts down before closing time. It is reasonable to expect kitchen cleaning to take place within current hours and 30 minutes after patrons leave the restaurant. Cleaning of the restaurant takes place from 5am approximately (this causes a problem of light spill). All businesses have to deal with the new operating procedures.**

**Comment:** The allowance of an additional 30 minutes for cleaning is considered reasonable to ensure adequate hygiene, particularly during a pandemic. Council's Compliance Officer has supported this change, subject to the side service door being kept closed during cleaning activities, refer to **Condition F.4**.

- **The proposal will result in increased refuse and refuse collection, including increased number of bottles for collection, which creates additional disturbance for residents during early morning collection.**

**Comment:** The proposed extension of the trading hours has not been supported, thus there is no intensification of the current use, and thus the quantity of waste or frequency of collection should remain unchanged.

- **After 8pm, the patrons are required to leave via the Victoria Street exit, which is directly opposite No. 7 Victoria Street. Once patrons have exited the venue, patrons often congregate on the street for extended periods. There is no consideration for the Victoria Street residents and no effort by the staff at Barbetta to move the patrons on in a swift manner to ensure there is no noise in the immediate or surrounding area. Similarly, Barbetta staff frequently smoke outside this exit, having loud conversations (sometimes after the closing time) and leave cigarettes scattered across the ground.**

**Comment:** The requirement for staff to enter and exit the premises via Victoria Street has been recommended to be deleted (until 8pm), which will reduce the impact on Victoria Street. A condition of consent for signage to be erected at the exits requesting patrons to leave quietly and not congregate outside the venue has been proposed, refer to **Condition F.4**.



- **The proposed hours will set a precedent for other businesses in the area to apply for a similar conditions, which will have a negative cumulative impact.**

**Comment:** The proposed extended trading hours have not been supported.

- **There has been inadequate assessment of the impact of the proposed changes to the PoM and the proposed amendment to the "reviewable trading hours" on the surrounding area.**

**Comment:** The proposed extension of the trading hours and the changes to the patron exit arrangements have not been supported. The remaining changes to the PoM are considered to have minimal impacts, and is discussed below in Sections 16.1 and 16.4.

- **There has been inadequate assessment of the impacts (including cumulative) of patrons arriving/leaving the restaurant, either by vehicle, taxi/Uber or walking, in the surrounding residential area.**

**Comment:** The submitted Plan of Management has stated that the staff will call Taxi's on request without charge and will be directed to pick up from Oxford Street. Notwithstanding this, the proposed extension to the trading hours and change to the patron exit arrangements have not been supported.

- **The supporting Acoustic Report does not address that the existing glazing to the proposed use has gaps which, does not provide for an adequate acoustic barrier to noise generation within the premises. Its outlines "Ensure the entry door to the restaurant remains closed at all times except for the ingress and egress of patrons". However the operation of the business is contrary to this advice failing to keep close the kitchen door during operational hours causing a constant nuisance.**

**Comment:** Council's Environmental Health Officer has supported the application and the submitted Acoustic Report. Notwithstanding this, the extended trading hours and changes to the patrons exiting arrangements has not been supported. A condition of consent has been recommended that requires that the side service door to Elizabeth Street will be kept closed, refer to **Condition F.4**. Compliance with patron management arrangements/litter is a matter for Council's Compliance Department.

- **The background noise levels presented in the Acoustic Report have been used in the noise model for the operational noise assessment and is contentious as its outdated (2018) and conducted prior to the commencement of late night trading.**

**Comment:** Council's Environmental Health Officer raised no objection to the use of this data. However, the proposed extension of the trading hours has not been supported.

- **There has been no assessment of staff/patrons talking on mobiles outside of the restaurant.**

**Comment:** Given that the extension of the trading hours and the patron exit arrangements have not been supported, an increase to these activities is unlikely.

- **There has been no assessment of staff/patrons smoking outside of our bedroom and living areas.**

**Comment:** Given that the extension of the trading hours and the patron exit arrangements have not been supported, an increase to these activities is unlikely.

- **Since the enactment of the development consent, there has been ongoing non-compliance with development consent DA620/2017, in particular Conditions C.1, F.4, I.4, I.6, I.9, I.10, I.11, I.13 and I.21. The numerous instances of the failure of the operation at 2-8 Elizabeth Street to comply with the development consent or the Plan of Management that have negatively affected local amenity.**

**Comment:** The proposed extension of the trading hours and changes to the patron exiting arrangements have not been supported. The remaining elements proposed by this S.4.55 application are considered acceptable, subject to **Condition F.4** and is discussed below in Section 16.1. Other breaches that are not covered by this application, are compliance matters and are outside the scope of this application.

## **12.2. Statutory Declaration**

The applicant has completed the statutory declaration dated 20/08/2020 declaring that the site notice for DA621/2017/3 was erected and maintained during the notification period in accordance with Chapter A2.3.5 of the Woollahra DCP 2015.

## **13. 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*
- 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.

As the site was remediated as part of the works approved by DA2008/829/1 & DA2008/829/2, it is considered that the land does not require further consideration under Clause 7 (1) (b) and (c) of SEPP 55. The proposal is therefore acceptable with regard to SEPP 55: Remediation of Land.

## **14. 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.

## **15. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014**

### **15.1. Part 1.2: Aims of Plan**

The proposal is considered to be satisfactory in terms of the aims in Part 1.2(2) of the Woollahra LEP 2014, subject to **Conditions F.4, I.1, I.2 and I.3.**

## **15.2. Land Use Table**

The proposal is defined as a *restaurant or café*, is permitted in Zone B1 Neighbourhood Centre, is consistent with the objectives of the B1 Neighbourhood Centre zone, subject to **Conditions F.4, I.1, I.2 and I.3**.

## **15.3. Part 4.3: Height of Buildings**

No change to the approved building height has been proposed.

## **15.4. Part 4.4: Floor Space Ratio**

No change to the approved gross floor area is proposed.

## **15.5. Part 5.10: Heritage Conservation**

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

The proposed development is located in Paddington Heritage Conservation Area. It is acceptable with regard to the objectives in Parts 5.10 of the Woollahra LEP 2014.

# **16. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015**

## **16.1. Chapter C1: Paddington Heritage Conservation Area**

### **Section C1.3.8: Commercial and Industrial Buildings including Shops**

No changes to the existing building has been proposed, thus the proposed modifications are acceptable in this regard.

### **Section C1.3.12: Existing Contemporary Infill**

No changes to the existing building has been proposed, thus the proposed modifications are acceptable in this regard.

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

No changes to the existing building has been proposed, thus the proposed modifications are acceptable in this regard.

### **Section C1.4.10: Acoustic and Visual Privacy**

Objective O2 of C1.4.1.10 seeks to minimise the impact of development on the acoustic privacy of existing development on neighbouring lands. The proposed development is considered to be consistent with O2 in the following ways:

- The extension of the existing extended trading hours has not been supported, refer to **Conditions I.1 and I.2**;

- The proposed changes to the patron exiting arrangement, after 8pm has not been supported, refer to **Condition F.4**;
- The applicant has submitted an Acoustic Report, which was supported by Council's Environmental Health Officer, refer to **Condition A.5**;
- The existing approved 'extended trading hours' allowed by **Condition I.2**, are reviewable. This allows Council's to revoke the existing approved 'extended trading hours' should Council receive serious and/or continual substantiated complaints. If this was to occur Council is able to revoke these existing extended trading hours;
- It has been proposed to modify **Conditions A.2** and **F.4** to allow for staff to be onsite for an additional 30 minutes after closing (a total of 1 hour) for cleaning purposes. This change is considered to be reasonable to ensure adequate hygiene, particularly during a pandemic. The acoustic impact of this additional cleaning time is considered to be minimal, subject to the side service door being kept closed during cleaning activities, refer to **Condition F.4**. It should be noted that Council's Compliance Officer has supported this change subject to the above mentioned condition;
- It has also been proposed to modify **Conditions A.2** and **F.4** to allow for staff to enter and exit the premises from Elizabeth Street (currently staff are required to enter and exit the site from Victoria Street only). This change is considered to be reasonable, as there is a maximum of 15 staff onsite at any one time. The coming and going of the staff is likely to be staggered as **Condition F.4** requires staff to enter and exit after 8pm via Victoria Street. This arrangement is the same as the patrons and is not considered to give rise to unacceptable amenity impacts on surrounding residential properties.

Thus, the proposal is considered to be inconsistent with Objective O2 of Section C1.4.10.

## **16.2. Chapter E1: Parking and Access**

DA2008/829/2 was approved with a provision of 13 parking spaces for the commercial building.

The change of use of the subject ground floor retail premises to a restaurant was approved by CDC 17/1417/01. No parking is allocated to the current restaurant use.

The proposal does not result in any additional floor area to the existing restaurant, thus it does not generate any additional parking demand. Notwithstanding this, the extension to the trading hours has not been supported. The remaining changes are minor operational matters, which do not create additional parking demand.

### Traffic

No change to the total GFA available to the restaurant use has been proposed by this application. Therefore there is no change to the traffic generation or vehicle trips. Notwithstanding this, the extension to the trading hours has not been supported. The remaining changes are minor operational matters, which do not create additional traffic to the area.

### Loading Facility

No changes to the approved delivery arrangements have been proposed by this application. **Condition I.21** of the approved development requires all deliveries to be made via the existing loading dock in Victoria Street.

## Conclusion

The proposal is acceptable with regard to the objectives and controls in Chapter E1 of the Woollahra DCP 2015.

### 16.3. Chapter E5: Waste Management

No changes to the approved waste management arrangements have been proposed. **Conditions I.10, I.11 and I.13** of the approved development relate to waste management.

### 16.4. Chapter F3: Licensed Premises

The objectives of the Licensed Premises controls in Chapter F3 are:

- O1: To standardise the way we assess development applications (DAs) and other related applications for licensed premises*
- O2: To provide certainty to applicants, residents and other stakeholders regarding our approach to, and planning requirements for, dealing with DAs and other related applications for licensed premises*
- O3: To achieve a more consistent approach to determining trading hours and operating conditions for licensed premises*

Part F3.1.2 of the chapter notes that the controls relate to applying the Land and Environment Court Planning Principle for licensed premises established in *Vinson v Randwick Council [2005]* NSWLEC 142.

The relevant objectives of the controls are:

- O1: Minimise the impact of licensed premises on the amenity of residential or other sensitive land uses*
- O2: Identify appropriate trading hours for licensed premises*
- O3: Identify the maximum number of persons permitted on the licensed premises (including outdoor areas) to:
  - a) minimise the impact on the amenity of surrounding residential and sensitive land uses; and*
  - b) provide a safe environment for occupants.**
- O4: Appropriate management practices are implemented for licensed premises to:
  - a) minimise impacts, such as anti-social behaviour and crime, on surrounding residential and other sensitive land uses particularly at closing times and during periods of high patronage; and*
  - b) safeguard persons occupying licensed premises.**
- O5 Buildings and areas accommodating licensed premises are designed and located to:
  - a) minimise impacts on the amenity of surrounding residential and other sensitive uses; and*
  - b) provide a safe environment for its occupants.**

## Rating

The premises comprises a licensed restaurant and has a rating level of HIGH in accordance with Table F3.2.

## Assessment

In accordance with C1, assessment of the licensed premises must consider the following:

a) *The location of the premises and the proximity of residential and other sensitive uses*

- The subject site is located in Zone B1 Neighbourhood Centre on the interface with the adjoining Zone R2 Low Density Residential directly opposite on Elizabeth Street;
- The subject building also adjoins residential terrace dwellings in Zone R2 to the west on Victoria Street;
- There are other commercial premises within Zone B4 Mixed Use along Oxford Street to the south; and
- There are other commercial premises, including licensed premises, along Elizabeth Street to the north.

b) *The type of licensed premises*

The proposed license is an On-Premises Liquor License.

c) *The size and capacity of the premises*

The premises has a floor area of approximately 166.6m<sup>2</sup> and capacity of 50 patrons. No change to the approved floor area or to the number of patrons has been proposed, refer to **Condition I.4** of the approved development.

d) *Trading hours*

The existing trading hours under **Condition I.1, I.2** and **I.3** of the approved development are as follows:

**Condition I.1:**

*Monday to Sunday: 7am to 8pm*

**Condition I.2: Extended hours of operation- reviewable condition**

- a) *Monday, Tuesday, Wednesday and Sunday: 8.00pm and 9.30pm*  
b) *Thursday, Friday and Saturday: 8.00pm and 10.00pm*

*This condition is a reviewable condition as referred to under the Act, s.80A (10B-10D). The extended trading hours will be reviewed in accordance with Condition I.3.*

**Condition I.3: Review of extended hours of operation for licensed premises**

*Council will review the extended trading hours as referred to in **Condition I.2** generally as follows:*

- a) *One (1) year following the issue of any occupation certificate applicable to this application (if works are proposed) or the date of development consent (if no works are proposed)*  
b) *Two (2) years following the first review*



*c) Each five (5) years thereafter*

*The review will be undertaken in accordance with the Regulations, cl.124D. This condition has been imposed to mitigate amenity impacts upon the neighbourhood.*

It has been proposed to modify the 'extended trading hours' (internal only) to the following:

- Monday, Tuesday, Wednesday: 8.00pm to 11pm
- Thursday, Friday and Saturday: 8.00pm to 11:30pm
- Sunday: 8pm to 10pm

The trading hours permitted by Control C2 are:

Risk rating	Internal (fully enclosed)		External (not fully enclosed)	
	Base	Extended	Base	Extended
High	8am - 10pm	8am - midnight	8am - 8pm	8am - 10pm
Low	8am - midnight	8am - 2am	8am - 10pm	8am - midnight

The proposed trading hours exceed the base and extended hours permitted for High Risk premises by Control C2.

In addition, the note in Control C2 highlights that:

*The base and extended trading hours referred to in the above table are not an 'as of right'. Where licensed premises are located in close proximity to low density residential zones, Council may impose more restrictive trading hours than those shown in the table*

The subject site is located on the zone interface with Zone R2 Low Density Residential, and the amenity impact of the operation of a licensed premises upon the terraces directly opposite the restaurant is considered to be high.

Council's Compliance Officer has not supported the proposed extension to the existing trading hours, as this change has the potential to expose surrounding properties to further deterioration of amenity, refer to **Annexure 2**.

In addition NSW Police have not supported the extended trading hours, as it will likely produce various disturbance impacts, which would adversely affect local amenity, given the locality of the premises to residential premises, refer to **Annexure 3**.

The impact of the proposed extended trading hours are considered to be further exacerbated, as the current restaurant use has been subject to a high volume of complaints, from several residents, regarding a number of breaches of the current development consent and Plan of Management. This has resulted in Council issuing a number of Breach of Consent letters and a Notice to the owner of the property, refer to Section 9 and **Annexures 8, 9, 10**. Given the volume and nature of the complaints, the applicant could be at risk of having the existing approved 'extended trading hours' revoked.

As such, the proposal extended trading hours are not considered to comply with Control C3 and C4, and does not achieve Objectives O2 and O5.

- e) *Existing and likely cumulative impacts, including social impacts, of licensed premises on the amenity of surrounding areas*
- The following licensed premises front onto Elizabeth Street:
    - A licensed restaurant, *Cipri*, at the adjoining property of No. 10, which may trade until midnight;
    - The pub, *Grand National Hotel*, at No. 33, which may trade until midnight (10PM Sundays), & *The Four in Hand Hotel*, at No. 105 Sutherland Street which trades until 11PM (10PM Sundays); and
    - A licensed restaurant, *Lucio's*, at No. 47 Windsor Street, which may trade until 10.15PM.
  - A licensed restaurant is approved at No. 1 Victoria Street by DA2016/452/1, with the following hours of operation:
    - Monday to Wednesday: 12 midday-9.30PM
    - Thursday: 12 midday-10PM
    - Friday to Saturday: 12 midday-11.30PM (with the 10PM-11.30PM subject to review following a trial period)
    - Sunday: 10AM-9.30PM
  - A number of licensed premises operate on Oxford Street to the south.

The licensed premises along Elizabeth Street already contribute to a cumulative impact upon the amenity of surrounding residences, and this impact is significant since the street leads to Oxford Street, thus attracting ride share trips, and departing customers walking to bus stops, parking and passing taxis.

Existing pubs, including *The Grand National Hotel*, *The Four in Hand Hotel*, and restaurant, such as, *Lucio's*, are located in Zone R2 Low Density Residential, and are not permissible uses under WLEP 2014. As such, the likely future character of the areas of Elizabeth Street Zoned R2 (located to the east and north) is considered to encompass primarily low density residential uses, rather the new restaurants or pubs.

Therefore, while a restaurant is permissible at the subject site, which is zoned B1, the proposed extended trading hours (until 11:30pm) to the existing licensed premises is considered to contribute to an unacceptable cumulative amenity impact upon the residents of Elizabeth Street, which is incompatible with the likely future character of the adjoining Zone R2.

Despite the provision of an acoustic report and a Plan of Management, the applicant has not demonstrated how the cumulative impact of the proposed intensification of use upon the surrounding residential dwellings will be sufficiently minimised or mitigated. Particularly, given the volume and nature of the complaints that have been received by Council from surrounding residents.

Therefore, the proposed extended trading hours are unsatisfactory with regard to Control C1(e) and Objective O1.

- f) *Existing and proposed management practices relating to the operation of the premises and of the areas in the vicinity of the premises*

The approved development, included a Plan of Management for the present restaurant use.

This application seeks to modify the Plan of Management. The proposed extension of the existing extended trading hours and the patron exit arrangements are considered unsatisfactory for the following reasons:

- The potential impacts on the amenity of surrounding properties as advised by Council's Compliance Officer and NSW Police;
- The present operation of the subject restaurant has been subject to a high volume of complaints from surrounding residents. In response to these multiple complaints Council's Compliance has taken appropriate actions by issuing the owner of the property breach of consent letters and a Notice, refer Section 9 of this report.

**Note:** The other proposed changes to staff access and cleaning times are considered acceptable for reasons already discussed in Section 16.1 of this report.

Therefore, when considering the existing and proposed management practices of the subject business, the proposal is considered to be unsatisfactory.

*g) The density of licensed premises in the vicinity of the proposed development*

The following licensed premises are located in the vicinity:

- *Cipri*, restaurant, 10 Elizabeth Street
- *The Grand National Hotel*, pub, 33 Elizabeth Street
- *Lucio's*, restaurant, 47 Windsor Street
- *The Four in Hand Hotel*, 105 Sutherland Street
- *The Paddington*, pub, 384 Oxford Street
- *Fred's*, restaurant, 380 Oxford Street
- *Saint Peter*, restaurant, 362 Oxford Street
- *Italian Bar*, restaurant, 438 Oxford Street

*h) Availability of car parking and proximity and access to public transport*

- Bus routes and car parking are located on Oxford Street, in close proximity to the site;
- The subject site does not provide parking for patrons;
- The proposed extended trading hours has not been supported and no increase to patron numbers have been proposed, thus the proposal would not result in additional demand for car parking.

*i) Any recommendations/comments provided by NSW Police*

NSW Police object to the proposal and have provided the following comments:

*The Licensing Police formed the view that the applicant has not provided a detailed analysis or evidence to indicate the extent of the demand for the additional hours of operation. Licensing Police note that Section 4.0 of the S.E.E provides an outline of the proposal, but is silent on how the extension of trade may effect the local community.*

*Albeit, an Acoustic report prepared by GHD has made certain recommendations by “actively monitoring” the behaviour of patrons leaving the venue, it will be difficult for the applicant to address likely amenity impacts from migrating patrons during later hours when they occur away from the immediate vicinity of the premises. Licensing Police are satisfied that patron migration occurring 1.5 hours later than the venues current approved operational hours will likely produce various disturbance impacts which would adversely affect local amenity, given the locality of the premises to residential premises.*

*In conclusion, there is a likely adverse social impact to the local community based on proposal by the applicant. Detriment to the wellbeing of the local and broader communities is not adequately ameliorated by the applicant. If Council is of the mind however to discount Police concerns and grant this application, Licensing Police would request that appropriate conditions be imposed to address the likelihood of negative social impact.*

The full comment from NSW Police is outlined in **Annexure 3**.

## **Conclusion**

The proposal is unacceptable with regard to the objectives and controls in Chapter F3 of the Woollahra DCP 2015.

## **17. APPLICABLE ACTS/REGULATIONS**

## **18. THE LIKELY IMPACTS OF THE PROPOSAL**

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

## **19. THE PUBLIC INTEREST**

The proposal is considered to be in the public interest, subject to **Condition F.4** (being amended) and **I.2**.

## **20. DISCLOSURE STATEMENTS**

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

## **21. 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 the consent authority, modify development consent to Development Application No. 621/2017/1 for change of use from a food and drink premises to a licensed restaurant including a liquor license on land at 2-8 Elizabeth Street Paddington, subject to the following:

**The following condition is added:**

**A.5 Approved Amended (section 4.55) Plans and Supporting Documents**

Those acting upon or under this amended consent must carry out all work and maintain the use and works in accordance with the approved plans and supporting documents listed in the original consent, as amended by the amended architectural approved plans to which is affixed a Council stamp “Approved” and supporting documents as submitted by the Applicant listed below otherwise than modified by further condition(s).

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

Reference	Description	Author/Drawn	Date(s)
Not specified	Acoustic Report	GHD	June 2020

**Note:** These plans and supporting documentation may be subject to conditions modifying the development imposed under section 4.17(1)(g) of the *Act* (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)

Standard Condition: A6 (Autotext AA6)

**AND**

**Condition F.4 is amended and replaced with the following:**

**F.4 Filing of an amended Plan of Management (POM)**

The POM prepared by GSA Planning, approved by **Condition A.2**, is to be modified to include the following:












- Compliance with **Conditions I.1, I.2, I.3, I.4 & I.7.**
- After 6pm, entry to the premises by patrons **and staff** must be limited to the northern entry off Elizabeth Street, Paddington. The southern entry off Elizabeth Street may continue to be used for disabled access after 6pm.
- Staff are to enter and exit the premises via Victoria Street, Paddington **after 8pm.**
- All patrons are to exit the premises via Victoria Street, Paddington after 8pm.
- All patrons must leave the premises within 30mins of closing time.
- **All staff must the leave the premises within 1 hour of closing time.**
- No noise generating activities after closing time, management to usher patrons from the site and adjacent footpath.
- Lights in the restaurant shall not cause a nuisance to the surrounding area.
- A complaints system, which includes the name and mobile number of the licensee/on site manager.
- **A staff member is to remind patrons to leave quietly**
- **Adequate signage is prominently displayed at each exit asking patrons to leave quietly and not to congregate outside the venue or in the local area.**
- **The side service door to Elizabeth Street will be kept closed during cleaning activities.**

The revised Plan of Management must be approved by Council's Manager, Development Control, and the premises operated in accordance with the approved Plan of Management, and must be filed with Licensing at the Eastern Suburbs Police Area Command prior to the commencement of the operations of the Licensed Restaurant.

**AND**

**Condition I.1, I.2 and I.3 must be retained.**

#### **Annexures**

1. Referral Response - Environmental Health [↓](#) 
2. Referral Response - Compliance [↓](#) 
3. Email from Licensing Police [↓](#) 
4. Amended Plan of Management (As Proposed) [↓](#) 
5. Acoustic Report [↓](#) 
6. Original DA Consent (DA621/2017/1) [↓](#) 
7. Section 4.55 Application Approval (DA621/2017/2) [↓](#) 
8. Breach of Consent letter 5th October 2018 [↓](#) 
9. Breach of Consent letter 3rd April 2020 [↓](#) 
10. Notice 62-2019 [↓](#) 
11. Response to the Notice on Behalf of the Restaurant Owner [↓](#) 



Completion Date: 28/7/2020

## REFERRAL RESPONSE - ENVIRONMENTAL HEALTH

**FILE NO:** Development Applications/ 621/2017/3  
**ADDRESS:** 2-8 Elizabeth Street PADDINGTON 2021  
**PROPOSAL:** Modification of Conditions A.2, F.4 and L.2 (extension of operating hours)  
  
**FROM:** K Pakhomova  
**TO:** Mrs L Hulbert

### 1. ISSUES

- n/a

### 2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced 17320\_S4.55(2) prepared by GSA Planning, dated 29 June 2020.
- Architectural Plans, referenced, prepared by, dated,
- Survey, referenced, prepared by, dated.
- Acoustic Report, prepared by GIID dated June 2020.
- Noise Management Plan, referenced, prepared by, dated.
- Acid Sulphate Soil Report, referenced, prepared by dated.
- Land Contamination Report, referenced, prepared by, dated.
- Plan of Management, referenced 17320, prepared by GSA Planning, dated June 2020

### 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

The modifications include increasing the hours of operation for the restaurant. The proposal includes an additional 1.5 hours on Monday to Tuesday; an additional 1.5 hours on Thursday to Saturday; and an additional 30 minutes on Sunday. Also, the proposal seeks to allow an additional 30 minutes for cleaning after closing. This will mean staff will leave the restaurant within 1 hour after closing, instead of 30 minutes

after closing, as currently conditioned and leave via Elizabeth Street instead of Victoria Street.

Trading hours: – 7:00 am to 11:00 pm, Monday to Wednesday – 7:00 am to 11:30 pm, Thursday to Saturday – 7:00 am to 10:00 pm, Sunday ☐

## **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**

Acoustic Report, prepared by GHD dated June 2020 states ‘the predicted noise levels presented in section 5 indicate compliance will likely be achieved with the relevant acoustic criteria presented in section 4. No further recommendations are required to achieve compliance with the relevant acoustic criteria for the extension of trading hours and new capacity.’

### **b) Food Premises**

*Food Act 2003*

### **c) Hair Salons**

### **d) Skin Penetration**

*Public Health Act 1991 No 10*

### **e) Acid Sulphate Soils**

### **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 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)
12533025	Acid Sulphate Soil Management Plan Acoustic Report	GHID	June 2020
17320	Noise Management Plan Plan of Management	GSA Planning	June 2020
	Contaminated Land - Initial Site Investigation Report (Stage 1)		
	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

### 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)**

**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 Trading hours**

Trading hours are limited to:

- a) Monday to Wednesday: 7:00am to 11:00pm
- b) Thursday to Saturday: 7:00am to 11:30pm
- c) Sunday and Public Holiday: 7:00am to 10:00pm

This condition has been imposed to mitigate amenity impacts upon the neighbourhood by commercial or retail trading including, but not limited to, external impacts associated with clients attending the site for business or otherwise.

**Note:** This condition does not apply to deliveries to, or dispatches from, the site of wholesale goods or internal activities that occur under the approved hours of use. General use and deliveries or dispatches may be restricted by hours of use conditions. This condition does not restrict the operation of noise pollution laws.  
*Standard Condition: 2*

**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

### **L3 Maintenance of Sound Attenuation**

Sound attenuation must be maintained in accordance with the *Acoustic Report*.

Standard Condition 157

### **L4 Noise from licensed premises**

The  $L_{eq}$  noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8k Hz inclusive) by more than 5dB(A) between 07:00 am and 12:00 midnight at the boundary of any affected residence.

The  $L_{eq}$  noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8k Hz inclusive) between 12:00 midnight and 07:00 am at the boundary of any affected residence.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 am.

This condition has been imposed to protect the amenity of the neighbourhood.

**Note:** dB(A) is a value used for 'A-weighted' sound pressure levels 'A' frequency weighting is an adjustment made to approximate the response of the human ear.

**Note:** *Licensed premises* means premises licensed under the *Liquor Act 2007*.

**Note:** For the purposes of this condition, the  $L_{eq}$  is the A-weighted sound pressure level that is exceeded for 10% of the time over which a given sound is measured.

**Note:** 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  $L_{A90}$  level measured by a sound level meter over the applicable period.

**Note:** This condition is identical to the minimum standard condition imposed by the Casino Liquor and Gaming Control Authority (the Authority). The Authority may specify other standards in respect of the above condition under the *Liquor Act 2007*, and associated Regulations. Section 79 of the *Liquor Act 2007* provides an informal mechanism for complaints to be made (by residents, Police, local consent authorities and others) where the amenity of local neighbourhoods is unduly disturbed by the conduct of licensed

premises including registered clubs (or their patrons). The Director of Liquor and Gaming is responsible for resolving such complaints and may impose temporary or permanent conditions on any licence. For further information go to the NSW Office of Liquor and Gaming and Racing's website: ([www.aler.nsw.gov.au](http://www.aler.nsw.gov.au)).

**Note:** Interior noise levels of licensed premises which exceed safe hearing levels are not supported or condoned by Council.  
Standard Condition: 158

#### **L.5 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.

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

**K Pakhomova**  
**Environmental Health Officer**

**Date: 28/7/2020**



11 November 2020

## **REFERRAL RESPONSE - COMPLIANCE**

FILE NO: DA 621/2017/3  
ADDRESS: 2-8 Elizabeth Street PADDINGTON 2021  
PROPOSAL: Modification of Conditions A.2, F.4 and L.2 (extension of operating hours)  
FROM: M Easton, Compliance Officer  
TO: Mrs L Holbert

### **1. ISSUES**

- Existing operation

### **2. DOCUMENTATION**

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced 17320\_S4.55 (2), prepared by GSA Planning, dated 29/06/2020.

### **3. RESEARCH**

The following research was undertaken in the preparation of this assessment:

- Review of HPE documents and CRM complaints in relation to the current operation of 2-8 Elizabeth Street, Paddington

### **4. SUMMARY OF PROPOSAL**

Modify conditions A.2, F.4 and L.2 of DA 621/2017 to extend the trading hours of the licensed restaurant until 11.00pm Mon – Tues, until 11.30pm on Thu – Sat and until 10.00pm Sun; provide an additional 30 mins for cleaning activities after closing; and allow staff and patrons to leave via Elizabeth Street instead of Victoria Street.

### **ASSESSMENT**

The existing extended hours of operation for the premises are:

- a) Monday, Tuesday, Wednesday and Sunday – between 8.00pm and 9.30pm

*Attachment to report 2021/11/11 (Title Referral Response - Compliance)*

b) Thursday, Friday and Saturday between 8.00pm and 10.00pm

The POM approved by Condition A.2, is proposed to be modified by deleting the requirement for staff are to enter and exit the premises via Victoria Street, Paddington only, deleting the requirement for all patrons are to exit the premises via Victoria Street, Paddington after 8pm and permitting all staff to leave the premises within 1 hour after closing time.

#### **Issues with existing operation**

Compliance disagrees with the statement in the SEE that *"Barbetta have been trading for 18 months, since approval, without incident"* as regular breaches of the consent and POM have been well documented over the last 18 months by a number of residents, through detailed diary notes and photos demonstrating a deterioration of amenity as a result of existing operations and breaches of the consent.

The first 'Breach of consent' letter was issued to Barbetta on 5/10/2018 (ref Notices/Orders 30/2018/91) following complaints from a resident about delivery vehicles double parking and illegally stopping in the street and obstructing traffic, the breach being that the dedicated delivery dock in Victoria Street was not being utilised.

Compliance received a number of emails from at least seven residents between January and March 2019, raising further issues and concerns about the operation of Barbetta, in addition to the on-going traffic issues resulting from the loading dock not being used for deliveries. One of those residents had previously been dealing with Council's EHO and Waste Compliance Officers regarding waste and glass bottle collections from Vials Lane, and with Barbetta directly regarding many other on-going operational breaches of DA 621/2017.

On 14 March 2019, Compliance and EHO officers had an on-site meeting with the owners of Barbetta and conducted an inspection of the premises. That inspection and meeting confirmed the concerns of residents and revealed significant breaches of the development consent and potential noise impacts on residents.

Breaches involving the emptying or transferring of glass bottles from one receptacle to another in Vials Lane instead of the garbage room, deliveries regularly occurring in Elizabeth Street instead of the designated loading dock in Victoria Street and the kitchen door to the Elizabeth Street side access not being kept closed were identified as significant concerns to residents and a source of significant amenity disturbance. A breach of the 50 seat limit was also observed by Council officers.

Consequently, a 'Breach of consent' letter was issued to Barbetta on 3/4/2019 (ref Notices/Orders 30/2019/62).

Subsequent feedback from residents indicated that some concerns had been addressed by Barbetta after the breach letter, but a number of operational breaches were allegedly still occurring. Despite representations and efforts made by Barbetta, Council continued to receive complaints about the operation of the venue regarding cleaning activities after 10.00pm, the loading dock frequently not being utilised for deliveries, patron numbers exceeding 50 and patrons and staff leaving via Elizabeth

Attachment to report 2021/9-11 (Title Referral Response - Compliance)

Street instead of Victoria Street. As a result, further correspondence was sent to Barbetta on 17/9/2019.

Complaints had substantially decreased between late November 2019 and early August 2020. The Covid-19 lockdown in March 2020 and on-going Covid-19 trading restrictions, as well as the submission of the subject application on 6 July 2020 may have contributed to the decline in complaints.

However, as the Covid-19 trading restrictions were relaxed, Council continued to receive complaints through August and September 2020, primarily concerning the following breaches:

- Noise from patrons regularly queuing and congregating in groups on the footpath, on most Friday and Saturday nights
- Regular occurrences of deliveries being made in Vials Lane, Elizabeth Place and Victoria Street, rather than the dedicated loading bay, causing obstruction to other vehicles and pedestrians
- Vehicles, including taxis and ubers, obstructing traffic when dropping off/picking up patrons
- Noise disturbances resulting from the front and side doors being left open during cleaning activities
- Noise associated with staff exiting via Elizabeth Street after closing
- Noise disturbances during the day resulting from the central doors being regularly propped open.

The proposed extension of trading hours have the potential to expose surrounding properties to further deterioration of amenity. For this reason, licensed premises in a B1 Neighbourhood zone are rated as high risk and trading hours are limited to 8.00am – 10.00pm Monday to Sunday under WDCP 2014.

Given the level of complaints and the social impact concerns identified by Police, the modification of condition L2 to extend the trading hours is not supported.

However, there is merit in allowing staff and patrons to enter and exit the premises via both Elizabeth Street and Victoria Street as this would encourage patrons to leave gradually via the appropriate exits after 8pm and avoids groups of patrons leaving via Victoria Street only. The POM could require a member of staff to direct patrons to an appropriate exit to control the dispersal and to remind patrons to leave quietly. Adequate signage at each exit asking patrons to leave quietly and not to congregate outside the venue or in the local area is also recommended.

Whilst acknowledging there are noise disturbances resulting from staff entering and exiting via Elizabeth Street rather than Victoria Street, and from the side door being left open during cleaning activities, it is reasonable to expect some level of noise or activity from licensed venues due to staff and patrons arriving and leaving, or in the general operation of the venue. In this regard, it is considered reasonable for the staff to enter and exit the premises via Victoria Street and Elizabeth Street up until 8pm, subject to staff using only the northern entry off Elizabeth Street after 6pm as is currently required for patrons.

Attachment to report 2021/9/41 (Title Referral Response - Compliance)

The additional 30mins being sought for cleaning activities after closing is also considered reasonable. The liquor licence does allow licensed venues to have “staffies” drinks for a maximum of two hours after the cease of trading on any day of the week. While not all venues have staffies, the regulation demonstrates that staff are generally permitted on the premises after the cessation of trade for cleaning purposes or “staffies” drinks. It is acknowledged that extending the period for cleaning activities to 1 hour will result in some noise, as evidenced by the current complaints. However the noise can be limited by requiring the side service door to Elizabeth Street to remain closed during cleaning activities.

## 5. RECOMMENDATION

It is recommended that the POM approved by condition A.2 be modified as follows:

### F.4 Filing of an amended Plan of Management (POM)

The POM prepared by GSA Planning, approved by **Condition A.2**, is to be modified to include the following:

- Compliance with **Conditions I.1, I.2, I.3, I.4 & I.7**.
- After 6pm, entry to the premises by patrons **and staff** must be limited to the northern entry off Elizabeth Street, Paddington. The southern entry off Elizabeth Street may continue to be used for disabled access after 6pm.
- Staff are to enter and exit the premises via Victoria Street, Paddington **after 8pm**.
- All patrons are to exit the premises via Victoria Street, Paddington after 8pm.
- All staff must leave the premises within **1 hour** after closing time
- All patrons must leave the premises within 30 minutes of closing time.
- No noise generating activities after closing time. management to usher patrons from the site and adjacent footpath.
- Lights in the restaurant shall not cause a nuisance to the surrounding area.
- A complaints system, which includes the name and mobile number of the licensee/on site manager.
- A **staff member is to remind patrons to leave quietly**
- **Adequate signage is prominently displayed at each exit asking patrons to leave quietly and not to congregate outside the venue or in the local area.**
- **The side service door to Elizabeth Street will be kept closed during cleaning activities.**

M Easton  
Compliance Officer

Attachment to report 2021/9-11 (Title Referral Response - Compliance)

From: [Licensing Police](#)  
To: [Remore](#)  
Subject: DA621/2017/8 - 2-B Elizabeth Street, Paddington NSW 1521 - Police Submission (DUH+Seniors NSW Government)  
Date: Tuesday, 27 August 2020 7:10:48 PM  
Attachments: [DA621/2017/8](#)

---

The Executive Manager

Woollahra Municipal Council

**DEVELOPMENT APPLICATION NUMBER:**

DA621/2017/8

**APPLICATION TYPE:**

Development Application – Extension of Operating Hours

**NAME, TYPE & ADDRESS:**

Barbetta

2-B Elizabeth Street, Paddington

NSW 1521

**POLICE POSITION:**

[Objector](#)

**COMMENTS:**

1. Licensing Police reviewed the Development Application and associated documentation. During the review process, Police identified social impact concerns that need to be considered by Council prior to any approval taking place.
  - a. Social Impact: As part of providing these referral comments, Licensing Police conducted a review of the submitted Statement of Environmental Effects (S.E.E.) report that was completed by GSA Planning. From that review, Licensing Police formed the view that the applicant has not provided a detailed analysis or evidence to indicate the extent of the demand for the additional hours of operation. Licensing Police note that Section 4.0 of the S.E.E. provides an outline of the proposal, but is silent on how the extension of trade may effect the local community.
- Albeit, an Acoustic report prepared by C. ID has made certain recommendations by "actively monitoring" the behaviour of patrons leaving the venue, it will be difficult for the applicant to address likely amenity impacts from migrating patrons during later hours when they occur away from the immediate vicinity of the premises. Licensing Police are satisfied that patron migration occurring 1.5 hours later than the venues current approved operating hours will likely produce various disturbance impacts which would adversely affect local amenity, given the locality of the premises to residential premises.

In conclusion, There is a likely adverse social impact to the local community based on proposal by the applicant. Dominant to the wellbeing of the local and broader communities is not adequately ameliorated by the applicant. If Council is of the mind however to discount Police concerns and grant this application, Licensing Police would request that appropriate conditions

be imposed to address the likelihood of negative social impact.

Regards,



Leading Senior Constable Jamie Zahra  
Licensing Unit  
Eastern Suburbs Police Area Command  
1 Wurula Road, Point Piper NSW 2027  
P: 02 9362 6399 E/N: 44348  
E: [zahrajam@police.nsw.gov.au](mailto:zahrajam@police.nsw.gov.au) E: [caslonrang@police.nsw.gov.au](mailto:caslonrang@police.nsw.gov.au)

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## **PLAN OF MANAGEMENT**

For a Licensed Restaurant

**No. 2-8 Elizabeth Street,  
Paddington**

Prepared for:  
**Barbetta Pty Limited**  
C/- ACME & Co  
46a Macleay Street  
Potts Point NSW 2011

Prepared by:  
**GSA PLANNING**  
Urban Design, Environmental & Traffic Planners  
(A.B.N. 16 003 667 983)  
95 Paddington Street, Paddington NSW 2021  
p: 02 9362 3364  
e: [info@gsaplanning.com.au](mailto:info@gsaplanning.com.au)

JOB NO. 17320  
June 2020

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## 1.0 INTRODUCTION

This Plan of Management (POM) has been prepared for Barbetta Pty Limited by Gary Shiels & Associates Pty Ltd – (hereafter referred to as GSA Planning). GSA Planning has expertise in Urban Design, Heritage, Environmental & Traffic Planning.

The Plan details the management practices for the operation of the proposed restaurant at Nos. 2-8 Elizabeth Street, Paddington. The primary aim of this Plan is to create a framework for operation of the restaurant that will minimise any potential adverse impacts on the surrounding neighbourhood.

The licensed restaurant is for a 50 patron licensed restaurant providing food and alcohol consumption. The primary purpose of the premises will at all times be maintained as a restaurant. Noise minimisation and responsible service of alcohol therefore, are at the forefront of the management policy.

This Plan of Management will be updated and amended from time to time as required.

This document is divided into five (5) sections. The remaining sections include details of the hours of operation and staff numbers, a description of the general mode of operation, patron issues, mitigation of noise, deliveries and waste management, security, house policy, community liaison and education and training of staff.

## 2.0 HOURS OF OPERATION & STAFF NUMBERS

The restaurant will operate as a cafe during the day, while during the evening the premises will be used as a restaurant. The new use will comprise a total of 50 patrons seated within the premises.

The proposed café use of the site is to occur during the day (Monday to Sunday). On-site cooking and an exhaust system are proposed for the daytime use of the premises, as well as pre-prepared food items. The café use of the site will involve the serving of alcohol.

The proposed restaurant use of the site will occur during the evening (Monday to Sunday). The restaurant will involve the serving of on-site cooked meals and the sale of wine, beer and spirits subject to purchase of a meal.

The hours of operation proposed are 7:00am to 11:00pm on Monday, Tuesday, Wednesday; 7:00am to 10:00pm on Sunday; and 7:00am to 11:30pm on Thursday, Friday and Saturday. The premises will not close between lunch and dinner, meaning that only the menu will change.

A total of 20 staff is to be employed by the restaurant with a maximum of 15 staff at any one time.

### 3.0 GENERAL MODE OF OPERATION

The restaurant will be located within tenancies G.01 - G.04 at Nos. 2-8 Elizabeth Street, Paddington. Meals and consumption of alcoholic (subject to purchase of a meal) and non-alcoholic beverages will be available at the restaurant/cafe. It is expected that fresh food stuffs will be delivered daily and one weekly wine delivery will be made to the subject site.

The daily management duties include the following:

- Ensuring the premises and its surrounds is cleaned properly of any rubbish;
- Ensure all security systems are working;
- Setting up restaurant for trade including establishing the daily cash register float;
- Reviewing of the complaint books for any comments or incidents from the previous day/evening and responding where appropriate;
- Monitoring of Elizabeth, Victoria and Underwood Streets to ensure that patrons do not consume food or drinks outside the premises and ensuring all litter is removed;
- Supervision all staff including compliance with RSA;
- Conducting frequent RSA compliance sweeps of the restaurant including monitoring of patrons for anti-social behaviour;
- Monitoring noise levels emanating from the restaurant and from patrons coming and going;
- Enforcing a 'no entry policy' to patrons within 30 minutes of closing, to minimise the number of patrons entering and exiting the restaurant at closing time;
- Ensuring that background music is turned off 15 minutes before closing;
- Food will be available at all times that liquor service is available;
- Reminding any remaining patrons of closing time and to ensure they leave at closing time in a quiet and quick manner;
- Supervision of restaurant closing procedures, including clean up of service and patron areas, ensuring all mechanical plant equipment is switched off and that the security system is switched on;
- Ensuring restaurant staff leave the premises generally within 30 minutes of the closing time, that staff leave the building quickly and quietly and that the premises is secured; and
- Emergency evacuation is provided through the rear door which allows access to the existing foyer fronting Victoria Street.

## 4.0 MANAGEMENT OF PATRONS

The management procedures for the orderly arrival, departure and congregation of patrons are as follows:

- Entrance to the restaurant after 6pm shall be limited to the northern entry off Elizabeth Street and an airlock shall be located internally to prevent the transmission of noise;
- The central entry may be used for disabled access after 6pm;
- All patrons must leave the premises within 30 minutes of closing time;
- All staff must leave the premises within 1 hour after closing time;
- The arrival and departure of patrons is to be supervised by staff members at all times and staff members are to ensure that patrons arrive and depart in an orderly fashion;
- Upon entry, patrons will be greeted by waiter staff and directed to tables. At full capacity, patrons will be advised of the wait time and suggested alternate locations;
- Patrons are directed to the tables;
- Management will politely remind all patrons entering, re-entering or departing the premises to respect the amenity of the neighbourhood;
- Signage is placed at the entrance/exit asking patrons to leave the premises quickly and quietly and to consider neighbours and respect the amenity of the neighbourhood;
- Information is available, on request, to all patrons regarding the public transport services in the area;
- Taxis will be called on request for patrons, without charge and taxis will be directed to pick patrons up from Oxford Street;
- The staff on duty will attend to each table at closing time and ask patrons to move quickly and quietly and direct patrons to Oxford Street where taxis are available to minimise disturbance to the surrounding streets; and
- Open containers of alcohol will not be permitted to be taken off the premises, other than as permitted by the License. Contact details of licensee will be visible in the premises.

## 5.0 MITIGATION OF NOISE

There are a number of potential noise sources from the proposed restaurant. These include plant noise, patron noise and other noise sources. These will now be discussed.

### **Plant Noise**

There are a number of existing mechanical plant units on the roof of the commercial building which service the tenancies within the building. It is not proposed to install additional mechanical plant to service the restaurant; however the Acoustic Report prepared by GHD and separately submitted, included a typical selection of mechanical plant in the noise model and assessment.

### **Patron Noise and Air Lock Door**

In addition to the practices in Section 4.0 above to minimise congregation of patrons, the following noise minimisation measures will be used:

- All patrons must leave the premises within 30 minutes of closing time;
- All staff must leave the premises within 1 hour after closing time; and
- An airlock at the northern entrance shall be located internally to prevent the transmission of noise.

Patron noise will be in accordance with the Standard LA10 Noise Condition stated inter alia:

*The  $L_{A10}$  noise level emitted from the licensed premises shall not exceed the background noise level in any octave band frequency (centres on 31.5 Hz – 8 kHz inclusive) by more than 5 dB between 7:00 am and 12:00 midnight at the boundary of any affected residence.*

*The  $L_{A10}$  noise level emitted from the licensed premises shall not exceed the background noise level in any octave band frequency (centred on 31.5 Hz – 8 kHz inclusive between midnight and 7:00 am at the boundary of any affected residence.*

*Notwithstanding compliance with the above, noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 7:00 am.*

After 6pm the entrance to the restaurant must be limited to the air lock door. The air lock will be activated from 6pm by staff in accordance with the conditions of consent.

### **Other Noise Issues**

All deliveries will occur from 7am to 6pm. Staff members will collect rubbish and will take out the rubbish, which will be collected from the kerb the following day.

## 6.0 DELIVERIES & WASTE MANAGEMENT

### *The Time of deliveries*

It is expected that fresh food stuffs will be delivered daily and one weekly wine delivery will be made to the subject site. Deliveries will not occur before 7am and will cease by 6pm.

### *Location of deliveries*

Vans delivering goods to the site will utilise the loading dock for deliveries.

### *Waste Removal*

The restaurant/cafe aims to minimise and dispose of waste in an orderly fashion to reduce output and maintain the amenity of the area. The existing garbage room will be utilised for the storage and collection of all waste.

Waste collection will occur in the mornings. A waste bin will be wheeled to the kerb by a contract cleaner prior to emptying and wheeled back afterwards.



## 7.0 SECURITY

Emergency contact persons and numbers will be located all telephones so that they are readily accessible when required.

Restaurant staff will ensure that patrons exit the restaurant in an orderly fashion. On leaving the patrons will be reminded of the residential nature of the area and asked to leave quickly and quietly. The calling of taxis will be offered free of charge and taxis will be directed to pick up patrons from the restaurant.

The fire escape door has been relocated from the main access doors on Elizabeth Street to the rear door that provides access to the existing foyer and Victoria Street. This exit is an existing fire escape corridor.

## 8.0 HOUSE POLICY

### *Introduction and Licensing*

The restaurant at No.2-8 Elizabeth Street will promote the responsible serving of alcohol for legal, health and community reasons. As the proposal is for a restaurant and will primarily serve food, an on-premise license for restaurant will be sought. This type of license allows liquor to be sold or supplied with or ancillary to the service of meals to the public.

### *Responsible Service of Alcohol Strategies and Measures*

When alcohol is served, the restaurant will adopt the following strategies for the Responsible Service of Alcohol (RSA):

- Maintain a House Policy that provides the framework for the responsible serving of alcohol;
- Train staff so that they can implement and promote the House Policy;
- Educate patrons so that they understand and abide to the House Policy;
- To prevent under-aged drinking;
- To prevent serving to intoxicated patrons;
- To ensure patrons behave responsibly;
- To ensure that no harm comes to patrons as a result of alcohol service;
- Drinks are only able to be purchased by patrons via table service from waiter or at the bar; and,
- To promote safe transport options.

The House Policy will comprise of the following measures:

- All staff involved with the sale or supply of liquor must have a current RSA competency card. Copies must be maintained on the premises together with a copy of the Liquor License. All must be made available upon request to Police or an Inspector from ILGA;
- Implementation, monitoring, and modification on an on-going basis of the House Policy;
- Prevention of under-age drinking by insisting on "proof of age" by requesting driver's licence, passport or proof of age card issued by the NSW Roads and Traffic Authority;
- Preventing intoxication by recognising the signs of intoxication and avoiding serving anyone to the point of intoxication. Entry or service will be denied to anyone who is already intoxicated;
- Managing intoxication, anti-social, or disruptive patrons by attempting to discourage them from becoming involved in activities, which can harm themselves or others;
- Promoting the service of non-alcoholic beverages and food;
- If a staff member and/or members believe a patron is intoxicated then they can refuse service, ask them to leave the premises and if they fail to leave to call the police;
- The maintenance of a register of banned patrons;
- Ensure that staff are to alert the manager if patrons are acting irresponsibly; and
- It is the policy of the restaurant not to allow intoxicated, violent, or quarrelsome behaviour in or around the restaurant.

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***Compliance with relevant guidelines***

The premises will comply with all relevant NSW Food Authority regulations, RSA and Signage and Licensing guidelines. Staff will be trained and instructed to ensure that the provisions of the act are complied with.

***Supervision***

Restaurant staff will be under supervision by senior management staff in the policing and practice of RSA training.

## 9.0 COMMUNITY LIAISON

### *Resident and Police Liaison*

The restaurant will provide an open line of communication with residents and retailers alike. All residents and retailers will have direct access to the Licensee. All complaints will be registered by the manager on duty in the incident logbook and will be followed up by the Licensee. The Licensee will deal with all resident and or retailer complaints directly.

The licensee will also liaise with the local police and notify them of any anti-social or harmful activities. The licensee will be responsible for updating the Plan of Management in accordance with any comments from the local police station.

### *Complaints*

Should a complaint be received, the details of the complaint are to be taken by the responding staff member and will include:

- The date of the complaint;
- The full name and contact details of complainant; and
- The date and details of the specific matter of disturbance.

## 10.0 STAFF EDUCATION & TRAINING

The restaurant is focused on providing every employee with an environment where they can be a part of a team and excel.

It is an important part of every new staff member's development and training to familiarise themselves with their working environment, policies and procedures.

As part of the premises commitment to developing the skills of employees, it will undertake regular staff meetings and training sessions. These meetings and sessions will be compulsory.

In regard to the air lock door, the staff will be instructed to activate the access control system of the air lock at 6pm each day to ensure the air lock operates in accordance with the conditions of consent (DA 621/2017).



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Appendix B	Restaurant seating plan and layout

# 1. Introduction

## 1.1 Introduction

GHD Pty Ltd (GHD) has previously prepared an acoustic assessment for an existing licensed venue located at G.01 – G.04 2-8 Elizabeth Street, Paddington, known as Barbetta. It was prepared for the lodgement of Development Application DA 621/2017 which has been approved. The proponent seeks to submit a modification application for an extension of trading hours and capacity. GHD has prepared this acoustic assessment in support of the S4.55 modification application.

The objective of this assessment is to assess noise emissions from the use and operation of the existing Barbetta Restaurant under proposed trading hours and capacity, and where required, provide mitigation measures to achieve the relevant requirements of Woollahra Council and Liquor and Gaming New South Wales (LGNSW)

## 1.2 Scope of works

This report has been prepared to assess the noise impact on the nearest sensitive receivers for the proposed extension of trading hours and the use of the premises as a licensed venue against the acoustic requirements of the existing DA Consent Conditions.

The scope of this assessment includes:

- Assessment of the operational noise emission, including patrons, music and mechanical plant in accordance with the requirements of Woollahra Council and LGNSW
- Provide mitigation measures, where required, to reduce noise emission to acceptable and compliant levels.

This report has been prepared with consideration of the following documents:

- Woollahra Council *Development Control Plan 2015*
- Woollahra Council *DA Consent Conditions 621/2017* (dated 24 May 2018)
- Acoustic requirements of the Liquor and Gaming New South Wales (LGNSW)
- *Plan of Management No. 2-8 Elizabeth Street, Paddington* (GSA Planning) (May 2020)

## 1.3 Limitations

This report has been prepared by GHD for Barbetta Pty Ltd and may only be used and relied on by Barbetta Pty Ltd for the purpose agreed between GHD and Barbetta Pty Ltd as set out in section 2 of this report.

GHD otherwise disclaims responsibility to any person other than Barbetta Pty Ltd arising in connection with this report. GHD also excludes implied warranties and conditions, to the extent legally permissible.

The services undertaken by GHD in connection with preparing this report were limited to those specifically detailed in the report and are subject to the scope limitations set out in the report.

The opinions, conclusions and any recommendations in this report are based on conditions encountered and information reviewed at the date of preparation of the report. GHD has no responsibility or obligation to update this report to account for events or changes occurring subsequent to the date that the report was prepared.

The opinions, conclusions and any recommendations in this report are based on assumptions made by GHD described in this report. GHD disclaims liability arising from any of the assumptions being incorrect.

GHD has prepared this report on the basis of information provided by Barbetta Pty Ltd and others who provided information to GHD (including Government authorities)], which GHD has not independently verified or checked beyond the agreed scope of work. GHD does not accept liability in connection with such unverified information, including errors and omissions in the report which were caused by errors or omissions in that information.

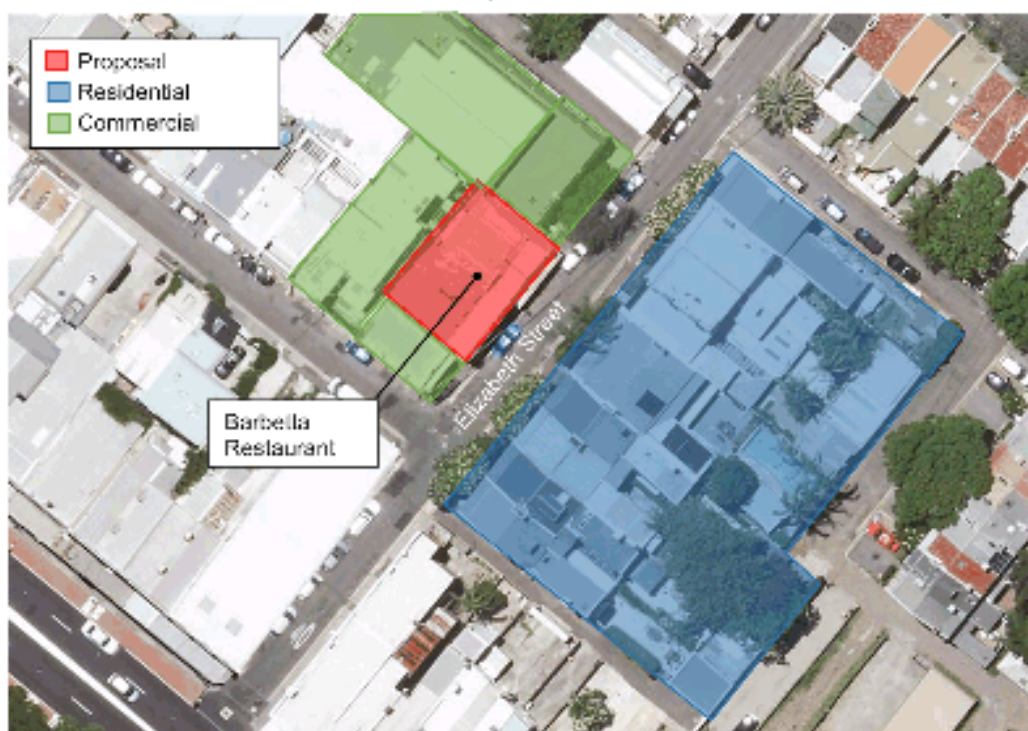
## 2. Proposal description

Barbella restaurant is located on the ground floor at 2-8 Elizabeth Street, Paddington. The location of the site is shown in Figure 2-1.

The restaurant is proposing to operate with a maximum occupancy of 50 patrons. The restaurant consists of a single level facility with no outdoor areas. The S4.55 Modification application seeks approval for the following:

- Trading hours:
  - 7:00 am to 11:00 pm, Monday to Wednesday
  - 7:00 am to 11:30 pm, Thursday to Saturday
  - 7:00 am to 10:00 pm, Sunday
- Capacity of 50 patrons

The nearest residential receiver are located across the road to the south-east at 15-31 Elizabeth Street. To the south-west, north-east and directly above the site are commercial tenancies.



**Figure 2-1 Site Location**

## 3. Monitoring and methodology

### 3.1 Background noise monitoring, 2017

#### 3.1.1 Noise monitoring methodology

The methodology for the noise monitoring program included the following:

- Identification of sensitive receivers including residences and other sensitive land uses in the vicinity of the proposal
- Noise logging was conducted from Tuesday 18<sup>th</sup> August 2017 to Monday 28<sup>th</sup> August 2017.
- A calibration check was performed on the noise monitoring equipment using a sound level calibrator with a sound pressure level of 94 dB(A) at 1 kHz. At completion of the measurements, the meter's calibration was re-checked to ensure the sensitivity of the noise monitoring equipment had not varied. The noise loggers were found to be within the acceptable tolerance of  $\pm 0.5$  dB(A)
- Noise monitoring was undertaken using a Rion NL-52 environmental noise logger. The noise logger was programmed to accumulate LA90, LA10, and LAeq noise descriptors continuously over the entire monitoring period. Details of the noise monitoring equipment are provided in Table 3-1
- The data collected by the logger was downloaded and analysed, and any invalid data removed. Invalid data generally refers to periods of time where average wind speeds were greater than 7 m/s (height adjusted), or when rainfall occurred. Meteorological data was sourced from the Bureau of Meteorology's Sydney Observatory Hill weather station (number 066062).

All noise monitoring activities were undertaken and processed in accordance with the *Noise Policy for Industry (NPI)* (EPA, 2017) long-term monitoring method. All noise logger settings and descriptors used were based on this method.

#### 3.1.2 Summary of noise monitoring results

Details of the noise monitoring equipment and location are provided in Table 3-1. Noise logger data results are summarised in Table 3-2. Noise monitoring charts are presented in Appendix A.

**Table 3-1 Unattended noise monitoring details**

Location	Equipment details	Equipment settings
10 Elizabeth Street, Paddington	Rion NL-52 SN: 00131630	A-weighted Fast time response 15 minute intervals  Pre to post calibration variance: 0.4 dB

**Table 3-2 Summary of noise monitoring results, dB(A)**

Location	Background noise descriptors L <sub>40</sub> (95%)			Ambient noise descriptors L <sub>40</sub> (95%)		
	Day	Evening	NTS <sup>1</sup>	Day	Evening	NTS <sup>1</sup>
10 Elizabeth Street, Paddington	42	40	37	57	54	53
Note 1 NTS – Night time shoulder period. This time period is 10:00 pm – 12:00 am and takes into account the proposed hours of operation						

The criteria presented in Section 4 requires the assessment of noise emission in octave bands. Octave band levels are presented in Table 3-3.

**Table 3-3 Summary of octave band noise monitoring results, dB(A)**

Time period	RBL L <sub>40</sub> : 7 am – 12 am in octave bands [Hz] <sup>1</sup>								
	31.5	63	125	250	500	1000	2000	4000	8000
Monday to Sunday	20 <sup>2</sup>	18	26	30	31	31	26	19	12
Note 1: Based on the background noise level during the quietest time of operation of the assessment period.									
Note 2: Certain octave band levels have been increased to align with the human threshold of hearing, as presented in Table 1 from ISO 229-2003 Acoustics – Normal equal-loudness-level contours									

### 3.2 Attended noise monitoring, 2018

A site inspection of the restaurant located at 2-8 Elizabeth Street, Paddington was conducted in February 2018. Attended noise measurements were undertaken within the restaurant space to quantify the internal noise levels of the background music. Details of the noise monitoring equipment are presented in Table 3-4, and the results of the attended noise measurements are presented below in Table 3-5.

**Table 3-4 Attended noise monitoring details**

Location	Equipment details	Equipment settings
Barbetta restaurant – internal 2-8 Elizabeth Street, Paddington	SVAN 977 SN 45743	A-weighted Fast time response 15 minute intervals Pre/Post call variance: 0.4 dB

**Table 3-5 Background music system internal noise levels, dB(A)**

Noise descriptor	Internal reverberant noise level of background music in octave bands [Hz], dB(A)									
	31.5	63	125	250	500	1000	2000	4000	8000	OA
L <sub>90</sub>	21	51	48	60	68	65	60	58	55	71
L <sub>10</sub>	24	55	51	63	70	68	62	61	59	73



## 4. Noise criteria

### 4.1 Woollahra Council DCP requirements

The Woollahra Council Development Control Plan 2015 provides the following requirements for noise emission for the use and operation of the proposed restaurant.

#### **Part D Business Centres**

##### **D3.7 Acoustic and Visual Privacy**

*C6 For a restaurant or a café, the design and operation minimises the impact of noise associated with late night operation on nearby residents.*

*C7 A rear courtyard is only permitted for a restaurant or café use if Council is satisfied that the use and hours of operation will not have an unreasonable impact on residential amenity.*

*Note: Council may require a Noise Impact Assessment as part of the development application.*

##### **D3.10. Site facilities**

*C10 Air conditioning units do not have an unreasonable impact on the visual or acoustic amenity of adjoining or nearby properties. The impact on neighbours is less than the impact on the occupants of the site where the air-conditioning unit is located.*

*Note: Noise emission from air-conditioning units must not exceed the background noise levels when measured at the boundary of the development site. The provisions of the Protection of the Environment Operations Act 1997 apply.*

#### **F3 Licensed Premises**

*C10 The location of:*

- a. Outdoor areas of licensed premises (includes smoking areas);
- b. Window, door and other opening in external walls;
- c. Plant and equipment; and
- d. Waste collection and storage areas

*Is to take into account the proximity of residential and other sensitive uses.*

*C11. A report by an acoustic engineer is submitted with applications involving licensed premises, where relevant.*

### 4.2 Woollahra Council DA Consent Condition requirements

The Woollahra Council Development Consent DA 2017 321 provides the following requirements relevant to noise from the use and operation of the site. The proponent is seeking to modify the trading hours to 11:30 PM Thursday, Friday and Saturday, 10:00 PM Sunday and 11:00 PM Monday - Wednesday.

#### **L1 Trading hours**

*Trading hours are limited to:*

- a) Monday to Sunday: 7.00am to 8.00pm



*This condition has been imposed to mitigate amenity impacts upon the neighbourhood by commercial or retail trading including, but not limited to, external impacts associated with clients attending the site for business or otherwise.*

**I.2 Extended hours of operation for licensed premises – Reviewable Condition**

**Reviewable Condition**

*The hours of operation for the licensed premises are extended as follows:*

- a) Monday, Tuesday, Wednesday and Sunday – between 8.00pm and 9.30pm*
- b) Thursday, Friday and Saturday – between 8.00pm and 10.00pm*

**I.4 Maximum Patron Capacity**

*The total number of patrons on the premises at any time shall not exceed 50 patrons*

**I.14 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.*

**I.15 Maintenance of Sound Attenuation**

*Sound attenuation must be maintained in accordance with the Acoustic Assessment approved by Condition A.2.*

**I.16 Noise from licensed premises**

*The  $L_{A10}$  noise emitted from the licensed premises shall not exceed the background noise level in any octave band frequency (31.5 Hz to 8 kHz inclusive) by more than 5 dB(A) between 7.00am and midnight at the boundary of any affected residence.*

*The  $L_{A10}$  noise level emitted from the licensed premises shall not exceed the background noise in any octave band centre frequency (31.5 Hz to 8 kHz inclusive) between midnight and 7.00am at the boundary of any affected residence.*

*Notwithstanding compliance of the above, noise from the licensed premises shall not be audible in any habitable room in any residential premises between the hours of midnight and 7.00am.*

**I.17 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 life 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  $L_{Aeq, 15 \text{ min}}$  level measured by a sound level meter*

The POEO Act defines 'offensive noise' as noise

- (a) that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances:*
- (i) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or*

*(ii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or*

*(b) that is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in other circumstances, prescribed by the regulations.*

Guidance from the *Noise Guide for Local Government* (EPA 2013) has been used to conservatively interpret offensive noise as noise which does not exceed background noise levels by more than 5 dB(A) when tested at the boundary of the nearest sensitive receiver.

#### 4.3 Australian Standards AS2107:2016

The AS2107:2016 *Acoustics – Recommended design sound levels and reverberation times for building interiors* provides guidance for design sound levels and reverberation times for internal areas depending on occupancy. The design sound levels and reverberation times relevant to the proposal are presented in Table 4-1 below.

**Table 4-1 Design sound levels and reverberations times for different areas of occupancy in buildings (Table 1 from AS2107:2016)**

Type of Occupancy/Activity	Design Sound level( $L_{Aeq}$ ) range	Design reverberation (T) range, s
5 OFFICE BUILDINGS		
General office areas	40 to 45	0.4 to 0.6
6 PUBLIC BUILDINGS		
Restaurant and Cafes- Restaurants	40 to 50	See Note 1
Note 1 states that the reverberation time should be minimised for noise control.		

In lieu of any specific criteria assessing the noise emission from the restaurant to adjacent tenancies through internal partitions, ensuring the noise emission from the restaurant is below the maximum design sound levels recommended above will likely protect the acoustic amenity of the commercial tenants directly adjacent to the restaurant.

#### 4.4 Noise emission to commercial receivers

In the absence of any specific requirements, the NSW Environment Protection Authority's *Noise Policy for Industry (NPI)* provides a suitable framework for the assessment of noise emission from the facility to adjacent commercial receivers.

The NPI provides amenity criteria that are designed to limit the total noise level from all sources near a receiver. The NPI noise criteria are planning levels and are not mandatory limits required by legislation however the noise criteria will assist the determining authority to assess operational noise impacts. Where noise criteria are predicted to be exceeded, feasible and reasonable noise mitigation strategies should be considered. Feasible and reasonable noise mitigation measures should consider the economic, social and environmental costs and benefits of the development against the noise impacts.

The NPI amenity criteria for commercial receiver surrounding the proposed facility is provided in Table 4-2.

**Table 4-2 NPI amenity criteria**

Type of receiver	Time of day	Recommended amenity noise level $L_{Aeq}(period)$ , dB(A)	Amenity noise criteria $L_{Aeq}(5min)$ , dB(A)
Commercial premises	When in use	65	63
Note 1. A + 3 dB correction factor has been added to convert the $L_{Aeq}(period)$ noise descriptor to the $L_{Aeq}(5min)$ noise descriptor			

#### 4.5 Liquor and Gaming New South Wales (LGNSW)

The restaurant will be licensed for the sale of alcohol, and as such will be assessed against the requirements of Liquor and Gaming New South Wales (LGNSW). Acoustic requirements of LGNSW is consistent with that presented in Woollahra Council *DA Consent – DA2017/521* Condition I.16.

Note should be made that where the octave-band background noise levels are below the thresholds of human hearing, the human threshold of hearing values have been used to establish the criteria (see Section 4.5.1 below).

##### 4.5.1 International Standard ISO 226 : 2003

The ISO 226 :2003 – Normal Equal-Loudness-Level contours presents *Tf* values for the threshold of human hearing in 3<sup>rd</sup> octave bands. The *Tf* corresponding to each octave band centre frequency is presented in Table 4-3 below.

**Table 4-3 Threshold of human hearing (ISO 226:2003 Table 1)**

Weighting	dB in octave bands [Hz]								
	31.5	63	125	250	500	1000	2000	4000	8000
Z - weighted	59.5	37.5	22.1	11.4	4.4	2.4	-1.3	-5.4	12.6
A - weighted	20.1	11.3	6	2.8	1.2	2.4	-0.1	-4.4	11.5

#### 4.6 Proposal specific criteria

The proposal specific criteria for the noise emission from the proposal is shown in Table 4-4 and Table 4-5 below.

**Table 4-4 Proposal specific noise criteria for commercial and residential land uses**

Receiver type / location	Time period	Criteria	Reference
Residential	Day-time (7 am – 6 pm)	$L_{Aeq}(5min)$ 47 dB(A) (intrusiveness BG + 5 dB)	Offensive noise test
	Evening (6 pm – 10 pm)	$L_{Aeq}(5min)$ 45 dB(A) (intrusiveness BG + 5 dB)	Offensive noise test

Receiver type / location	Time period	Criteria	Reference
	NTS (10 pm – 12 am)	$L_{Aeq(15min)} 42 \text{ dB(A)}$ (intrusiveness BG + 5 dB)	Offensive noise test
Commercial	When in use	$L_{Aeq(15min)} 63 \text{ dB(A)}^1$	NPI
Site boundary	NTS (10 pm to 12 am)	$L_{Aeq(15min)} 37 \text{ dB(A)}$	Woollahra Council
Note 1: A -3 dB correction has been applied to convert the $L_{Aeq(2min)}$ noise descriptor to a $L_{Aeq(15min)}$ noise descriptor			

**Table 4-5 Octave band noise criteria at residences, dB(A) (LGN5W)**

Assessment period	Noise emission criteria $L_{A10}$ in octave bands [Hz]								
	31.5	63	125	250	500	1000	2000	4000	8000
Monday to Sunday 7:00 am to 11:30 pm (background + 5 dB)	25	23	31	35	36	36	31	24	17

## 5. Assessment of impacts

### 5.1 Operational noise emission

The assessment of noise emission from the use and operation of the proposed restaurant has been assessed against the relevant criteria based. The assessment is based on the following scenario for the operation of the proposed restaurant:

- typical maximum operations from Monday to Sunday nights

The assessment of the various noise sources presented below are assessed against the relevant criteria presented in Section 4.

Operations on Monday to Sunday nights:

- 50 patrons dining within the restaurant space
- Low level background music inside
- Medium sized mechanical plant operating on rooftop

Numbers of patrons presented above are expected to be a worst case scenario for operations for the whole week, and is based on the designated capacity presented in the Plan of Management (POM) (GSA Planning, 2020).

It is noted that there are a number of existing mechanical plant units on the roof of the commercial building servicing the large number of tenancies within the building. No additional mechanical plant is proposed to be installed to service the restaurant. The noise emission from the mechanical plant servicing the subject tenancy is unlikely to be distinguishable from the other mechanical plant. However, a typical selection of mechanical plant servicing a restaurant/bar has been included in the noise model.

Noise predictions were undertaken using ISO 9613:1996 Acoustics – Attenuation of sound during propagation outdoors. The following source noise levels were used for each of the sources described above:

- 50 patrons dining with the restaurant space (50% of patrons talking at any given time) – Internal reverberant sound pressure level (SPL) of 75 dB(A)
- Background Music<sup>1</sup>
  - SPL of  $L_{Aeq(15min)}$  72 dB(A)
  - SPL of  $L_{A10(15min)}$  74 dB(A)
- Mechanical plant – Sound power level (SWL) of 80 dB(A)

Table 5-1 below presents the calculated total internal reverberant sound pressure levels within internal area of the restaurant based on the proposed operations described above.

**Table 5-1 Internal reverberant sound pressure level ( $L_{A10(15 min)}$ )**

Source	Internal reverberant sound pressure level ( $L_{A10(15 min)}$ ) in octave bands [Hz], dB									
	31.5	63	125	250	500	1000	2000	4000	8000	Overall
Patrons and BG music (50 patrons)	21	51	48	60	71	73	70	65	61	77

<sup>1</sup> Background music source noise levels measured as part of attended monitoring 2016 and presented in Table 3-5 have been used in the noise model for the operational noise assessment

Predicted octave band noise levels for the assessment of the acoustic requirements of LGNSW are presented in Table 5-2 below.

**Table 5-2 Predicted octave band noise levels at nearby residential receivers – external**

Receivers	Evening $L_{Aeq,10min}$ in octave bands [Hz], dB(A)									
	31.5	63	125	250	500	1000	2000	4000	8000	OA
19-25 Elizabeth St	10	23	24	27	29	28	25	12	4	34
7 am to midnight Criteria	25	23	31	35	36	36	31	24	17	37

Predicted noise levels at nearby receivers against the acoustic requirements of the NPI are presented in Table 5-3 (external).

**Table 5-3 Predicted noise levels at nearby receivers - overall**

Receiver	Receiver Type	Most stringent time period	Predicted $L_{Aeq}$ noise level at receiver (external) dB(A)	Criteria dB(A)
19-25 Elizabeth St	Residential	Night-time shoulder (Mon- Sun)	34	41
4-6 Elizabeth St	Commercial	When in use	34	63
10 Elizabeth St	Commercial		37	63

Predicted noise levels within internal areas of the adjacent commercial receivers against the guidelines of AS2107:2016 are presented in Table 5-4 (internal). It has been assumed that the partition wall separating the tenancies is constructed of double brick and the floor / ceiling partition separating the tenancies is a 200 mm thick concrete slab.

**Table 5-4 Predicted noise levels to internal receivers - overall**

Receiver	Receiver Type	Time Period	Predicted $L_{Aeq}$ noise level at receiver (internal) dB(A)	AS2107 Guideline dB(A)
4-6 Elizabeth St (adjacent)	Commercial	When in use	37	45
2-8 Elizabeth St (directly above)	Commercial	When in use	32	45

Predicted noise levels at the nearest residential boundaries against the Woollahra Council's mechanical noise emission criteria (mechanical noise emission does not exceed the background noise level) is presented in Table 5-5 below.



**Table 5-5 Predicted mechanical noise levels to residential receivers**

Location	Time Period	Predicted $L_{Aeq,Tmax}$ noise level at boundary, dB(A)	Council Criteria (BG + 5 dB)
Site boundary	Night-time shoulder	30	37

## 5.2 Discussion

The results in Table 5-2 to Table 5-5 above demonstrate that the proposal during operations in Section 5.1 is predicted to comply with the relevant noise emission criteria for nearby residential and non-residential receivers during all times of operation.

Predicted noise levels at the nearest and worst case receivers have been presented in the tables above. Given the compliance of the presented receivers, all other receivers will have lower received noise levels from the use and operation of the proposed restaurant and would also comply with the relevant criteria.

The development should achieve the relevant noise emission criteria and should not adversely affect the existing or future amenity of the surrounding residential area assuming the venue is operated in an orderly manner. Staff should actively monitor the behaviour of patrons within the subject premises and the erection of clear signage at all entries and exits advising patrons that they must not generate excessive noise and leave the premises in a quiet and sensible manner to minimise any potential impacts on the surrounding amenity.

With the incorporation of this management measure impacts at residences are not anticipated for the extended trading hours.



## 6. Recommendations

The predicted noise levels presented in Section 5 indicate compliance will likely be achieved with the relevant acoustic criteria presented in Section 4. No further recommendations are required to achieve compliance with the relevant acoustic criteria for the extension of trading hours and new capacity. However, compliance is based on the sound attenuation measures being maintained in accordance with the Acoustic Assessment approved by condition A.2 of DA2017/321, namely:

- Staff should actively monitor the behaviour of patrons within the subject premises and the erection of clear signage at all entries and exits advising patrons that they must not generate excessive noise and leave the premises in a quiet and sensible manner to minimise any potential impacts on the surrounding amenity.
- Ensure the entry door to the restaurant remains closed at all times except for the ingress and egress of patrons.
- Ensure that the internal music is kept below an internal reverberant sound pressure level of 72 dB (refer to octave-band limits in Table 6-1) to ensure the level of patron conversation is at an optimal level within the internal areas of the restaurant.

**Table 6-1 Internal noise limits for background music**

Location	Internal Limiting Reverberation SPL in octave bands (Hz), dB(A)									
	31.5	63	125	250	500	1000	2000	4000	8000	OA
Internal areas of the restaurant	24	55	51	63	70	68	62	61	59	72

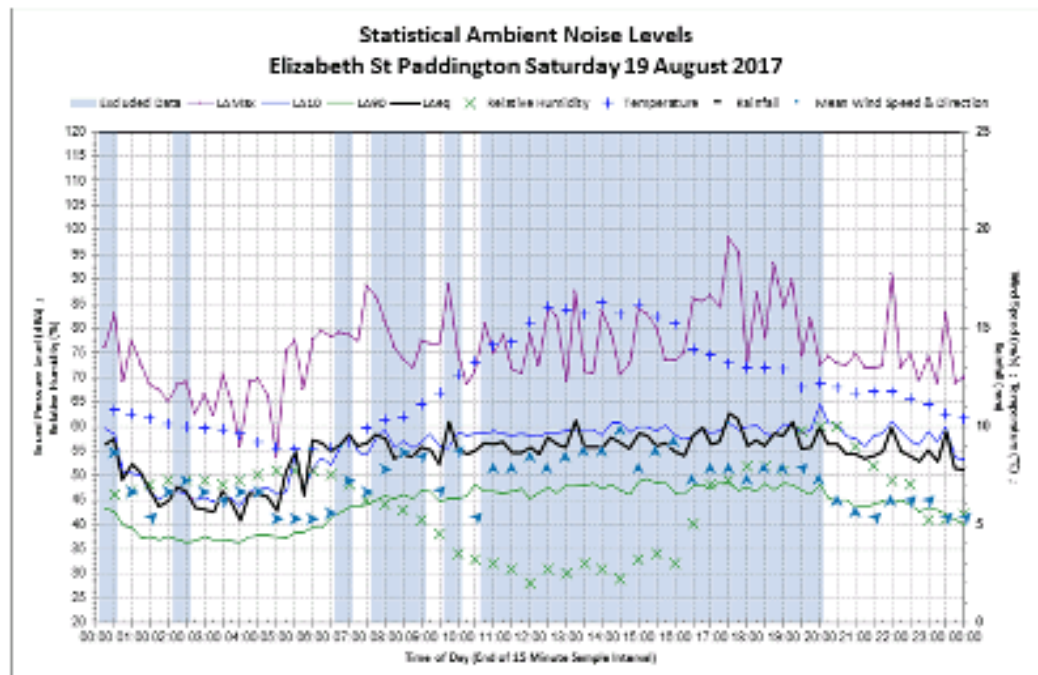
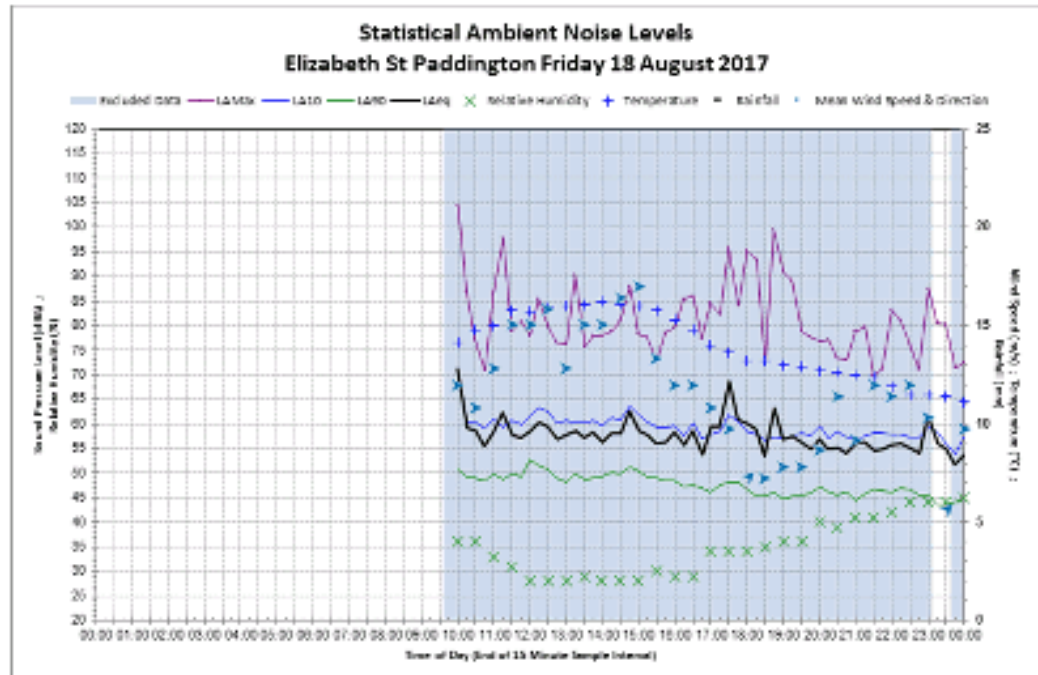
- The use of absorptive material lining the walls and ceilings of the internal areas of the restaurant, where possible, to reduce the reverberant build-up of sound and improve the acoustic quality of speech within the restaurant. As a guideline, a minimum of 10% of the wall/ceiling surface area should incorporate 50 mm thick absorptive material.
- Noise generating activities such as placing empty glass bottles in bins are to be conducted during the day time hours only (7 am to 6 pm Monday to Saturday and 8 am to 6 pm on Sundays and Public Holidays). Glass should be crushed prior if feasible.

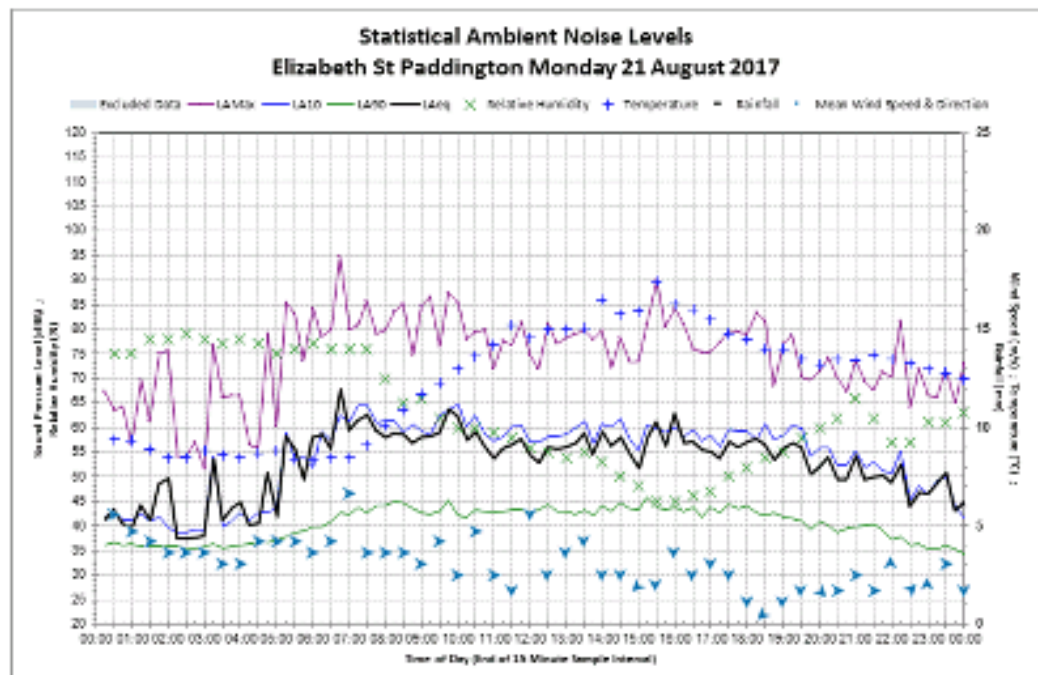
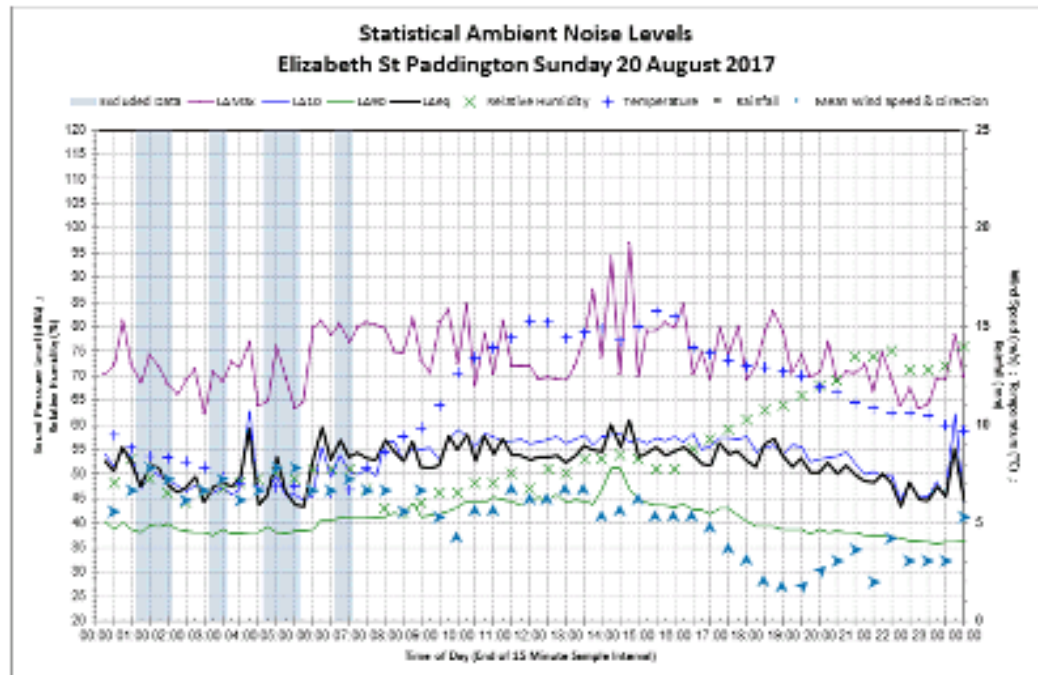
## 7. Conclusion

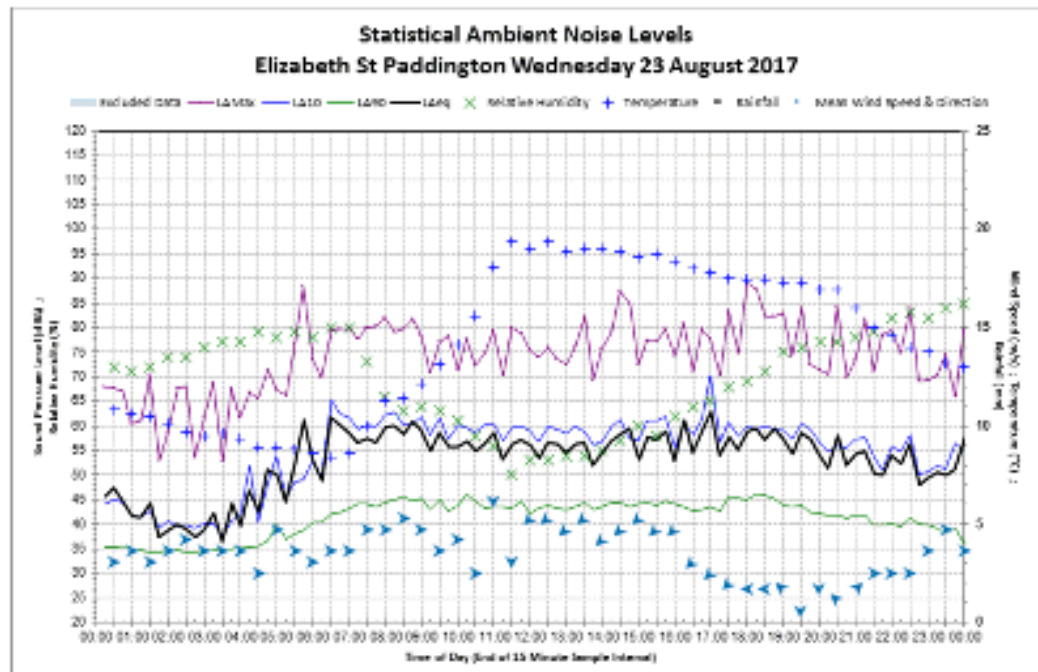
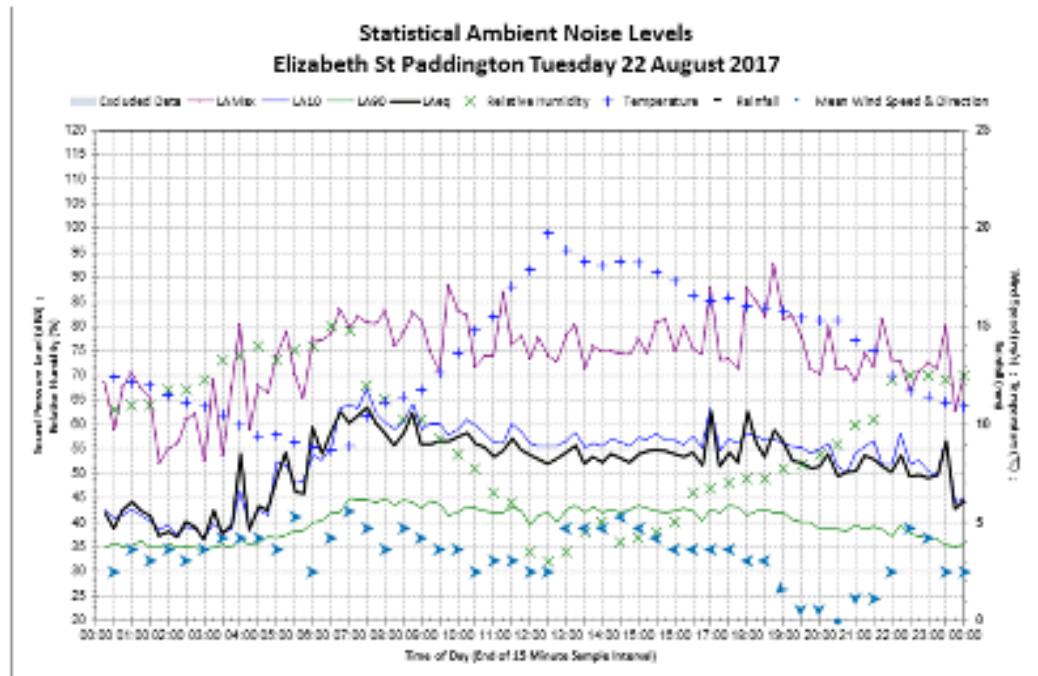
Based on the noise modelling and assessment of the operation of the proposed licensed venue located at 2-8 Elizabeth Street, Paddington, GHD considers the development should achieve the relevant noise emission criteria presented in Section 3 of the report and should not adversely affect the existing or future acoustic amenity of the surrounding commercial and residential area.

## Appendices

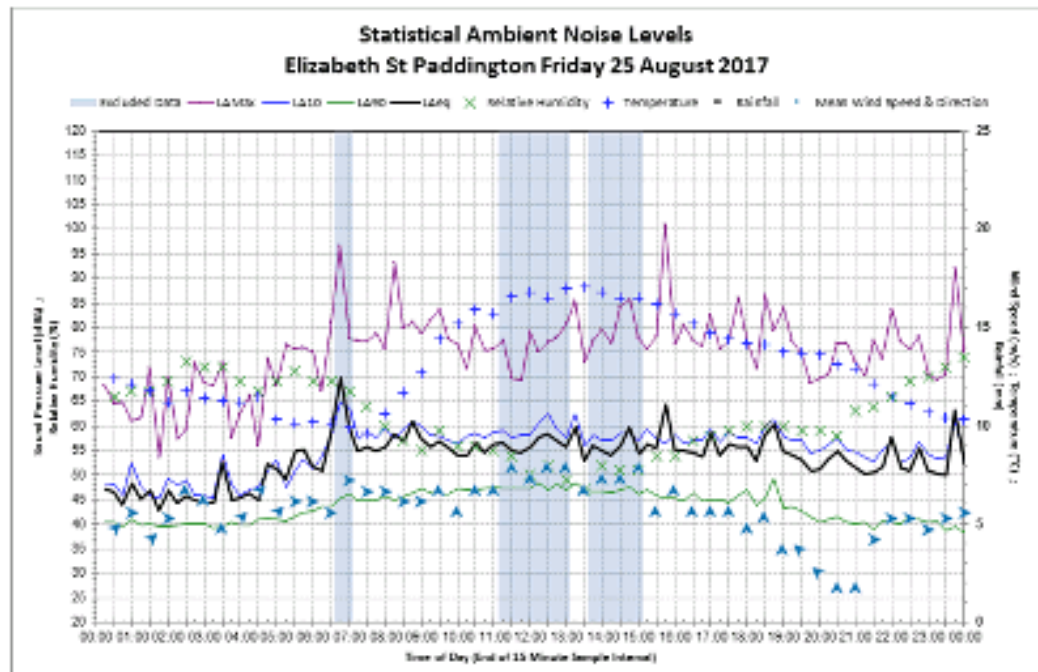
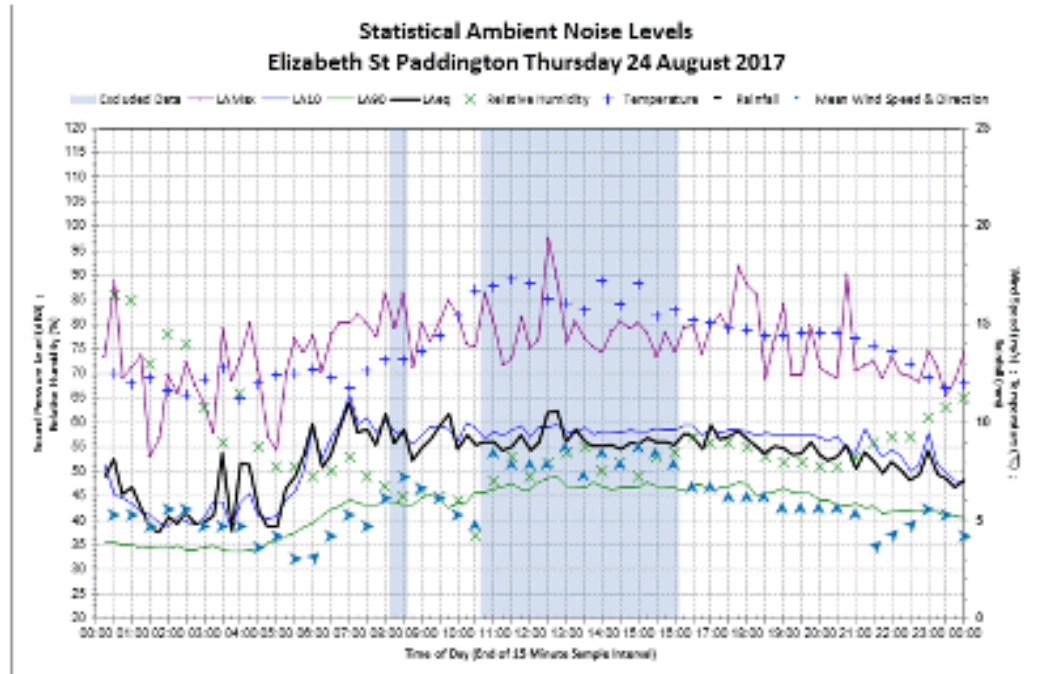
## Appendix A – Noise monitoring charts



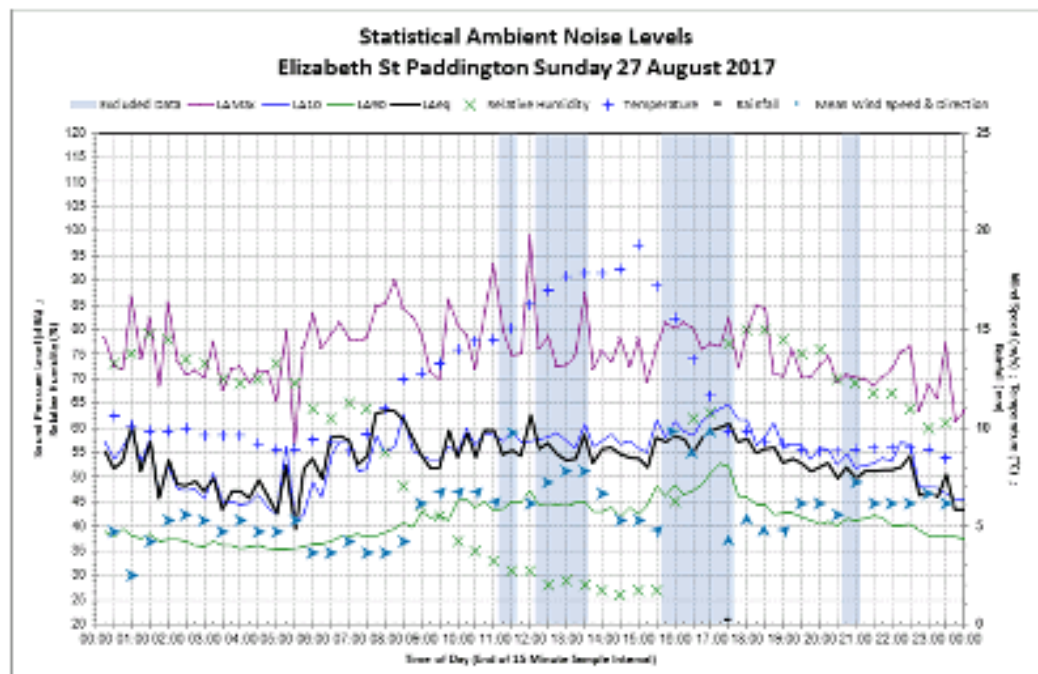
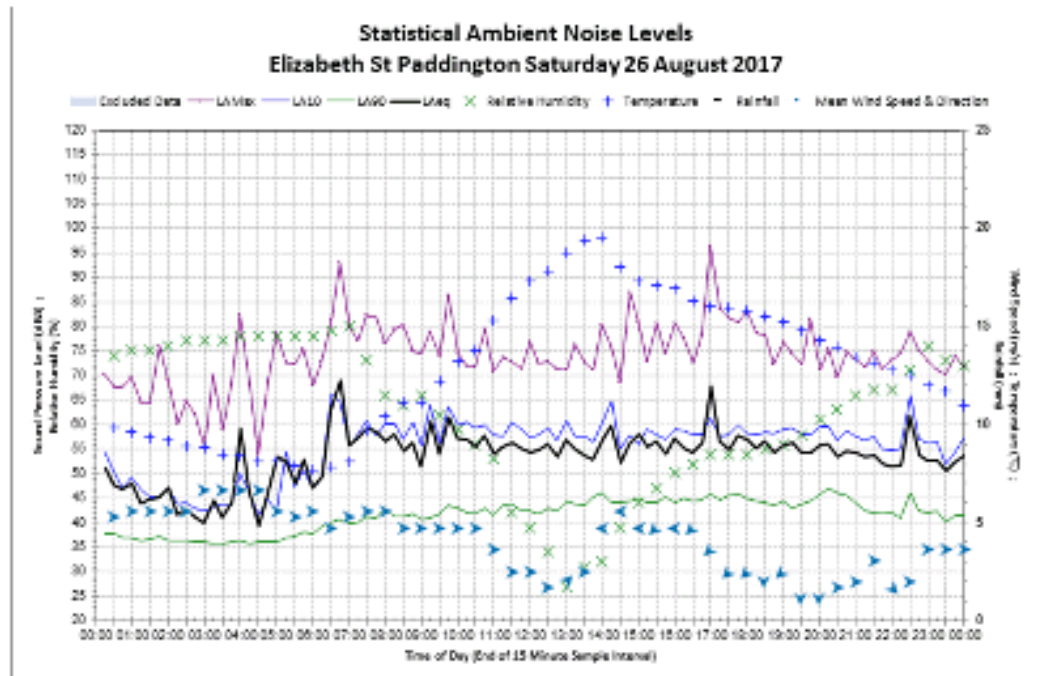


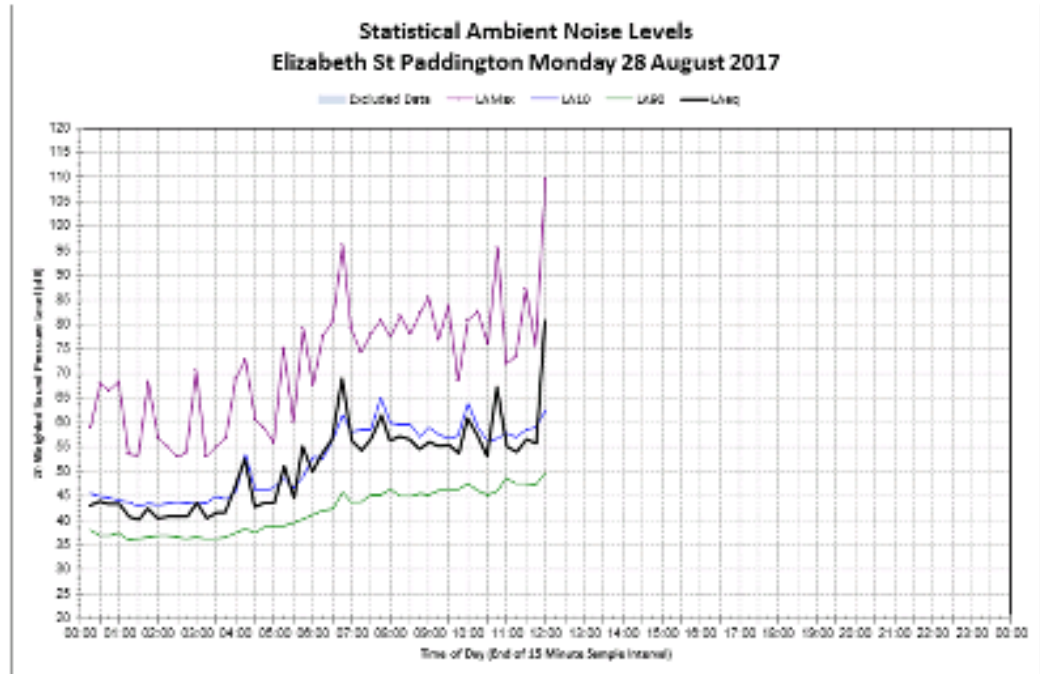




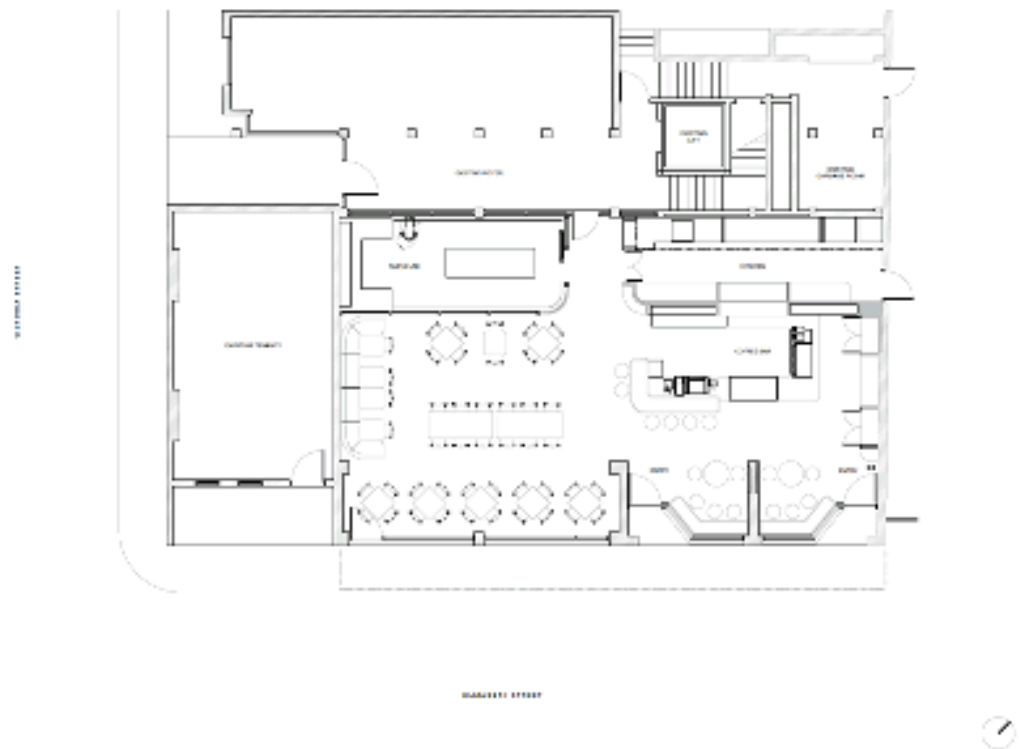








## Appendix B – Restaurant seating plan and layout



GHD

Level 15  
133 Castlereagh Street  
T: 61 2 9239 7100 F: 61 2 9239 7199 E: [sydmall@ghd.com](mailto:sydmall@ghd.com)

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1/[https://projectsportal.ghd.com/sites/pp15\\_01/barbettarestaurantup/ProjectDocs/12533025-REP\\_Barbetta Restaurant Paddington Acoustic Report\\_Delivery.docx](https://projectsportal.ghd.com/sites/pp15_01/barbettarestaurantup/ProjectDocs/12533025-REP_Barbetta Restaurant Paddington Acoustic Report_Delivery.docx)

Document Status

Revision	Author	Reviewer		Approved for Issue		
		Name	Signature	Name	Signature	Date
0	M.Velasco	C.Gordon		E.Milton		12/09/17
1	A.Bagby	M.Velasco		E.Milton		10/08/20

[www.ghd.com](http://www.ghd.com)



Council Ref: DA 621/2017/1:Mr A Hill:en  
Planning & Development Division

24 May 2018

Barbetta Pty Ltd  
C/- GSA Planning  
95 Paddington St  
PADDINGTON NSW 2021

Dear Sir,

**Development Consent**

**Application No:** DA 621/2017  
**Property:** 2-8 Elizabeth Street PADDINGTON 2021  
**Applicant:** Barbetta Pty Ltd  
**Proposal:** Change of use from a food and drink premises to a licensed restaurant including a liquor license

Please find attached your development consent including conditions, notes, stamped plans and additional information. Your conditions have been structured to outline the regulatory frame-work at each stage leading to the occupation and use of the completed development.

These conditions will guide you through our requirements. You must also check other Commonwealth and NSW Acts and Regulations that may apply to the demolition, building, subdivision and the use of developments, including but not limited to:

- Workcover NSW (work safety and asbestos requirements)
- Sydney Water (provision of water and sewer services)
- Energy and Gas suppliers (provision of energy services)
- Department of Fair Trading (advice about builders and licensing)
- Building Professionals Board (advice about private certifiers)
- Roads and Traffic Authority (works on state roads only)
- NSW Police Service's Traffic Sergeant (temporary road closures only)
- Human Rights and Equal Opportunity Commission (access issues)

Refer to the NSW Government's homepage ([www.nsw.gov.au](http://www.nsw.gov.au)) or specific consent conditions for further advice.

Where there is an upgrade or connection to Council's footpaths, roads and public drainage systems, you will need further approval from Council before you undertake such works. You may also need approval for hoarding and construction and work zones. Avoid delays by addressing these issues early.

The following guide is provided in good faith to assist applicants to understand the broad process. Not every statutory step may apply or has been covered.

Woollahra  
Municipal  
Council

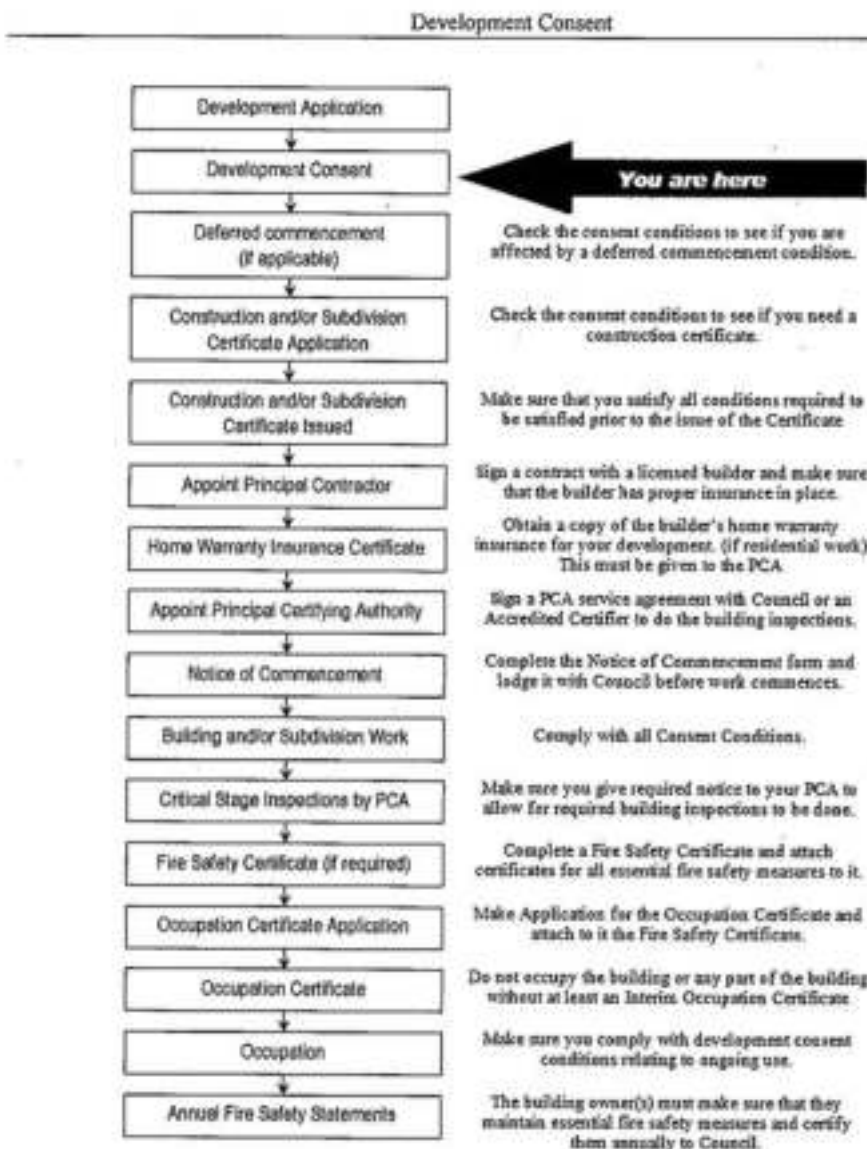


ASN 32 218 483 245

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[records@woollahra.nsw.gov.au](mailto:records@woollahra.nsw.gov.au)  
[www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)  
Telephone: 61 2 9391 7000  
Facsimile: 61 2 9391 7044





Council can also issue Construction Certificates and act as your PCA at competitive rates. Visit [http://www.woollahra.nsw.gov.au/building\\_and\\_development/building](http://www.woollahra.nsw.gov.au/building_and_development/building) or speak to our Customer Service Officers if you have any further questions.

If you have any questions regarding the consent, contact our Assessment Officer, Mr A Hill, on 9391-7162 between 8.30am and 11.00am Monday to Friday.

Yours sincerely,

George Fotis  
Team Leader – Development Control  
per:



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Development Consent

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**Development Consent No. 621/2017/1**

**Notice of Determination**

Section 4.18 of the Environmental Planning and Assessment Act 1979 ("the Act")  
Clause 100 of the Environmental Planning and Assessment Regulation 2000 ("the Regulation")

**Applicant's Name**

Barbetta Pty Ltd

**Date of Determination**

19 April, 2018

**Land to which this applies**

2-8 Elizabeth Street PADDINGTON

**Proposal**

Change of use from a food and drink premises to a licensed restaurant including a liquor license

**Imposition of Conditions**

Subject to the provisions of section 4.17 of the Act, this consent has been granted subject to conditions annexed to this consent.

**Period of Consent**

Subject to Sections 4.20 of the Act, this consent becomes effective and operates from 24 May, 2018. The consent lapses five years after the date of consent in accordance with Section 4.53 of the Act.

**Review of determination and right of appeal**

Within 6 months after the date of determination, a review of this determination can be made under Division 8.2 of the Act or an appeal to the Land and Environment Court can be made pursuant to the provisions of Section 8.7 of the Act.

**Plans endorsed by the consent authority**

Copies of relevant plans endorsed by the consent authority and as referenced by conditions of consent are annexed.

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DA Consent - DA2017 621 1 - 2-8 Elizabeth Street PADDINGTON

3

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Development Consent

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**Endorsed for and on behalf of Woollahra Municipal Council**

**George Fotis**  
**Team Leader – Development Control**  
per:



AH1

**24 May, 2018**  
**Date of endorsement**

Development Consent

**A. General Conditions**

**A.1 Conditions**

Consent is granted subject to the following conditions imposed pursuant to section 80 of the Environmental Planning & Assessment Act 1979 ("the *Act*") and the provisions of the Environmental Planning and Assessment Regulation 2000 ("the *Regulation*") such conditions being reasonable and relevant to the development as assessed pursuant to section 79C of the Act. Standard Condition: A1 (Autotext AA1)

**A.2 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)
A.14.16 Rev C	External Details: Signage + Seating	ACME & O	20.10.17
A.02.03A Rev A	Plan: Proposed Furniture	ACME & O	15.01.18
Job No. 11264 POM	Plan of Management	GSA Planning	November 2017
2126736	Acoustic Assessment	GHD	August 2017

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 (Autotext AA5)

**A.3 Development Consent is not granted in relation to these matters**

This approval does not give consent to the proposed bench upon the Elizabeth Street footpath.

Standard Condition: A9 (Autotext AA9)

**B. Conditions which must be satisfied prior to the demolition of any building or construction**

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Development Consent

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**B.1 Construction Certificate required prior to any demolition**

Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is "commencement of erection of building" pursuant to section 81A(2) of the Act. In such circumstance all conditions in Part C and Part D of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the issue of a Construction Certificate, appointment of a PCA and Notice of Commencement under the Act.

*Note: See Over our Dead Body Society Inc v Byron Bay Community Association Inc [2001] NSWLEC 125. Standard Condition: B1 (Autotext BB1)*

**C. Conditions which must be satisfied prior to the issue of any construction certificate**

**C.1 Modification of details of the development (Section 80A(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 proposed business identification sign**

In order to comply with Assessment Criteria 7 & 8 of Schedule 1 of State Environmental Planning Policy No. 64 – Advertising and Signage, and Control C18b of Section E7.2.1 Building Identification Signs and Business Identification Signs of Chapter E7 Signage of Woollahra Development Control Plan 2015, the proposed business identification sign must be 2.6m above the level of the footpath immediately below and the sign is not to be illuminated.

**b) The proposed bench is to be deleted**

As no owners consent by Council is given to the proposed bench upon the Elizabeth Street footpath, the bench is to be deleted.

This condition has been imposed in order to protect the amenity of the neighbourhood.

**c) The proposed furniture plan must provide seating for no more than 50 patrons**

The proposed furniture plan approved by Condition A.2 must be amended to provide for a maximum of 50 patrons.

This condition has been imposed to ensure that the built furniture of the Licensed Restaurant reflects the maximum capacity approved by **Condition I.3.**

**d) Loading dock**

The existing loading dock within the building is to be utilised for all deliveries.

Development Consent

e) **Garbage room**

The existing garbage room is to be utilised for the storage and collection of all waste (including glass).

f) **Restaurant entry (Elizabeth Street, Paddington)**

The entrance to the restaurant after 6 pm must be limited to the central entry off Elizabeth Street, Paddington and an air lock must be constructed and located internally to prevent the transmission of noise. The northern entry off Elizabeth Street, Paddington may be used as a disabled access after 6pm.

**Note:** The effect of this condition is that it requires design changes and/or further information to be provided with the *Construction Certificate* drawings and specifications to address specific issues identified during assessment under section 79C of the *Act*.

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

**Note:** Clause 145 of the *Regulation* prohibits the issue of any *Construction Certificate* that is inconsistent with this consent. Standard Condition: C4 (Autotext CC4)

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

The certifying authority must not issue any *Part 4A Certificate* until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees prior to the issue of a *construction certificate, subdivision certificate or occupation certificate*, as will apply.

Description	Amount	Indexed	Council Fee Code
<b>LONG SERVICE LEVY</b>			
under Building and Construction Industry Long Service Payments Act 1986			
<b>Long Service Levy</b> <a href="http://www.lspc.nsw.gov.au/levy_information/levy_information/levy_calculator.htm">http://www.lspc.nsw.gov.au/levy_information/levy_information/levy_calculator.htm</a>	Contact LSL Corporation or use online calculator	No	
<b>SECURITY</b>			
under section 80A(6) of the Environmental Planning and Assessment Act 1979			
<b>Property Damage Security Deposit -</b> making good any damage caused to any property of the <i>Council</i>	\$2354	No	T115
<b>INSPECTION FEES</b>			
under Section 608 of the Local Government Act 1993			
Security Administration Fee	\$190	No	T16
<b>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</b>	\$2544 plus any relevant indexed amounts and long service levy		

**Building and Construction Industry Long Service Payment**

The Long Service Levy under Section 34 of the *Building and Construction Industry Long Service Payment Act, 1986*, must be paid and proof of payment provided to the *Certifying Authority* prior to the issue of any *Construction Certificate*. The Levy can be paid directly to the Long Services Payments Corporation or to Council. Further information can be obtained from the Long Service Payments Corporation's website <http://www.lspc.nsw.gov.au/> or the Long Service Payments Corporation on 13 14 41.

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Development Consent

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**How must the payments be made?**

Payments must be made by:

- Cash deposit with Council,
- Credit card payment with Council, or
- Bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:

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

**How will the section 94A levy be indexed?**

To ensure that the value the development levy is not eroded over time by increases in costs, the proposed cost of carrying out development (from which the development levy is calculated) will be indexed either annually or quarterly (see table above). Clause 3.13 of the Woollahra Section 94A Development Contributions Plan 2011 sets out the formula and index to be used in adjusting the s.94A levy.

**Do you need HELP indexing the levy?**

Please contact our customer service officers. Failure to correctly calculate the adjusted development levy will delay the issue of any Part 4A Certificate and could void any Part 4A Certificate (construction certificate, subdivision certificate, or occupation certificate).

**Deferred or periodic payment of section 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 94A levy other than as required by clause 3.9, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:

- The reasons given;
- Whether any prejudice will be caused to the community deriving benefit from the public facilities;
- Whether any prejudice will be caused to the efficacy and operation of 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.

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Development Consent

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Any deferred or periodic payment of the section 94A levy will be adjusted in accordance with clause 3.13 of the plan. The applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.

Standard Condition: C5

**D. Conditions which must be satisfied prior to the commencement of any development work**

**D.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989**

For the purposes of section 80A (11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:

- a) that the work must be carried out in accordance with the requirements of the Building Code of Australia,
- b) in the case of residential building work for which *the Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

- a) to the extent to which an exemption is in force under *the Home Building Regulation 2004*,
- 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 Site Signs**

The *Principal Contractor or owner builder* must ensure that the sign/s required by clauses 98A and 227A of the *Regulation* is/are erected and maintained at all times.

Clause 98A of the *Regulation* provides:

***Erection of signs***

- For the purposes of section 80A (11) of the *Act*, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:



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- a. showing the name, address and telephone number of the principal certifying authority for the work, and
- b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- c. stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws."

Clause 227A of the Regulation provides:

***Signs on development sites***

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

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

**Note:** Clause 227A imposes a penalty exceeding \$1,000 if these requirements are not complied with.

**Note:** If Council is appointed as the PCA it will provide the sign to the *principal contractor or owner builder* who must ensure that the sign is erected and maintained as required by Clause 98A and Clause 227A of the Regulation. Standard Condition: D12 (Autotext DD12)

**D.3 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.

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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 Workcover NSW requirements.

Standard Condition: D13 (Autotext DD13)

**D.4 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)**

The erection of the building in accordance with this development consent must not be commenced until:

- a) A construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited Certifier, and
- b) The person having the benefit of the development consent has:
  - Appointed a principal certifying authority for the building work, and
  - Notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- c) The principal certifying authority has, no later than 2 days before the building work commences:
  - Notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
  - Notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- d) The person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
  - Appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
  - Notified the principal certifying authority of any such appointment, and
  - Unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
  - Given at least 2 days' notice to the council of the person's intention to commence the erection of the building.

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- Note:** *building* has the same meaning as in section 4 of the *Act* and includes part of a building and any structure or part of a structure.
- Note:** *new building* has the same meaning as in section 109H of the *Act* and includes an altered portion of, or an extension to, an existing building.
- Note:** The commencement of demolition works associated with an altered portion of, or an extension to, an existing building is considered to be the commencement of building work requiring compliance with section 82A(2) of the *Act* (including the need for a *Construction Certificate*) prior to any demolition work. See: *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.
- Note:** *Construction Certificate* Application, *PCA* Service Agreement and *Notice of Commencement* forms can be downloaded from Council's website [www.woollahra.nsw.gov.au](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 81A(2) of the *Act*. Standard Condition: D15 (Autotext DD15)

**D.5 Notification of Home Building Act 1989 requirements**

- a) For the purposes of section 80A (11) of the *Act*, the requirements of this condition are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the Home Building Act 1989.
- b) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
  - In the case of work for which a *principal contractor* is required to be appointed:
    - the name and licence number of the principal contractor, and
    - the name of the insurer by which the work is insured under Part 6 of that Act,
  - In the case of work to be done by an owner-builder:
    - the name of the owner-builder, and
    - if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- c) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.
- d) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the *Act*, to comply with the technical provisions of the State's building laws. Standard Condition: D17 (Autotext DD17)

**E. Conditions which must be satisfied during any development work**

**E.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989**

For the purposes of section 80A (11) of the *Act*, the following condition is prescribed in relation to a development consent for development that involves any building work:

- a) That the work must be carried out in accordance with the requirements of the Building Code of Australia,

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- 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, published by Standards Australia, and as in force at 13 September 2001. Standard Condition: E2 (Autotext EE2)

## **E.3 Critical Stage Inspections**

Critical stage inspections must be called for by the *principal contractor or owner builder* as required by the PCA, any PCA service agreement, the *Act* and the *Regulation*.

Work must not proceed beyond each critical stage until the PCA is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the *Act*.

*Critical stage inspections* means the inspections prescribed by the *Regulations* for the purposes of section 109E(3)(d) of the *Act* or as required by the PCA and any PCA Service Agreement.

Note: The PCA may require inspections beyond mandatory critical stage inspections in order that the PCA be satisfied that work is proceeding in accordance with this consent.

Note: The PCA may, in addition to inspections, require the submission of *Compliance Certificates*, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development. Standard Condition: E5 (Autotext EE5)

## **E.4 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;

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- (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 down loaded from <http://www.epa.nsw.gov.au/noise/ngls.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 (Autotext EE6)

#### **E.5 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.

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This condition does not apply to the extent that a permit or approval exists under the section 73 of the *Road Transport (Safety and Traffic Management) Act 1999*, section 138 of the *Roads Act 1993* or section 94 of the *Local Government Act 1993* except that at all time compliance is required with:

- a) Australian Standard AS 1742 (Set) Manual of uniform traffic control devices and all relevant parts of this set of standards.
- b) Australian Road Rules to the extent they are adopted under the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*.

**Note:** Section 73 of the *Road Transport (Safety and Traffic Management) Act 1999* allows the Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose. Any road closure requires Police approval.

**Note:** Section 138 of the *Roads Act 1993* provides that a person must not:

- erect a structure or carry out a work in, on or over a public road, or
- dig up or disturb the surface of a public road, or
- remove or interfere with a structure, work or tree on a public road, or
- pump water into a public road from any land adjoining the road, or
- connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.

**Note:** Section 68 of the *Local Government Act 1993* provides that a person may carry out certain activities only with the prior approval of the council including:

- Part C Management of Waste:
  - a. For fee or reward, transport waste over or under a public place
  - b. Place waste in a public place
  - c. Place a waste storage container in a public place."
- Part E Public roads:
  - a. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
  - b. Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road."
  - c. Any work in, on or over the Road or Footway requires Council Approval and in the case of classified roads the NSW Roads and Traffic Authority. Road includes that portion of the road uses as a footway. Standard Condition: E7 (Autotext EE7)

#### E.6 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;

**Note:** See [http://www.spa.nsw.gov.au/small\\_business/builders.htm](http://www.spa.nsw.gov.au/small_business/builders.htm) for additional information.  
Standard Condition: E11

#### E.7 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*;



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- 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.8 Placement and use of Skip Bins**

The *principal contractor* or *owner builder* must ensure that all waste storage containers, including but not limited to skip bins, must be stored within the site unless:

- a) Activity Approval has been issued by Council under section 94 of the *Local Government Act 1993* to place the waste storage container in a public place, and
- b) Where located on the road it is located only in a positions where a vehicle may lawfully park in accordance with the Australian Road Rules to the extent they are adopted under the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*.

**Note:** Waste storage containers must not be located on the footpath without a site specific activity approval. Where such site specific activity approval is granted a 1.5m wide clear path of travel is maintained free of any trip hazards. Standard Condition: E21 (Autotext EE21)

#### **E.9 Dust Mitigation**

Dust mitigation must be implemented in accordance with "*Dust Control - Do it right on site*" published by the Southern Sydney Regional Organisation of Councils.

This generally requires:

- a) Dust screens to all hoardings and site fences.
- b) All stockpiles or loose materials to be covered when not being used.
- c) All equipment, where capable, being fitted with dust catchers.
- d) All loose materials being placed bags before placing into waste or skip bins.
- e) All waste and skip bins being kept covered when not being filled or emptied.
- f) The surface of excavation work being kept wet to minimise dust.
- g) Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

**Note:** "*Dust Control - Do it right on site*" can be down loaded free of charge from Council's web site [www.woollahra.nsw.gov.au](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 (Autotext EE23)



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**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 Occupation Certificate (section 109M of the Act)**

A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 109H (4) of the *Act*) unless an occupation certificate has been issued in relation to the building or part.

**Note:** New building includes an altered portion of, or an extension to, an existing building.  
Standard Condition: F1 (Autotext FFI)

**F.2 Food Premises - Inspection and Registration**

Prior to the issue of any *Occupation Certificate* or occupation or use of any food premises:

- a) The *Principal Contractor* or *owner* must arrange an inspection of the fit out of the Food Premises by Council's Environmental Health Officer;
- b) A satisfactory final inspection must have been undertaken by Council's Environmental Health Officer; and
- c) The *owner* or *occupier* must have registered the Food Premises (Notification of conduct under section 100 of the *Food Act* 2003).

**Note:** Notification can be done on-line at [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au)

**Note:** Inspections are subject to payment of the adopted inspection fee.

**Note:** Section 100 of the *Food Act* 2003 requires:

"100 Notification of conduct of food businesses

(1) The proprietor of a food business must not conduct the food business unless the proprietor has given written notice, in the approved form, of the information specified in the Food Safety Standards that is to be notified to the appropriate enforcement agency before the business is conducted. Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation."

**Note:** *Accredited Certifiers* are unable to issue *Compliance Certificates* in relation to compliance with the *Food Act* 2003, *Food Regulation* 2004; the Food Standards Code and the Australian Standard AS 4674-2004: *Construction and fit out of food premises*; since these are not matters which an *Accredited Certifier* can be satisfied in relation to under Clause 161 of the *Regulation*. This condition can only be satisfied following an inspection and sign off from Council's Environmental Health Officers. Standard Condition: F15

**F.3 Food Premises – Maintenance of the Kitchen Exhaust**

The proprietor(s) of the subject site shall enter into a contract agreement for the regular maintenance and cleaning of the odour control units and filtering systems. A copy of the contract agreement shall be made available to Council's Health Services Section prior to the occupation of the building.

**F.4 Filing of an amended Plan of Management (POM)**

The POM prepared by GSA Planning, approved by **Condition A.2**, is to be modified to include the following:

- Compliance with **Conditions I.1, I.2, I.3, I.4 & I.7.**
- After 6pm, entry to the premises by patrons must be limited to the central entry off Elizabeth Street, Paddington. The northern entry off Elizabeth Street may continue to be used for disabled access after 6pm.

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- Staff are to enter and exit the premises via Victoria Street, Paddington only.
- All patrons are to exit the premises via Victoria Street, Paddington after 8pm.
- All patrons (including staff) must leave the premises within 30 minutes of closing time.
- No noise generating activities after closing time, management to usher patrons from the site and adjacent footpath.
- Lights in the restaurant shall not cause a nuisance to the surrounding area.
- A complaints system, which includes the name and mobile number of the licensee/on site manager.

The revised Plan of Management must be approved by Council's Manager, Development Control, and the premises operated in accordance with the approved Plan of Management and must be filed with Licensing at the Eastern Suburbs Police Area Command prior to the commencement of the operations of the Licensed Restaurant.

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

None.

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

**H.1 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 H12)

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

**I.1 Trading hours**

Trading hours are limited to:

- a) Monday to Sunday: 7.00am to 8.00pm

This condition has been imposed to mitigate amenity impacts upon the neighbourhood by commercial or retail trading including, but not limited to, external impacts associated with clients attending the site for business or otherwise.

**Note:** This condition does not apply to deliveries to, or dispatches from, the site of wholesale goods or internal activities that occur under the approved hours of use. General use and deliveries or dispatches may be restricted by hours of use conditions. This condition does not restrict the operation of noise pollution laws.  
Standard Condition: I2 (Autotext: I2)

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**I.2 Extended hours of operation for licensed premises – Reviewable Condition**

**Reviewable Condition**

The hours of operation for the licensed premises are extended as follows:

- a) Monday, Tuesday, Wednesday and Sunday – between 8.00pm and 9.30pm
- b) Thursday, Friday and Saturday – between 8.00pm and 10.00pm

This condition is a reviewable condition as referred to under the Act, s.80A (10B-10D). The extended trading hours will be reviewed in accordance with **Condition I.3**.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

**Note:** Council's consideration of the extended hours of operation of licensed premises will take into account:

- a) compliance of the premises in terms of security and its general management;
- b) the number and nature of substantiated complaints regarding the operation of the premises;
- c) compliance with the conditions of this consent; and
- d) any other matters considered relevant to the environmental evaluation of the premises.

Standard Condition: I4 (Autotext: I14)

**I.3 Review of extended hours of operation for licensed premises**

Council will review the extended trading hours as referred to in **Condition I.2** generally as follows:

- a) One (1) year following the issue of any occupation certificate applicable to this application (if works are proposed) or the date of development consent (if no works are proposed)
- b) Two (2) years following the first review
- c) Each five (5) years thereafter

The review will be undertaken in accordance with the Regulations, cl.124D. This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

**Note:** A review will only be undertaken if Council has satisfactory evidence to suggest the extended trading hours are unduly impacting on the amenity of the neighbourhood or NSW Police has requested a review.

**Note:** The review will be presented to the Council Committee that determined the application and all stakeholders will be notified of the meeting.

**Note:** As a result of a review a reviewable condition may be changed

Standard Condition: I5 (Autotext: I15)

**I.4 Maximum Patron Capacity**

The total number of patrons on the premises at any time shall not exceed **50** patrons.

Any person/s attending the premises for the purpose of 'takeaway' products/services will not be considered a 'patron' as detailed above, provided no food and or drink is consumed by those persons on the premises.

Standard Condition: I6 (Autotext: I16)

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**L.5 Signage to be Displayed – Licensed Premises**

Signage (in lettering not less than 15mm in height on a contrasting background) is to be erected in a prominent position near the principal entry to the premises in accordance with Clause 98D of the EPA Regulation 2000.

The signage may change from time to time due to reviewable conditions in accordance with **Condition L.3**, and shall state the following:

"Approved Hours of Operation

Monday Tuesday, Wednesday and Sunday including Public Holidays: **7.00am to 9.30pm**

Thursday, Friday and Saturday: **7.00am to 10.00pm**

Approved patron capacity

50 patrons

Upon leaving please respect local residents by minimising noise.

Name and mobile number of the licensee/on site manager"

The signage required by this condition is to be erected prior to the commencement of operations. This condition has been imposed to clearly identify the hours and patron capacity of the licensed premises.

Standard Condition: 19 (Autotext: 111)

**L.6 Neighbourhood Amenity – Licensed Premises**

The management of the premises:

- a) Shall ensure persons entering and leaving the premises do not crowd or loiter in the vicinity of the premises in such manner that pedestrian movement is obstructed or hindered.
- b) Shall ensure that the manner in which the business of the premises is conducted and/or the behaviour of persons entering and leaving the premises does not cause undue disturbance to the amenity of the neighbourhood. In this regard, the management shall be responsible for the control of noise and litter generated by persons and/or premises operations. If so directed by Council or by NSW Police, the Management is to employ private security staff to ensure that this condition is complied with.
- c) Shall record in a Register full details of any disturbance complaint/s made by a person to management or staff in respect to the manner in which the business of the premises is conducted and/or the behaviour of persons entering or leaving the premises. Such recording will include time, date, nature of the complaint/s and any complainant details if provided.

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- d) Shall respond to any disturbance complaint/s in a timely and effective manner. All actions undertaken by management / staff to resolve such complaint/s shall be recorded in the Register.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

Note: The lead agency for the enforcement of this condition is NSW Police.  
Standard Condition: I10 (Autotext: I110)

#### **I.7 Copies of Consents, Registers and Management Plans – Licensed Premises**

A full copy of all current development consents (including approved plans) for the operation of the premises, any Registers required and any required Plan of Management must be kept on the premises and made available for inspection immediately upon request by Council Officers, Police Officers and/or Office of Liquor Gaming and Racing Authorised Officers.  
Standard Condition: I12

#### **I.8 Sale/consumption of liquor**

##### **Licensed Restaurant (On-premises License)**

- a) No liquor may be sold, supplied or consumed on the premises except with the approval and authorisation from the relevant Liquor Authority.
- b) The primary use of the premises must be that of a restaurant with the provision of genuine meals, prepared upon the premises, to patrons seated at comfortable dining positions. This will include a seat and access to table / bench space generally in accordance with the approved plans
- c) Liquor may only be sold and/or supplied to patrons on the premises with or ancillary to a genuine meal.
- d) Patrons shall be seated whilst consuming liquor.
- e) The sale and/or supply of liquor must cease 15 minutes prior to the cessation of the respective hours of operation for the specified indoor and outdoor seating areas.
- f) No patron shall be permitted to take glasses or open containers of liquor off the premises.
- g) Management is responsible for ensuring the number of patrons in the premises does not exceed the approved capacity specified in **Condition I.3**.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

Standard Condition: I14 (Autotext: I114)

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Development Consent

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**I.9 Operation in Accordance with Plan of Management (POM)**

- a) The operation and management of the premises shall be in accordance with the POM prepared by GSA Planning, as approved by **Condition A.2** and amended under **Condition F.4** above. Where there is a discrepancy between the POM and this consent, this consent prevails.
- b) The POM shall be filed with the Licensing Police of the Rose Bay Local Area Command prior to the commencement of operations.
- c) The POM cannot be altered without the written consent of Council  
Standard Condition: I15 (Autotext: I115)

**I.10 Garbage Collection**

The garbage area must be maintained at all times to ensure that a breeding ground is not created for pests and must be capable of being easily and effectively cleaned.

All garbage containers must have tight fitting lids and be large enough or in sufficient numbers to contain all the waste produced by the business while awaiting the next removal from the premises.

Waste collection is to be undertaken **ONLY** between the hours of:

- 7.00am and 9.00pm Monday to Friday, and
- 8.00am and 8.00pm Saturday, Sunday and Public Holidays

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

Standard Condition: I16 (Autotext: I116)

**I.11 Glass sorting or collection**

Glass must not be emptied or transferred from one receptacle to another anywhere in a public place. All glass must be emptied/transferred within the premises and removed in containers.

No bottle or glass sorting, recycling or collection shall take place between 8.00pm and 8.00am Sunday to Friday and between 9.00pm Saturday and 10am Sundays and Public Holidays.

This condition is imposed to protect the amenity of neighbouring residents.

Standard Condition: I17 (Autotext: I117)

**I.12 NSW Police requirements (Licensed Premises)**

**Incidents involving acts of violence**

Immediately after the person in charge of the licensed premises becomes aware of an incident involving an act of violence causing an injury to a person on the premises, the person must:



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Development Consent

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- a) Take all practical steps to preserve and keep intact the area where the act of violence occurred
- b) Retain all material and implements associated with the act of violence in accordance with the Crime Scene Preservation Guidelines issued by the NSW Police
- c) Make direct and personal contact with the Local Area Commander or his/her delegate and advise the Commander or delegate of the incident, and comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred

**Safety and security measures**

The following safety and security measures must be complied with:

- a) The entrance is to remain illuminated during all hours of trade past sunset until close
- b) The licensed premises are to be supervised during all hours of trade.
- c) An incident register is to be utilised and maintained on a daily basis solely for the purpose of the ground floor restaurant during all hours of trade.

**No use of strobes, lasers or flicker lights is permitted**

No strobes, lasers or flicking lights are to be employed to the restaurant area.

**Note:** The lead agency for enforcement is NSW Police. Standard Condition: I19

**L13 Waste Management - Commercial**

The owner and/or occupier must comply with the approved Site Waste Minimisation and Management Plan (SWMMP) and with Council's Site Waste Minimisation and Management Development Control Plan 2010.

All waste must be presented for collection in a receptacle. Waste receptacles must be presented no earlier than the close of business on the day before collection. Waste and recycling bins/crates must be removed from the road or footpath within 1 hour of collection or otherwise in accordance with the approved SWMMP.

Receptacles are not to be stored in any public place at anytime. Waste and recycling receptacles must be stored at all times within the boundaries of the site.

This condition does not apply to the extent that Activity Approval exists under the Local Government Act 1993 or the Roads Act 1993 and subject that all conditions of such approval(s) are complied with.

**Note:** This condition has been imposed to ensure that the provisions of the approved SWMMP and of Council's Site Waste Minimisation and Management Development Control Plan 2010 are complied with during the ongoing operations of the development.

**Note:** No waste will be collected by Council that isn't presented properly. The waste must be presented with lid closed to reduce littering.  
Standard Condition: I32



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Development Consent

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**L14 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* (<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

**L15 Maintenance of Sound Attenuation**

Sound attenuation must be maintained in accordance with the *Acoustic Assessment* approved by Condition A.2. Standard Condition: 157

**L16 Noise from licensed premises**

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8k Hz inclusive) by more than 5dB(A) between 07:00 am and 12:00 midnight at the boundary of any affected residence.

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8k Hz inclusive) between 12:00 midnight and 07:00 am at the boundary of any affected residence.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 am.

**Note:** This condition has been imposed to protect the amenity of the neighbourhood.

**Note:** dB(A) is a value used for 'A-weighted' sound pressure levels 'A' frequency weighting is an adjustment made to approximate the response of the human ear.

**Note:** *Licensed premises* means premises licensed under the *Liquor Act 2007*

**Note:** For the purposes of this condition, the LA10 is the A-weighted sound pressure level that is exceeded for 10% of the time over which a given sound is measured.

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Development Consent

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**Note:** 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  $L_{A90}$  level measured by a sound level meter over the applicable period.

**Note:** This condition is identical to the minimum standard condition imposed by the Casino Liquor and Gaming Control Authority (the Authority). The Authority may specify other standards in respect of the above condition under the *Liquor Act 2007*, and associated Regulations. Section 79 of the *Liquor Act 2007* provides an informal mechanism for complaints to be made (by residents, Police, local consent authorities and others) where the amenity of local neighbourhoods is unduly disturbed by the conduct of licensed premises including registered clubs (or their patrons). The Director of Liquor and Gaming is responsible for resolving such complaints and may impose temporary or permanent conditions on any licence. For further information go to the NSW Office of Liquor and Gaming and Racing's website: [www.olgr.nsw.gov.au](http://www.olgr.nsw.gov.au).

**Note:** Interior noise levels of licensed premises which exceed safe hearing levels are not supported or condoned by Council. Standard Condition: 158

#### **L17 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: *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

#### **L18 Food Premises – Maintenance of Food Premises**

The food premises must be maintained in accordance with the *Food Act 2003*, *Food Regulation 2004*; the Food Standards Code as published by Food Standards Australia and New Zealand and Australian Standard AS 4674-2004: *Construction and fit out of food premises*.

This condition has been imposed to protect public health.

**Note:** The provisions of the Food Act 2003 may change over time and irrespective of this condition compliance with this Act, regulations, food standards and other standards adopted under the Food Act (as amended) are mandatory. The *Food Act* and applicable regulations can be accessed free of charge at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

Standard Condition: 130

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Development Consent

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**I.19 Food Premises – Maintenance of the Kitchen Exhaust Log**

A logbook detailing the schedule maintenance and cleaning of the odour control units and filtering systems shall be kept on the premises at all times and be made available for viewing by Council's Environmental Health Officer's as required.

**I.20 Food Premises – Odours**

The use of the premises must not give rise to air pollution, including odours, as defined by the Protection of the Environment Operations Act 1997. Waste gases released from the premises must not cause a public nuisance, be hazardous, or harmful to human health or the environment.

**I.21 Deliveries**

All deliveries must utilise the loading dock of the building approved by DA2008/829/1, consistent with **Condition C.1(f)** of that consent, and **Condition C.1(d)** of this consent.

Deliveries are not to be made by parking vehicles on the street.

All deliveries are to occur during operating hours only.

This condition has been imposed to protect the amenity of the neighbourhood and to mitigate the potential impacts of the development upon parking and traffic.

**I.22 Sanitary Facilities**

Access must be provided to the existing toilet facilities upon the first floor of the subject building to patrons of the approved licensed restaurant throughout the approved trading hours.

Access to the disabled toilet must be provided by use of the lift.

Use of the building area beyond the subject tenancy is subject to the relevant owner's consent.

**J. Miscellaneous Conditions**

No conditions.

**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;

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Development Consent

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- c) Prosecute any person breaching this consent; and/or
- d) Seek injunctions/orders before the courts to restrain and remedy any breach.

Warnings as to potential maximum penalties

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council's policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order.

This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

**Note:** The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of the *Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. You can obtain further information from the following web sites:

<http://www.theshopfront.org/documents/ConvictionsCriminalRecords.pdf> and the Attorney General's [www.agd.nsw.gov.au](http://www.agd.nsw.gov.au).

Standard Advising: K1 (Autotext KK1)

## **K.2 Commonwealth Disability Discrimination Act 1992 ("DDA")**

The Disability Discrimination Act 1992 (DDA) makes it against the law for public places to be inaccessible to people with a disability. Compliance with this development consent, Council's Access DCP and the BCA does not necessarily satisfy compliance with the DDA.

The DDA applies to existing places as well as places under construction. Existing places must be modified and be accessible (except where this would involve "unjustifiable hardship").

Further detailed advice can be obtained from the Human Rights and Equal Opportunity Commission ("HEROC"):

- a) <http://www.hreoc.gov.au/index.html>
- b) [http://www.hreoc.gov.au/disability\\_rights/dda\\_guide/ins/ins.html](http://www.hreoc.gov.au/disability_rights/dda_guide/ins/ins.html)

If you have any further questions relating to the application of the DDA you can send an email to HEROC at [disabdis@humanrights.gov.au](mailto:disabdis@humanrights.gov.au).

Standard Advising: K3 (Autotext KK3)

## **K.3 Builder's Licences and Owner Builders Permits**

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Development Consent

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Section 81A of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an **owner-builder**, must appoint a *principal contractor* for residential building work who must be the holder of a contractor licence.

Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder): <http://www.dft.nsw.gov.au/building.html>.

The Owner(s) must appoint the PCA. The PCA must check that Home Building Act insurance is in place before the commencement of building work. The Principal Contractor (Builder) must provide the Owners with a certificate of insurance evidencing the contract of insurance under the Home Building Act 1989 for the residential building work.

Standard Condition: K5 (Autotext KK5)

#### K.4 Building Standards - Guide to Standards and Tolerances

The PCA does not undertake detailed quality control inspections and the role of the PCA is primarily to ensure that the development proceeds in accordance with this consent, Construction Certificates and that the development is fit for occupation in accordance with its classification under the Building Code of Australia. Critical Stage Inspections do not provide the level of supervision required to ensure that the minimum standards and tolerances specified by the "Guide to Standards and Tolerances©" ISBN 0 7347 6010 8 are achieved.

The quality of any development is a function of the quality of the *principal contractor's* or *owner builder's* supervision of individual contractors and trades on a daily basis during the development. The PCA does not undertake this role.

The NSW Office of Fair Trading have published a "Guide to Standards and Tolerances©" ISBN 0 7347 6010 8. The guide can be obtained from the Office of Fair Trading by calling 13 32 20 or by Fax: 9619 8618 or by post to: Marketing Branch, PO Box 972, Parramatta NSW 2124.

The Guide can be down loaded from:

<http://www.fairtrading.nsw.gov.au/pdfs/corporate/publications/dft242.pdf>

Council, as the PCA or otherwise, does not adjudicate building contract disputes between the *principal contractor*, contractors and the owner.

Standard Condition: K6 (Autotext KK6)

#### K.5 Appeal

If you wish to discuss this decision, please do not hesitate to contact Mr A Hill, Assessment Officer, on (02) 9391 7162.

However, if you wish to pursue your rights of appeal in the Land & Environment Court you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, site hearings and the use of Court Appointed Experts, instead of a full Court hearing.

This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time

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Development Consent

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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.6 Release of Security**

An application must be made to Council by the person who paid the security for release of the securities held under section 80A of the *Act*.

The securities will not be released until a *Final Occupation Certificate* has lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council's requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council's requirements.

Council will only release the security upon being satisfied that all damage or all works, the purpose for which the security has been held have been remedied or completed to Council's satisfaction as the case may be.

Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed.

Upon completion of each section of road, drainage and landscape work to Council's satisfaction, 90% of the Bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.

**Note:** The Application for Refund of Security form can be downloaded from [http://www.woollahra.nsw.gov.au/\\_data/assets/pdf\\_file/0004/76405/Refund\\_of\\_Security\\_Form.pdf](http://www.woollahra.nsw.gov.au/_data/assets/pdf_file/0004/76405/Refund_of_Security_Form.pdf)  
Standard Condition: K15 (Autotext KK15)

#### **K.7 Recycling of Demolition and Building Material**

It is estimated that building waste, including disposable materials, resulting from demolition, excavation, construction and renovation, accounts for almost 70% of landfill. Such waste is also a problem in the generation of dust and the pollution of stormwater. Council encourages the recycling of demolition and building materials.  
Standard Condition: K17 (Autotext KK17)

#### **K.8 Encroachments**

It is noted that there is an encroachment by the building over Council's road reserve. While in this case the encroachments are only minor, Council may at some future date require its removal or formalisation.  
Standard Condition: K22 (Autotext KK22)



Council Ref: DA 621/2017/2; Mr A Hill:kp  
Planning & Development Division

Woollahra  
Municipal  
Council



7 August 2018



Mr G Cipri  
Barbetta Pty Ltd  
2-8 Elizabeth St  
PADDINGTON NSW 2021

Dear Mr Cipri,

**Approval of a Section 4.55 Application**

**Application No: DA 621/2017/2**

**Property: 2-8 Elizabeth Street PADDINGTON 2021**

**Applicant: Mr G Cipri**

**Proposal: Relocation of the air-lock door from existing central door to another door**

Please find attached your modified consent including conditions, notes, stamped plans and additional information in relation to DA621/2017, for change of use from a food and drink premises to a licensed restaurant including a liquor license, issued on 19 April 2018.

If you are dissatisfied with the determination, you can seek a review of Council's determination provided an application is made to Council within 6 months of the determination.

Alternatively, you can appeal to the Land and Environment Court within 6 months of the date on which you receive this Notice. However, 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, quicker and cheaper for all parties.

If you have any enquiries, please contact our Assessment Officer Mr A Hill on 9391-7162 between 8.30am and 11.00am Monday to Friday.

Signature on behalf of the consent authority

Mr G Fotis  
Team Leader – Development Control

Redleaf Council Chambers  
636 New South Head Road  
Double Bay NSW 2028

Correspondence to:  
PO Box 61  
Double Bay NSW 1360

t: (02) 9391 7030  
f: (02) 9391 7044  
e: records@woollahra.nsw.gov.au  
www.woollahra.nsw.gov.au

DX 3907 Double Bay  
ABN 32 218 483 245



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Section 4.55 Consent Conditions

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**Development Consent No. 621/2017/2**

**Notice of Determination of a Section 4.55 Application**

Sections 4.17 and 4.55 of the Environmental Planning and Assessment Act 1979 ('the Act')  
Clause 122 of the Environmental Planning and Assessment Regulation 2000 ('the Regulation')

**Applicant's Name**

Mr G Cipri

**Date of Determination**

7 August 2018

**Land to which this applies**

2-8 Elizabeth Street PADDINGTON

**Proposed Modification**

Relocation of the air-lock door from existing central door to another door

**Statement of Reasons for Decision**

- The development consent as proposed to be modified, is considered to be substantially the same as the originally approved development
- The proposal satisfies section 4.55 of the Environmental Planning and Assessment Act 1979
- It is considered to be satisfactory with all relevant planning policies including the objectives of WLEP 2014 and WDCP 2015
- It will not have adverse effects on the local built and natural environment nor any adverse social and economic impacts in the locality
- All likely impacts to adjoining properties including any submissions made have been addressed in the report, or considered to be satisfactory
- The site is suitable for the proposed development
- The proposal is in the public interest

Section 4.55 Consent Conditions

**Imposition of Conditions**

Subject to the provisions of section 4.17 of the Act, this consent has been granted subject to the following:

**The following condition is to be added:**

**A.4 Approved Amended (s4.55) Plans and supporting documents**

Those acting upon or under this amended consent must carry out all work and maintain the use and works in accordance with the approved plans and supporting documents listed in the original consent, as amended by the amended architectural approved plans to which is affixed a Council stamp "Approved" and supporting documents as submitted by the Applicant listed below otherwise than modified by further condition(s). Where the plans relate to amendments, alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
A.02.11 Revision A	Proposed Plan: Airlock Detail	ACME	3.05.18

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

Standard Condition: A5 (Autotext AA6)

**AND**

**Condition C.1 is to be replaced with the following condition (in order to amend part f & to add part g):**

**C.1 Modification of details of the development (Section 80A(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 proposed business identification sign**

In order to comply with Assessment Criteria 7 & 8 of Schedule 1 of State Environmental Planning Policy No. 64 – Advertising and Signage, and Control C18b of Section E7.2.1 Building Identification Signs and Business Identification Signs of Chapter E7 Signage of Woollahra Development Control Plan 2015, the proposed business identification sign must be 2.6m above the level of the footpath immediately below and the sign is not to be illuminated.

**b) The proposed bench is to be deleted**

As no owners consent by Council is given to the proposed bench upon the Elizabeth Street footpath, the bench is to be deleted.

This condition has been imposed in order to protect the amenity of the neighbourhood.

Section 4.55 Consent Conditions

- c) **The proposed furniture plan must provide seating for no more than 50 patrons**

The proposed furniture plan approved by Condition A.2 must be amended to provide for a maximum of 50 patrons.

This condition has been imposed to ensure that the built furniture of the Licensed Restaurant reflects the maximum capacity approved by **Condition I.3**.

- d) **Loading dock**

The existing loading dock within the building is to be utilised for all deliveries.

- e) **Garbage room**

The existing garbage room is to be utilised for the storage and collection of all waste (including glass).

- f) **Restaurant entry (Elizabeth Street Paddington)**

The entrance to the restaurant after 6 pm must be limited to the northern entry off Elizabeth Street, Paddington and an air lock must be constructed and located internally to prevent the transmission of noise. The southern entry off Elizabeth Street, Paddington may be used as a disabled access after 6pm.

- g) **Airlock Entry**

The airlock shall be designed to achieve the following:

- a) The airlock doors shall be equipped with self-closing devices;
- b) The airlock shall be designed so that in passing through the airlock **it is impossible for the interior and exterior doors to open at the same time**;
- c) The airlock doors are to be designed to assist in reducing noise emission from the premises; &
- d) Airlock Doorways are to be acoustically sealed.

**Note:** The effect of this condition is that it requires design changes and/or further information to be provided with the *Construction Certificate* drawings and specifications to address specific issues identified during assessment under section 79C of the *Act*.

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

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

Standard Condition: C4 (Autotext CC4)

**AND**

**Condition F.4 to be replaced with the following condition (in order to reflect the amendments made to Condition C.1):**

**F.4 Filing of an amended Plan of Management (POM)**

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Section 4.55 Consent Conditions

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The POM prepared by GSA Planning, approved by **Condition A.2**, is to be modified to include the following:

- Compliance with **Conditions L1, L2, L3, L4 & L7**.
- After 6pm, entry to the premises by patrons must be limited to the northern entry off Elizabeth Street, Paddington. The southern entry off Elizabeth Street may continue to be used for disabled access after 6pm.
- Staff are to enter and exit the premises via Victoria Street, Paddington only.
- All patrons are to exit the premises via Victoria Street, Paddington after 8pm.
- All patrons (including staff) must leave the premises within 30 minutes of closing time.
- No noise generating activities after closing time, management to usher patrons from the site and adjacent footpath.
- Lights in the restaurant shall not cause a nuisance to the surrounding area.
- A complaints system, which includes the name and mobile number of the licensee/on site manager.

The revised Plan of Management must be approved by Council's Manager, Development Control, and the premises operated in accordance with the approved Plan of Management, and must be filed with Licensing at the Eastern Suburbs Police Area Command prior to the commencement of the operations of the Licensed Restaurant.

**Review of Determination and Right of Appeal**

Within 6 months after the date of determination, a review of this determination can be made under Division 8.2 of the Act or an appeal to the Land and Environment Court can be made pursuant to the provisions of Part 4, Division 8 of the Act.

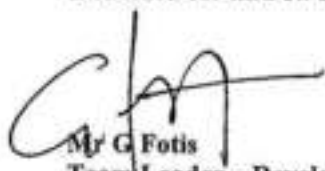
**Plans endorsed by the consent authority**

Copies of relevant plans endorsed by the consent authority and as referenced by conditions of consent are annexed.

**Construction Certificate**

Your attention is drawn to the necessity to obtain a Construction Certificate under Part 6 - Building & Subdivision Certification of the Environmental Planning and Assessment Act 1979 in respect of the modifications approved pursuant to Section 4.55 of the Act. An Application for a Construction Certificate may be lodged with Council. Alternatively, you may apply to an accredited certifier for a Construction Certificate.

**Endorsed for and on behalf of Woollahra Municipal Council**

  
Mr G Fotis  
Team Leader – Development Control  
per:

7 August 2018  
Date of endorsement



**Council Ref:** Notices/Orders: 91/2018/Mr C Jenner/cj  
Compliance Division

5 October 2018

Woollahra  
Municipal  
Council



|||||  
Ashdel Properties Pty Ltd  
C/- Hajos, Anstee & Associates  
GPO Box 248  
SYDNEY NSW 2001

Dear Sir/Madam

**Breach of Development Consents DA829/2008 and DA621/2017  
2-8 Elizabeth Street PADDINGTON 2021  
LOT: 228 DP: 1188819**

Woollahra Council has received allegations regarding the operations of Barbetta Café claiming that they are in breach of the subject development consents.

The claims state that delivery vehicles for Barbetta at 2-8 Elizabeth St Paddington are double parking and illegally stopping. Specifically that a bread delivery on 4 October 2018 (vehicle registration number BLT65Z) double parked on Elizabeth Street at around 7.30am holding up traffic.

The deliveries for the premises are governed by two specific conditions of consent(s). Condition C.1(f) of development consent DA829/2008 for the erection of the subject commercial premises states:

*C.1 Modification of details of the development (s80A(1)(g) of the Act)*

*The approved plans must be amended and the Construction Certificate plans and specification, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail:*

- ...
- f. The loading bay must be used for the loading and unloading of all goods relating to the ground floor retail use.*

Condition I.9(a) to development consent DA621/2017 for the change of use of the café to a licensed restaurant states:

*I.9 Operation in Accordance with Plan of Management (POM)*

- a) The operation and management of the premises shall be in accordance with the POM prepared by GSA Planning, as approved by Condition A.2 and amended under Condition F.4 above. Where there is a discrepancy between the POM and this consent, this consent prevails.*

Recycled Council Chambers  
535 New South Head Road  
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[www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)

DX 8807 Double Bay  
ABN 92 218 483 245

The Plan of Management approved under DA621/2017 states:

***"Location of deliveries***

***Vans deliveries goods to the site will park legally on the street and deliver the goods directly to the site."***

**Effect of Breach of Development Consent**

Your attention is drawn to the following sections and provisions of the *Environmental Planning and Assessment Act 1979* (the "Act"):

**9.50 Offences against this Act and the regulations**

*"(3A) A person who:*

*(a) aids, abets, counsels or procures another person to commit, or*

*(b) conspires to commit,*

*an offence against this Act or the regulations arising under any other provision is guilty of an offence against this Act or the regulations arising under that provision and is liable, on conviction, to the same penalty applicable to an offence arising under that provision.*

*(4) It is a sufficient defence to a prosecution for an offence that arises from the failure to comply with a development control order if the defendant satisfies the court that the defendant was unaware of the fact that the matter in respect of which the offence arose was the subject of an order.*

*(5) Unless the context otherwise requires, a requirement under this Act or the regulations that must be complied with by a particular time, or within a particular period, continues after the time has expired or the period ended, and so must still be complied with."*

**9.51 Maximum monetary penalty—Tier 1, Tier 2 or Tier 3**

*"If Tier 1, Tier 2 or Tier 3 is specified as the maximum monetary penalty at the end of a provision (or a number of provisions) of this Act, a person who contravenes or fails to comply with that provision (or those provisions) is guilty of an offence and liable to a monetary penalty not exceeding the relevant penalty specified in the following sections. If a period of imprisonment is also specified, the person is also liable to imprisonment not exceeding the period so specified."*

**9.52-9.54 Maximum penalties for offences against Act**

The maximum penalties for offences against the Act range from \$250,000 to \$5 million, with maximum daily penalties for continuing offences ranging from \$2,500 to \$50,000.

**9.58 Penalty notices for certain offences**

*"(1) An authorised person may serve a penalty notice on a person if it appears to the authorised person that the person has committed an offence under this Act or the regulations, being an offence prescribed by the regulations."*

**Direction to cease illegal development**

Council requires you to explain what action you will take to immediately remedy the above breaches. Council will take appropriate action to prosecute any breach. Current Fines of up to \$6000.00 per offence may apply.

**Representation must be made to Council**

Prior to giving effect to the provisions of Act, Council requests you to show cause in writing to Council why legal proceeding or penalty infringement notices should not be instituted against you for the above breach(s) of Development Consent.

Should you wish to make representations they should be made by you, your solicitor, barrister or agent in writing to **Mr C Jenner, Council's Team Leader Compliance**, within SEVEN (7) DAYS of the date of this letter.

Should you have any further questions please contact Mr C Jenner, between 8.00am and 4.30pm weekdays on 9391-7146, by facsimile on 9391-7044 or by email: [records@woollahra.nsw.gov.au](mailto:records@woollahra.nsw.gov.au).

Yours sincerely

  
Craig Jenner  
Team Leader Compliance





File Ref:

### Affidavit of Service within Summons/Notice/Order

made under the Oaths Act 1900

Part 5

#### Council Officer

Name

Title

Address

#### Service of Summons / Notice / Order

By post

In person

Leaving with person over the age of 16  
years

In the case of a Company

A copy of the said notice/  
order/summons is attached and  
marked with the letter

#### Explanation to person upon whom summons served

§ Where left with person other  
than the person to whom  
summons/notice/order is directed add  
"Who replied ....."

#### Sworn

**Martina Patience**

**Administration Officer – Building & Compliance**

of Woollahra Municipal Council, 536 New South Head Road, Double Bay

On the 4th day of April, 2019

I served the Summons/Notice/Order, of which the within is a duplicate, by:

☐ Delivering it to Double Bay Australia Post Office at 130 pm  
for transmission by pre-paid post in one properly stamped envelope.

☐ Delivering it to him/her personally at : \_\_\_\_\_

☐ Leaving it for him/her with \_\_\_\_\_

a person apparently over the age of 16 years at \_\_\_\_\_

his/her last and most usual place of abode as he/her could not conveniently be met  
with.

☐ Leaving it with \_\_\_\_\_

a person apparently in the service of the Company

at \_\_\_\_\_

the registered office of the Company.

At the time of service I read and explained the nature and effect of the said summons /  
notice / order to the said person.

§ Who replied \_\_\_\_\_

Sworn at

Double Bay  
[place]

on

4/4/19  
[date]

[signature of officer]

in the presence of an authorised witness, who states:

I, Seymour J. Kennedy a JP for NSW 185991 :  
[full name of JP] [JP Registration number]

Certify the following matters concerning the making of this affidavit by the person  
who made it: [\*please cross out any text that does not apply]

1. \*I saw the face of the declarant/deponent ~~OR~~

~~\*I did not see the face of the declarant/deponent because he/she was wearing  
a face covering but I am satisfied that he/she had a special justification for  
not removing it, and~~

2. \*I have known the person for at least 12 months ~~OR~~

~~\*I confirmed the person's identity with~~ road house  
[describe identification document relied on]

Kennedy (JP)  
[signature of JP]

4-4-2019  
[date]

Joy M J Kennedy  
A Justice of the Peace in and for  
the State of New South Wales  
Reg. No. 185991

<b>For hearing at Local Court (in case of summons)</b>	
at	<input type="checkbox"/> Waverley <input type="checkbox"/> Other
on	_____ day of _____, 2019
<b>Defendant/Person</b>	
Name	_____ ACN No.: _____
Address	_____
	Suburb: _____ Post Code: _____
<b>Part 5 Section 26 Oaths Act 1900</b>	<b>Part 5 Affidavits</b>
	26 Before whom oaths or affidavits may be taken
	(1) Any oath declaration or affidavit required for the purpose of any court or for the purpose of the registration of any instrument in the State of New South Wales or for the purpose of any arbitration may be taken or made:
	(a) in any place in the said State before any justice of the peace for the said State, and
	(b) in any country or place out of the said State before a notary public, or before any person having authority to administer an oath in that country or place, and
	(c) in any country or place out of the said State before a British Consular Officer or an Australian Consular Officer exercising his or her functions in that country or place.

Council Ref: Notices/Orders: 62/2019:Ms M Easton  
Compliance Division

3 April 2019

Barbetta Pty Ltd  
2-8 Elizabeth Street  
PADDINGTON NSW 2021

Attention: Joe Cipri

Woollahra  
Municipal  
Council



**Breaches of Development Consent DA621/2017  
Barbetta - 2-8 Elizabeth Street PADDINGTON 2021  
LOT: 228 DP: 1188819**

Council is in receipt of a number of complaints from residents concerning the operation of Barbetta. These complaints relate to breaches of development consent DA621/2017 (the consent) as follows:

1. Daily occurrences of light spill as early as 5.15am.
2. Staff using Elizabeth Street entrances day and night instead of Victoria Street, resulting in noise disturbances particularly at night.
3. The kitchen door adjacent to Elizabeth Street side access kept open permanently, resulting in noise disturbances from kitchen activities.
4. Staff regularly on site after 10.30pm carrying out noise generating activities in the Elizabeth Street side access.
5. Noisy patrons routinely exiting to Elizabeth Street after 8.00pm.
6. Patrons congregating on Elizabeth Street at busy lunch times, creating noise and blocking the footpath.
7. Seating capacity exceeding 50 patrons.
8. The loading dock in Victoria Street not being utilised for all deliveries.
9. The garbage room not being utilised for storage and collection of waste, including glass bottles.
10. Permanent storage of waste receptacles in Vials Lane with transfer of waste and glass bottles occurring in Vials Lane throughout the day and night.

Council officers have conducted an initial review of these matters and are determined to ensure that operations of Barbetta are conducted in an environmentally satisfactory manner and in accordance with the conditions of development consent.

On 14 March 2019, Council officers had an on-site meeting with you and conducted an inspection of Barbetta. That inspection and meeting confirmed the concerns of residents

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536 New South Head Road  
Double Bay NSW 2028

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PO Box 61  
Double Bay NSW 1360

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f: (02) 9391 7044  
e: records@woollahra.nsw.gov.au

DX 3687 Double Bay  
ABN 32 218 483 245

and revealed, without limitation, significant breaches of the development consent and potential noise impacts on residents.

Since our meeting, it has been reported to Council that a bread delivery occurred at 7.45am on 16 March 2019 in Elizabeth Street (vehicle registration number DSF60P) and at 11.45am and 11.50am on 30 March 2019 two vehicles (registration numbers CDX05D and CX63XU respectively) parked in Vials Lane and made deliveries via the Elizabeth Street side access. Elizabeth Street was blocked while the second van waited for the first van to exit Vials Lane.

The consent specifies that all deliveries must utilise the loading dock of the building. Deliveries are not to be made by parking vehicles on the street.

With regard to waste and glass bottles collection, the consent requires the existing garbage room to be utilised for the storage and collection of all waste, including glass. Waste collection is to be undertaken only between the hours of 7.00am and 9.00pm Monday to Friday, and 8.00am and 8.00pm weekends and Public Holidays.

All glass must be stored, emptied and transferred within the premises (ie the garbage room). Glass must not be emptied or transferred from one receptacle to another anywhere in a public place. Bottle and glass sorting, recycling or collection is to be undertaken in the garbage room only between the hours of 8.00am and 8.00pm Monday to Friday, 8.00am and 9.00pm Saturday, and 10.00am to 8.00pm Sunday.

Under parts 5.0 and 6.0 of the approved Plan of Management dated November 2017 staff will take out the rubbish, which will be collected from the kerb the following day and that a waste bin will be wheeled to the kerb by a contract cleaner prior to emptying and wheeled back afterwards.

We observe also that Barbetta is required under condition I.9 of the consent to manage the premises in accordance with the Plan of Management, as approved by condition A.2 and amended under condition F.4 of the consent.

Under parts 3.0, 4.0, 5.0 and 6.0 of the Plan of Management dated November 2017, Barbetta is to manage patrons, noise, deliveries and waste management and take all practical steps to minimise any adverse impacts on the surrounding neighbourhood.

In addition, an amended Plan of Management dated November 2018 was provided to Council with Occupation Certificate 18/206, issued by Paul Aramini Consulting Pty Ltd. However, the amended Plan of Management has not been approved by Council's Manager Development Control in accordance with condition F.4.

Council is greatly concerned that your obligations are regularly not being complied with. The emptying or transferring of glass bottles from one receptacle to another in Vials Lane instead of the garbage room, the loading dock in Victoria Street not being utilised for all deliveries and the kitchen door to the Elizabeth Street side access not being kept closed are significant concerns to residents, a source of significant amenity disturbance, and therefore also a particular concern to Council.

#### **Effect of Breach of Development Consent**

Your attention is drawn to the following sections and provisions of the *Environmental Planning and Assessment Act 1979* (the "Act"):

Notice Orders - 2019-02 - 1-6 Elizabeth Street PADDINGTON - EP and A Breach of - Barbetta

2 of 3



**9.50 Offences against this Act and the regulations**

*"(3A) A person who:*

- (a) aids, abets, counsels or procures another person to commit, or*
  - (b) conspires to commit,*
- an offence against this Act or the regulations arising under any other provision is guilty of an offence against this Act or the regulations arising under that provision and is liable, on conviction, to the same penalty applicable to an offence arising under that provision.*
- (4) It is a sufficient defence to a prosecution for an offence that arises from the failure to comply with a development control order if the defendant satisfies the court that the defendant was unaware of the fact that the matter in respect of which the offence arose was the subject of an order.*
  - (5) Unless the context otherwise requires, a requirement under this Act or the regulations that must be complied with by a particular time, or within a particular period, continues after the time has expired or the period ended, and so must still be complied with."*

**9.51 Maximum monetary penalty—Tier 1, Tier 2 or Tier 3**

*"If Tier 1, Tier 2 or Tier 3 is specified as the maximum monetary penalty at the end of a provision (or a number of provisions) of this Act, a person who contravenes or fails to comply with that provision (or those provisions) is guilty of an offence and liable to a monetary penalty not exceeding the relevant penalty specified in the following sections. If a period of imprisonment is also specified, the person is also liable to imprisonment not exceeding the period so specified."*

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The maximum penalties for offences against the Act range from \$250,000 to \$5 million, with maximum daily penalties for continuing offences ranging from \$2,500 to \$50,000.

**9.58 Penalty notices for certain offences**

*"(1) An authorised person may serve a penalty notice on a person if it appears to the authorised person that the person has committed an offence under this Act or the regulations, being an offence prescribed by the regulations."*

**Direction to comply with Development Consent**

Council requires you to explain what action you will take to immediately remedy the identified breaches and why Council should not take immediate enforcement action in respect of the identified non-compliances in relation to conditions C.1, F.4, I.4, I.6, I.9, I.10, I.11, I.13 and I.21 of Development Consent DA621/2017.

**Representation must be made to Council**

Should you wish to make representations they should be made by you, your solicitor, barrister or agent in writing to **Ms M Easton, Council's Compliance Officer, by close of business on 10 April 2019.**

If a satisfactory response is not received, Council reserves its right to take appropriate enforcement action to prosecute any breach and/or restrain any ongoing breach by seeking urgent interlocutory relief.

Should you have any further questions please **contact Ms M Easton, between 10.00am and 4.30pm weekdays on 9391-7149**, by facsimile on 9391-7044 or by email: [records@woollahra.nsw.gov.au](mailto:records@woollahra.nsw.gov.au).

Yours sincerely

  
Craig Jenner

Team Leader Compliance

Notice 01/19 - 2019 42 - 2-4 Elizabeth Street PADDINGTON - EP and A Breach of - Barista

3 of 3

Council Ref: Notices/Orders 62/2019/1:Ms M Easton

Woollahra  
Municipal  
Council

17 September, 2019



Barbetta Pty Ltd  
2-8 Elizabeth Street  
PADDINGTON NSW 2021

Attention: Joe Cipri

Dear Mr Cipri

Council Notice: 62/2019

Property: 2-8 Elizabeth Street PADDINGTON 2021

I refer to Council's 'show cause' letter dated 3 April 2019, directing compliance with development consent DA620/2017/1, and your meeting with Council staff on 14 March 2019.

Feedback from residents indicates that some conditions are being adhered to. However, a number of conditions are still not being complied with and the operation of the restaurant continues to negatively impact on the amenity of surrounding neighbours.

Your attention is drawn to the following summarised conditions of consent which must be satisfied during the ongoing use of the restaurant:

- **F.4 Plan of Management** to include the following:
  - Staff are to enter and exit the premises via Victoria Street, Paddington only.
  - All Patrons are to exit the premises via Victoria Street, Paddington after 8pm.
  - All patrons (including staff) must leave the premises within 30 minutes of closing time.
  - No noise generating activities after closing time, management to usher patrons from the site and adjacent footpath.
- **I.2 Extended hours of operation**  
The hours of operation for the licensed premises are extended as follows:
  - a) Monday, Tues, Wed, and Sun – to 9.30pm
  - b) Thu, Fri and Sat – to 10.00pm
- **I.4 Maximum Patron Capacity**  
The total number of patrons on the premises at any time shall not exceed 50 patrons.
- **I.6 Neighbourhood Amenity – Licensed Premises**  
The management of the premises:
  - b) shall ensure that the manner in which the business is conducted and/or the behaviour of persons entering and leaving the premises does not cause undue disturbance to the amenity of the neighbourhood.

- **L8 Sale/consumption of liquor**
  - b) The primary use of the premise must be a restaurant with the provision of genuine meals to patrons seated at comfortable dining positions.
  - c) Liquor may only be sold and/or supplied to patrons with or ancillary to a genuine meal.
  - d) Patrons must be seated whilst consuming liquor
- **L21 Deliveries**

All deliveries must utilise the loading dock of the building.  
Deliveries are not to be made by parking vehicles on the street.

Since Council's last correspondence, Council has continued to receive complaints about the operation of Barbetta as detailed below:

1. **26/5/2019** – Cleaning activities after 10pm / staff access

*"Staff continue to access the premises via Elizabeth Street Paddington and loud and noisy cleaning activities continued until 11.20pm outside of the premises in the side alleyway accessed via Elizabeth Street Paddington."*

2. **3/6/2019** – Cleaning activities after 10pm / staff access

*"Staff on site up to 11.30pm last night (2<sup>nd</sup> June 2019); this occurs every Friday, Saturday and Sunday. The biggest issue is the use of the side access corridor at that time of night, due to the high walls any noise activity is amplified and impacts on neighbours. Staff are still entering and leaving via Elizabeth Street."*

3. **30/6/2019** - Deliveries

*"Barbetta caf  s delivery vehicle continue not to utilise the loading dock, ie. This week, bread delivery (DSF60P) and Lotus air-conditioning filter delivery Saturday morning."*

4. **2/8/2019** – Cleaning activities after 10pm

*"The noisy cleaning continue to be conducted outside of the premises well past 10 pm on Wednesday, Thursday, Friday and Saturday nights. Most nights the side access door located off Elizabeth Street is left open whilst the restaurant is closing up and open for trading, thus cannot adequately contain the sound reverberation arising from the kitchen, combined with cleaning outside of the premises is a significant ongoing disturbance to those neighbours directly across the Rd with their bedrooms facing Elizabeth Street."*

5. **23/8/2019** – Patron numbers / cleaning activities after 10pm

*"Last night the on 22nd of August and Saturday 27th of July private functions were held at the premises, on both occasions the restaurant exceeded the maximum patron number of 50 ( last night's function consisted of around 70 patrons) thus in breach of "Condition L4 Maximum Patron Capacity." Furthermore, part of their Liquor licence consent requires liquor to be served with a "genuine meal", importantly it highlights patrons must be seated in a*



*dining position whilst consuming alcohol. However patrons were not seated, in fact most of the restaurants tables and chairs were removed to make room for the exceeding number of patrons thus in breach of ...Condition 1.8 Sale /consumption of liquor.*

*Unreasonable noise (is) transmitted into our homes late at night (by) the continued neglect (of) Condition F.4 Plan of Management.*

*Staff continue to breach the above conditions and noisy and unacceptable cleaning being conducted outside of the premises is a regular occurrence between 10.00- 11.30pm on Wednesday, Thursday, Friday and Saturdays nights. This noise generating activity outside of the premises is unreasonable and directly affects my wellbeing."*

6. **25/8/2019 – Noisy function / trading hours**

*"Functions were held at the premises on Saturday 27/8/2019 & Thursday 22/8/2019 but the premises are not approved for use as a function centre. Neither do they have a PSA liquor licence. Patrons are to leave via Victoria Street...noise from patrons leaving the premises via Elizabeth Street impacts adversely on my property. On the night of Thursday 22/8, there was a lot of noise coming from patrons gathered outside Barbetta in Elizabeth Street. The noise was especially disruptive as there was very loud yelling, over-exuberant laughter, high-pitched screaming and endless repetition of farewells from some females (presumably resulting from excess liquor consumption)"*

7. **12/9/2019 - Deliveries**

*"Delivery vehicles to cafe Barbetta are continuing not to utilise the loading dock located in Victoria Street Paddington. The development conditions are that all deliveries are to be accepted via the loading dock and vehicles are not to park on the street.*

*Bread delivery this morning at 7.45am illegally parked on the corner of Victoria and Elizabeth Street in a no stopping blocking traffic, vehicle plate number DSF60P."*

The above complaints are significantly disturbing to residents and may reflect an unwillingness on your part to improve your practices. It would be appreciated if you could respond to the above complaints within seven (7) days from the date of this letter, providing details of your immediate remedial action.

Should you have any questions please contact Ms M Easton, between 10.00am and 4.30pm weekdays on 9391-7149, or by email: [records@woollahra.nsw.gov.au](mailto:records@woollahra.nsw.gov.au)

Yours sincerely

  
Craig Jenner  
Team Leader Compliance

Notices Order - 2019-02 - 1-5 Elizabeth Street PADDINGTON - Lonsdale - Narlec - Barbetta

## Nicholas Eddy & Company

SOLICITORS, ATTORNEYS AND CONVEYANCERS

ABN 83 936 752 496

13 November 2019

Woollahra Municipal Council  
C/- Team Leader Compliance  
Mr. Craig Jenner  
Po Box 61  
DOUBLE BAY NSW 1360

Dear Mr. Jenner,

**RE: 62/2019**

**RE: YOUR REF: NOTICE/ORDERS 62/2019/1; Ms. M. Easton**

**RE: BARBETTA AT 2-8 ELIZABETH STREET, PADDINGTON**

---

We are the solicitors for Barbetta Restaurant and have been handed your letter of 17 September 2019, just received by our client. I am surprised that the Council is writing to our client about this matter about alleged complaint from an unknown person who lives across the road from the restaurant. The restaurant has been the most popular addition to Paddington and is full all of the time with locals dining there for breakfast, lunch and dinner. In fact, one of the regular patrons is a neighbour across the road in Elizabeth Street, who is there most of the time, morning, lunch and dinners.

We await from you the name and address of the complainant who is the only complaint that apparently there has been to you.

Our client has always complied with their Development Application approval. Please provide us who you state are the "surrounding neighbours" who are negatively impacted by the restaurant as it is clear to us that everyone in the area is very happy with the restaurant being there. The Council should be aware that Paddington is full of excellent restaurants and hotels and bars that improve the amenity of the suburb and our clients could easily obtain approvals from all of the people who attend at the restaurant.

Council states that they have received complaints about the operation at Barbetta, yet there are no details of who the complainants are and where they live. Please provide this information to us.

Nicholas James Eddy, B.A., LL.B.

Consultant Sir Warwick Andrew, Kt, CRE, LL.M

194 Underwood Street, Paddington NSW 2021 • E [nick@nicholaseddy.com.au](mailto:nick@nicholaseddy.com.au) • [www.nicholaseddy.com.au](http://www.nicholaseddy.com.au)  
Tel 02 9327 8606 • Fax 02 9363 2652 • PO Box 27 Woollahra 2025

## Nicholas Eddy & Company

SOLICITORS, ATTORNEYS AND CONVEYANCERS

ABN 83 926 732 496

Using your numbered paragraphs we advise as follows:

1. At what time of day is it alleged that staff access the premises via Elizabeth Street. It is strenuously denied that there is loud and noisy cleaning activities continued until 11.20pm. The property is so sound resistant that cleaning cannot be heard outside the restaurant. There is no cleaning done outside of the premises in the side alleyway.
2. The restaurant is not opened on Sunday nights, so again this is strenuously denied. The sound cannot be heard outside the premises. Cleaners may be seen inside the restaurant but they certainly cannot be heard.
3. Lotus air-conditioning have never serviced the filters in the restaurant on a Saturday morning. Our clients cannot tell any delivery vehicle company what to do. They tell them that it is to be delivered to the loading dock but they cannot control the drivers of the trucks.
4. Barbetta is not opened on a Wednesday night and the restaurant certainly does not do any cleaning outside of the premises. Our client denies that the Elizabeth Street side access door is left open when the restaurant is closing and also opened for trading. Our client ensures that the door is always closed and will continue to ensure that it is closed. Your complainants should advise where the cleaning is carried on outside the premises because this is just false.
5. Again, this is false. Who counted the numbers of 70 in the premises? Our client knows how many people are attending at the restaurant each day and night and there have never been 70 people in the restaurant. All liquor is served with meals. It is not a wine bar. All patrons drinking are also eating whether sitting down or at some point standing up. I note that the complainant states that *"unreasonable noise is transmitted into our homes"*. Is this complainant making a complaint on behalf of a number of neighbours or themselves only?
6. The restaurant is not a function centre. Sometimes people attend there for birthdays with friends to celebrate and they all attend to eat and drink. Clearly, the complainant wishes the patrons to exit the restaurant via Victoria Street, rather than Elizabeth Street, as the complainant presumes that the patrons will make a noise for the people residing in Victoria Street, rather than Elizabeth Street. The complainant clearly is very concerned about the neighbours in Paddington. I do not think. Our clients have a notice on the front door of the property requesting patrons to respect the neighbours by being quiet when they depart. Our clients are not aware of any alleged loud yelling, over exuberant laughter, high pitched screaming and endless repetition of farewells. Our clients are clearly at the building when the

Nicholas James Eddy, B.A., LL.B.

Consultant Sir Warwick Andrew, Kt, CBE, LL.M

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## Nicholas Eddy & Company

SOLICITORS, ATTORNEYS AND CONVEYANCERS

ABN 83 926 752 496

people are departing and they have never been aware of such behaviour.

As stated above, one of the Elizabeth Street neighbours dines at Barbetta regularly in the mornings, lunch time and dinners.

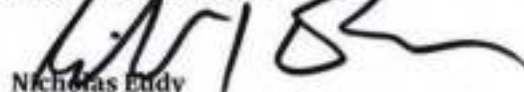
7. This is denied. Council would be aware as I am as a neighbour that garbage trucks regularly block traffic in Paddington because of the narrow streets, however, we never complain about the Woollahra Council garbage trucks as they always do an excellent job in Paddington and we are very proud to have them.

In relation to your penultimate paragraph, please provide us the names and addresses of the complainants. There is certainly no unwillingness on our client's part to run a proper and respectful restaurant.

We await your response with the details of the complainant or complainants.

Yours faithfully

NICHOLAS EDDY & CO



Nicholas Eddy

Liability limited by a scheme approved under the Professional Standards Legislation

*Merry Christmas*



*We advise that our office will be closed from  
Friday 20 December 2019 at 5pm and re-open at 9am on 13 January 2020.  
We take this opportunity to wish you Happy Holidays and New Year.*

Nicholas James Eddy, B.A., LL.B.

Consultant Sir Warwick Andrew, Kt, CBE, LL.M

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Tel 02 9327 8606 • Fax 02 9363 2652 • PO Box 27 Woollahra 2025

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>ITEM No.</b>	D3
<b>FILE No.</b>	DA510/2019/1
<b>ADDRESS</b>	16 Olphert Avenue VAUCLUSE
<b>COUNCIL WARD</b>	Vaucluse
<b>SITE AREA</b>	947.6m <sup>2</sup>
<b>ZONING</b>	R2 Low Density Residential
<b>PROPOSAL</b>	Alterations and additions to existing dwelling including new swimming pool and cabana
<b>TYPE OF CONSENT</b>	Local development
<b>COST OF WORKS</b>	\$3,364,209.00
<b>DATE LODGED</b>	20/12/2019
	<b>First replacement application was lodged on 24/04/2020. Second replacement application was lodged on 15/06/2020 Third replacement application was lodged on 17/08/2020</b>
<b>APPLICANT</b>	De Moyer Architecture
<b>OWNER</b>	Ms J McMillan
<b>AUTHOR</b>	Ms T Ward
<b>TEAM LEADER</b>	Mr M Moratelli
<b>SUBMISSIONS</b>	Twenty-Two (22) (by way of objections)
<b>RECOMMENDATION</b>	Approval, subject to <b>Condition C.1</b>

### 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

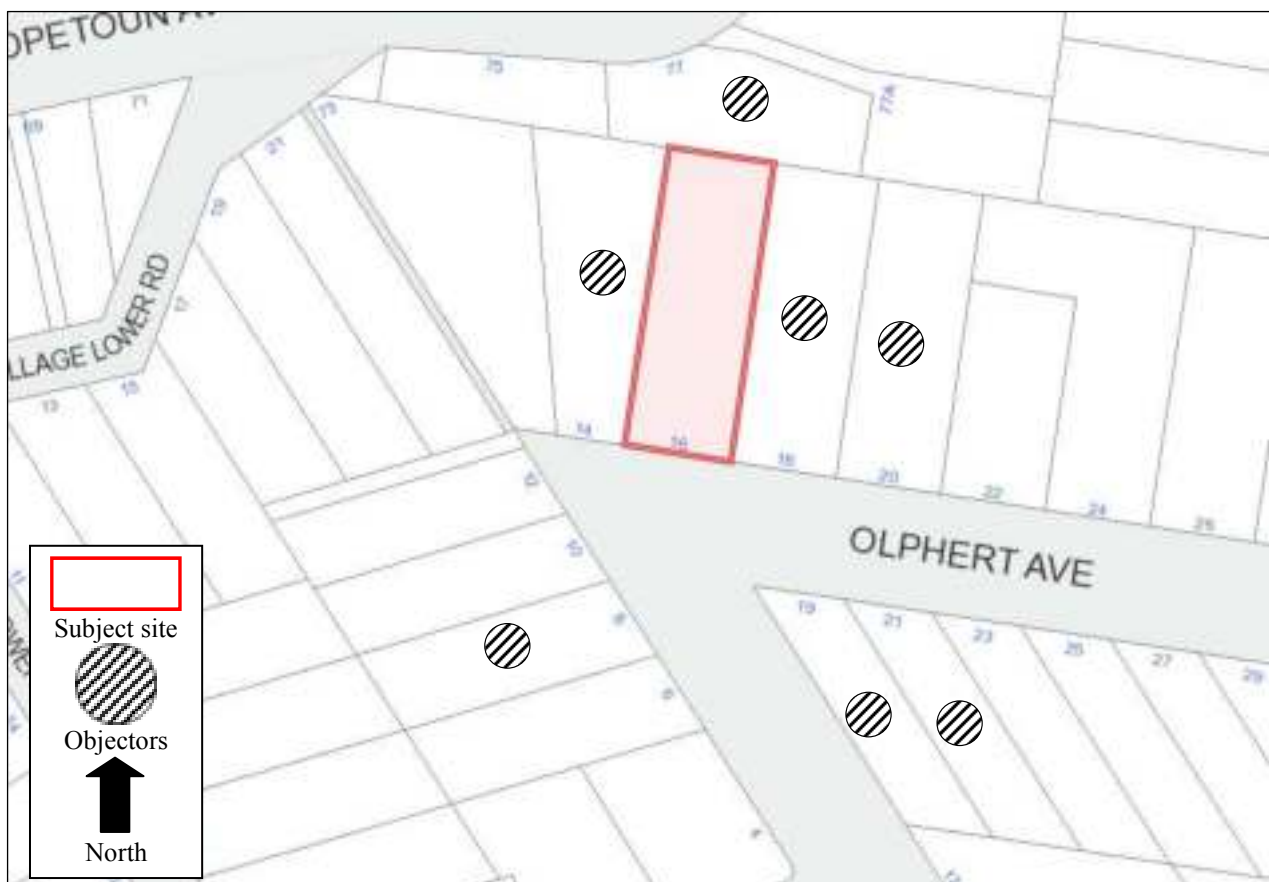
### 2. REASONS FOR RECOMMENDATION

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 approval because:

- It is considered to be satisfactory with all relevant planning policies including the objectives of WLEP 2014 and WDCP 2015.
- The proposed development comprises a built form that complies with Council's WDCP 2015 floorplate and excavation controls.
- 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. Specifically, the Clause 4.6 submission in relation to the non-compliance with the height standard is supported and the view impacts are satisfactory with regards to the case law established in *Tenacity Consulting v Warringah (2004) NSWLEC 140*.
- Fundamental to the recommendation for approval, is that the central flat section of the roof is non-trafficable and would not operate as a roof terrace, thereby ensuring that the proposal does not generate unacceptable privacy impacts.
- The site is suitable for the proposed development.
- The proposal is in the public interest.

### 3. LOCALITY PLAN



### 4. PROPOSAL

The proposal involves alterations and additions to the existing dwelling including a new swimming pool and cabana.

The **first replacement application was lodged on 24/04/2020** and included amendments to the boundary fences and retaining walls.

The **second replacement application was lodged on 15/06/2020** and included further amendments to the boundary fences and retaining walls.

The **third replacement application was lodged on 17/08/2020** and included further amendments to the boundary fences, retaining walls, rear garden levels and a new green roof to the cabana.

## 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	0.49m or 5.2% departure from the 9.5m control	Satisfactory

## PROPERTY DETAILS AND REFERRALS

## 6. SITE AND LOCALITY

<b>Physical features</b>
The subject site is located on the northern side of Olphert Avenue and encompasses an area of 947.6m <sup>2</sup> . The site has a southern (front) boundary to Olphert Avenue of 18.29m, an eastern (side) boundary of 51.815m, a northern (rear) boundary of 18.29m and a western (side) boundary of 51.815m.
<b>Topography</b>
The site falls approximately 14.35m from the front boundary (RL+50.25) to the rear of the site (RL+64.60). There is a steep drop from the rear private open space area to the rear neighbouring property at 77 Hopetoun Avenue by approximately 3.4m.
<b>Existing buildings and structures</b>
The site is occupied by a three-storey dwelling-house with a pitched roof to the main ridge and a flat roof to the garage at the front boundary. The dwelling-house presents as single storey to Olphert Avenue and three storeys to the rear. The rear of the site comprises the main area of private open space and includes a swimming pool and tennis court. Vehicular access is granted from Olphert Avenue to the double and single attached garages at the street front. The rear of the subject site is partially visible from Hopetoun Avenue.
<b>Surrounding Environment</b>
The subject site is located within the Vacluse East Residential Precinct under the provisions of the Woollahra DCP 2015. The adjoining site to the west (14 Olphert Avenue) is occupied by a one-two storey dwelling-house. The adjoining site to the east (18 Olphert Avenue) is also occupied by a one-two storey dwelling-house. The adjoining property to the rear (77 Hopetoun Avenue) is occupied by a two storey dwelling-house.





Figure 1: Google Maps 3D View



Figure 2: View of subject site from Olphert Avenue



Figure 3: Rear elevation of the existing dwelling

## 7. RELEVANT PROPERTY HISTORY

<b>Current use</b>
Dwelling-house
<b>Requests for Additional Information and Replacement Applications</b>
On 09/01/2020, Council requested a Clause 4.6 Written Request for the height non-compliance, amended sections and floorplate calculations. This information was provided on 04/02/2020.
On 14/04/2020, Council requested revised floorplate calculations, deep soil landscaping calculations, excavation calculations, and information required by Council's Technical Services Engineer. This information was provided on 28/04/2020 and 11/05/2020.
On 13/07/2020, Council requested additional information required by Council's Technical Services and Drainage Engineers. This information was provided on 04/08/2020 and 18/08/2020.
On 28/10/2020, Council requested the Clause 4.6 Written Request to be updated to correct the proposed height non-compliance. This information was provided on 04/11/2020.

## 8. REFERRALS

Referral	Summary of Referral Response	Annexure
Technical Services	Satisfactory, subject to conditions	3
Drainage	Satisfactory, subject to conditions	4
Trees and Landscaping	Satisfactory, subject to conditions	5

## ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

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

1. The provisions of any environmental planning instrument

2. The provisions of any proposed instrument that is/has been the subject of public consultation
3. The provisions of any development control plan
4. Any planning agreement that has been entered into
5. Any draft planning agreement that a developer has offered to enter into
6. The regulations
7. 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 12/02/2020 to 26/02/2020 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. Submissions were received from:

1. Michael Hammond – 77 Hopetoun Avenue, Vacluse (**4 submissions**)
2. Matthew King – 6 Olphert Avenue, Vacluse (**Letter of Support**)
3. Tanya Hall – 8 Olphert Avenue, Vacluse
4. Keith & Jo Maloon – 10 Olphert Avenue, Vacluse (**Letter of Support**)
5. Rosemary & Ronald Fine – 14 Olphert Avenue, Vacluse (**2 submissions**)
6. Campbell Taylor & Sarah Curtis - 18 Olphert Avenue, Vacluse (**3 submissions**)
7. Campbell Taylor & Sarah Curtis C/O Louise St John Kennedy - 18 Olphert Avenue, Vacluse (**7 submissions**)
8. Campbell Taylor & Sarah Curtis C/O Brett Daintry - 18 Olphert Avenue, Vacluse
9. Charlotte & Michael Norfolk – 19 Olphert Avenue, Vacluse
10. Frances & Jack Ezra C/O Simon Wakerman – 20 Olphert Avenue, Vacluse (**2 submissions**)
11. Victor Lee & Fei Qu – 21 Olphert Avenue, Vacluse

The submissions raised the following issues:

- **Views**  
The proposal, as amended, has been assessed against the view sharing principles contained in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* in Section 14.2.4. The proposal is considered to represent a skilful design which upholds Council's view sharing principals. The overall impact with regards to view loss is minor at 18 and 21 Olphert Avenue. As discussed in Part B3.7 of the WDCP 2015, the proposal is satisfactory subject to **Conditions C.1(d), (e) and (f)** that require the *Syzygium resilience*, unspecified *Plumeria species* and *Viburnum emerald lustre* to be replaced with shorter species to address view impacts to 18 Olphert Avenue.
- **Height, building envelope, bulk, design, amenity, character and streetscape**  
The height, scale, bulk and design of the proposal are consistent with the desired future character objectives and would result in an appropriate streetscape outcome in the Vacluse East Residential Precinct. Refer to Sections 13 and 14.

- **Overlooking, acoustic and visual privacy**  
An assessment of the proposal against the relevant objectives and controls for acoustic and visual privacy is provided in Section 14.2.4. It is considered that the proposal, as conditioned, would not result in any adverse privacy impacts to neighbouring properties, such that refusal or further modification is warranted.
- **Non-compliant and substantial retaining wall/fences to the side and rear boundaries**  
An assessment of the proposed rear and side boundary retaining walls and fences is provided in Section 14.2.6. The proposal, as conditioned, is considered satisfactory and upholds the objectives in Part B3.7.2 of the WDCP 2015.
- **Excessive height of replacement retaining wall at the rear boundary results in adverse solar impacts to 77 Hopetoun Avenue**  
As discussed in Section 14.2.4, the proposal complies with Council's requirements for overshadowing and solar access to neighbouring properties' private open space and north facing upper level habitable room windows.
- **Stormwater runoff**  
Subject to the recommended conditions, Council's Technical Services Engineer has determined the proposal is satisfactory in this regard. Refer to Section 14.4.
- **Structural, hydrogeological and geological impacts**  
Subject to the recommended conditions, Council's Technical Services Engineer has determined the proposal is satisfactory in this regard. Refer to Section 13.6.
- **The cabana is located in the covenant area that applies to the site and 18 Olphert Avenue. Raising the ground levels including the side boundary fence are against the covenant.**  
Subject to Clause 1.9A in the WLEP 2014, for the purpose of enabling development on land in any zone, any covenant that restricts the carrying out of development does not apply and is beyond the scope of the subject assessment/application.
- **Not in the public interest**  
For the reasons outlined in this report, the proposal is considered to be in the public interest.
- **Unsightly roof of cabana**  
The proposed green roof to the cabana is not considered to result in any adverse visual impacts to the neighbouring properties.
- **Excessive height, bulk and scale of the cabana is out of keeping with side and rear setbacks**  
For the reasons discussed in Section 14.2.6, the proposed cabana is considered satisfactory and upholds the relevant objectives in Part B3.7.4 of the WDCP 2015.
- **Cabana lighting will result in adverse amenity impacts**  
Subject to **Condition I.2**, the proposal is not considered to result in adverse amenity impacts to neighbouring properties in terms of light spillage to neighbouring properties.

- **Inaccurate information**  
Notwithstanding any inaccuracies in the documentation, sufficient information has been submitted to enable an assessment of the application.
- **Design excellence**  
The proposed development is considered to uphold the design excellence objectives in Part B3.1.3 of the WDCP 2015.
- **The swimming pool is non-compliant with the boundary setback and depth**  
The proposal, as conditioned, is considered satisfactory with regard to the swimming pool objectives and controls in Section 14.2.6 and no significant adverse impacts are likely to occur.
- **The rear setback should be constructed to the pre-existing ground level below the tennis court**  
The proposed works in the rear setback area are within 1.2m of the existing ground level (the level of the existing tennis court). As such, the proposal is considered acceptable with regard to the objectives and controls in Part B3.7 of the WDCP 2015.
- **Floorplate and buildable area calculations do not include the elevated rear setback area or cabana**  
The proposed development complies with the maximum permitted floorplate yield as discussed in Section 14.2.2. It is noted that the elevated rear setback area and the new cabana are excluded from the calculation in accordance with Part B3.3 of the WDCP 2015.

## 9.2. Replacement Application

The **third replacement application lodged on 17/08/2020** noted in Section 4 was renotified to surrounding residents and previous objectors under the Woollahra Community Participation Plan from 02/09/2020 to 16/09/2020 as the proposed changes have the potential for additional impacts upon neighbours. Additional submissions have been considered in Section 9.1.

## 9.3. Statutory Declaration

The applicant has completed the statutory declaration dated 26/02/2020 declaring that the site notice for DA510/2019/1 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

As the site has a long history of residential use, it is considered that the land does not require further consideration under Clause 7 (1) (b) and (c) of SEPP 55. The proposal is therefore acceptable with regard to SEPP 55: Remediation of Land.

## 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 A362284\_02 demonstrating compliance with the SEPP. These requirements are imposed in **Conditions C.3, H.1 and I.1.**

## **12. 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.

## **13. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014**

### **13.1. Part 1.2: Aims of Plan**

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

### **13.2. Land Use Table**

The proposal is defined as alterations and additions to an existing dwelling-house and is permitted and is consistent with the objectives of the R2 Low Density Residential zone.

### **13.3. Part 4.3: Height of Buildings**

Part 4.3 limits development to a maximum height of 9.5m.

	<b>Existing</b>	<b>Proposed</b>	<b>Control</b>	<b>Complies</b>
Maximum Building Height	10.19m	9.99m	9.5m	NO

The proposal does not comply with Part 4.3 of Woollahra LEP 2014 as detailed and assessed in Part 13.4. The proposal involves a maximum height of 9.99m above the existing ground level. As shown by the blue dashed line below in **Figure 4** below, a section of the flat roof profile located above Council's 9.5m height plane. The proposal represents a non-compliance of 0.49m, and is primarily limited to the rear section of the building.

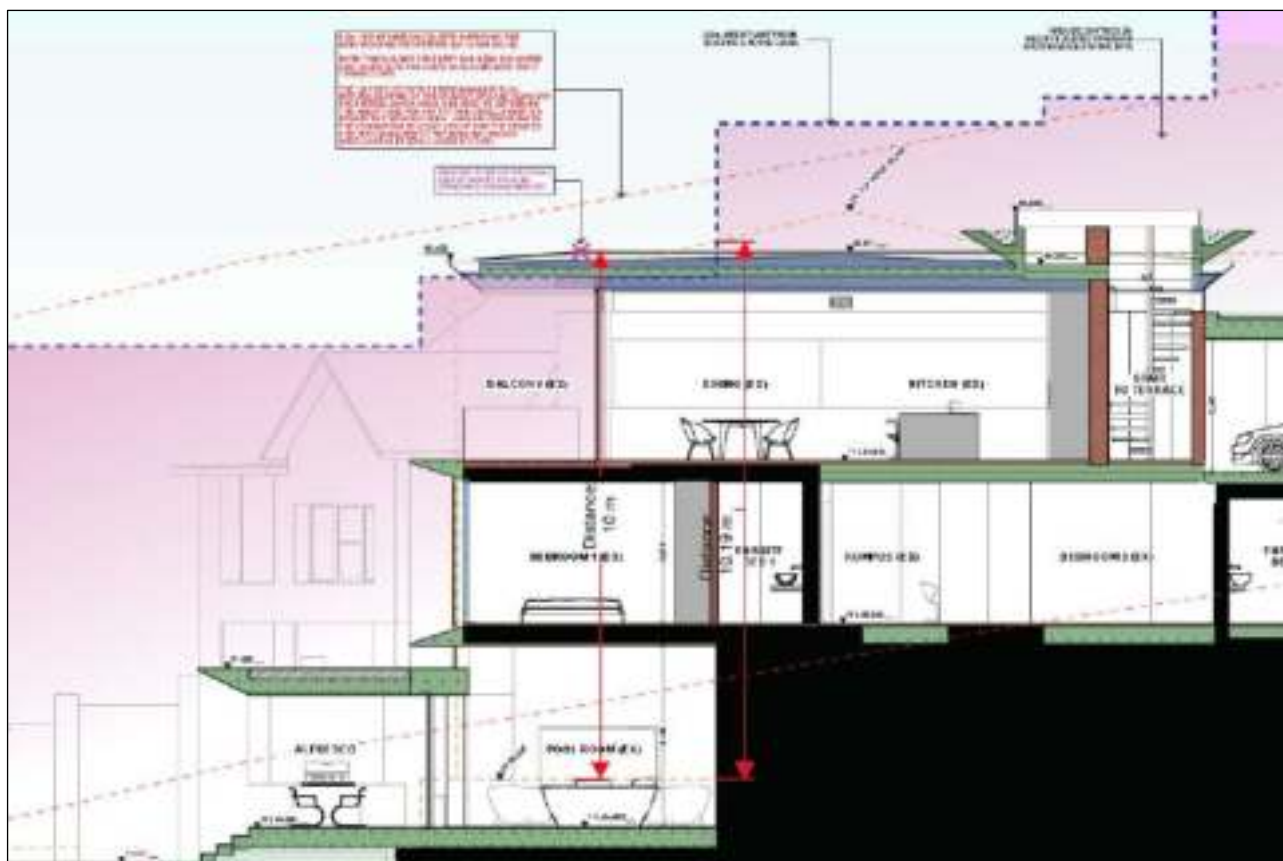


Figure 4: Extent of height non-compliance

### 13.4. Part 4.6: Exceptions to Development Standards

#### 13.4.1. Departure

The proposal involves the following non-compliance with the Woollahra LEP 2014:

- Non-compliance with the 9.5m maximum building height development standard under Part 4.3 as detailed in Section 12.4.

#### 13.4.2. 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.

#### 13.4.3. 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. The applicant has provided a written request in relation to the proposed departure which is found at **Annexure 2**. An extract from the written request is provided below:



- *“Whilst there is a breach of the Height of Buildings Standard, the breach is a very minor numerical breach. The great majority of the proposed dwelling is also significantly below the 9.5m Height of Buildings Standard. Please refer to the relevant architectural plans which clearly evidence the fact that the breach is only very minor and the great majority of the proposed dwelling is significantly below the 9.5m Height of Buildings Standard.*
- *The maximum building height is located over a minor portion of the proposed roof, located at the northern section of the proposed roof. Furthermore, the breaching portion will not be readily visible from the public domain and adjoining properties as indicated in the various view analysis drawings lodged with the current DA.*
- *The proposed dwelling is strongly articulated on its external facades.*
- *The proposed development does not create adverse unreasonable impacts on adjoining properties or the public domain as outlined in this Clause 4.6 Request and my accompanying Statement of Environmental Effects (SEE),*
- *I also consider that there are positive Environmental Planning Grounds and Positive Outcomes to justify contravention.*
- *For the reasons outlined in my SEE, the proposed development “is of a height and scale that achieves the desired future character of the neighbourhood” for the following reasons:*
  - *(i) The proposed development will present itself as a single storey structure when viewed from Olphert Avenue. In fact, the current DA will result in a reduction in the overall height of the existing dwelling when viewed from the street, despite the introduction of the proposed roof top terrace, due to the removal of the existing pitch roof to be replaced with a proposed flat roof.*
  - *(ii) The single storey presentation of the existing dwelling when viewed from the street will remain, but in a more visually appealing form.*
  - *(iii) For the reasons outlined in my SEE, the proposed development will not have an adverse impact on the public domain. On this point, I consider that the proposed dwelling will result in a significant improvement compared to the existing dwelling in terms of its visual aesthetics when viewed from the public domain.*
  - *(iv) There is no impact on the public domain in terms of public views of Sydney Harbour and surrounding areas.*
  - *(v) For the reasons outlined in my SEE, I consider that there is no unreasonable impact on solar access to existing adjoining buildings and their open space areas.*
  - *(vi) For the reasons outlined in my SEE, I consider that there are no unreasonable impacts on views, privacy, overshadowing or visual intrusion/impact on existing adjoining buildings and their open space areas.*

*Please refer to additional comments in my SEE in support of this Clause 4.6 Request.”*

#### **13.4.4. 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.*

### 13.4.5. 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 applicant's written request has demonstrated that the objectives of the height of buildings development standard are achieved, notwithstanding the non-compliance. In doing so, 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 standards are discussed further in the assessment of Clause 4.6(4)(a)(ii).

- a) *That there are sufficient environmental planning grounds to justify contravening the development standard.*

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

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

S1.3 of the EPA Act 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 responses regarding how the proposal satisfies the objectives of Clause 4.3 in the excerpt of the written request above are considered to have adequately demonstrated sufficient environmental planning grounds, with regard to the relevant objectives of the Act, to justify contravention of the development standard.

#### **13.4.6. 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 standards and the objectives of the R2 Zone. An assessment against these objectives is provided 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 interpretation of height was considered by the Court in *Bettar v Council of the City of Sydney [2014] NSWLEC 1070*. There was discussion in Bettar concerning the interpretation of 'existing ground level' and 'basement' which are separately defined. The LEP definition of building height requires a measurement from existing ground level, rather than existing basement level.

In considering the application of the height development standard, it was indicated by the Court that relying on existing basement levels (in this case, the existing lower ground floor level) would result in the height control artificially rising and falling across the site. In Bettar the Court took the approach of measuring height with the intent, in part, of relating the development proposal to its context in the streetscape. The Court made the following relevant comments:

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

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

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

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

In light of the above judgement, regard has been given to the height of the non-compliant aspect of the proposal above the pre-excavated ground level. In other words, the ground level that existed prior to the excavation works associated with the existing dwelling and the lower ground floor level.

The desired future character statement for the Vaucluse East Residential Precinct stipulates development should be designed to step down and follow the topography. Furthermore, to minimise building bulk and scale to the street, three storey development should generally present as a two storey form to the street. The height of the existing dwelling-house and the proposed roof form retains the single storey presentation to Olphert Avenue and three storeys at the rear. The proposed height of the building has a satisfactory streetscape presentation and would not result in any significant adverse amenity or visual impacts to neighbouring properties. Furthermore, requiring compliance with the height standard would result in an irregular roof pattern. The proposal provides a good contemporary building incorporating modulation, articulation and a varied palette of materials. As such, the height, bulk and scale of the proposed development is consistent with the Vaucluse East Residential Precinct.

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

Assessment: Not applicable.

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

Assessment: The proposal retains the required amount of sunlight to the area of private open space at the neighbouring properties (14 and 18 Olphert Avenue) and to neighbouring north facing upper level habitable room windows. Accordingly, the proposal satisfies the overshadowing controls and objectives prescribed in Part B3.5.2 of the Woollahra DCP 2015, thereby upholding the objective.

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

Assessment: As discussed in Section 14, the proposal satisfies the objective due to the following:

1. **Views:** The proposal, as conditioned, is considered to represent a skilful design which upholds Council's view sharing principals and the overall impact with regards to view loss is minor. The proposal is considered to be satisfactory in this regard.
2. **Privacy:** The non-compliant portion of the proposal would not result in any significant adverse visual or acoustic privacy impacts.
3. **Overshadowing:** Satisfactory, as addressed in the response to objective (c) above.
4. The proposal, as conditioned, will not result in any significant adverse visual impacts to the streetscape or neighbouring properties.

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

Assessment: There are no nearby significant public views or vistas that would be impacted by the proposal.

### **Objectives of the R2 Zone**

The proposal is also considered against the objectives applying to the R2 Zone as follows:

- *To provide for the housing needs of the community within a low density residential environment.*

Assessment: The proposal continues the use of the subject site as a dwelling house.

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

Assessment: Not applicable.

- *To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.*

Assessment: For the reasons set out within Section 14, it is considered that the proposal upholds this objective.

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

Assessment: As discussed in Section 14, the proposal comprises an appropriate bulk and scale that satisfies the desired future character objectives of the Vaucluse East Residential Precinct.

Conclusion: The proposal satisfies the objectives of Zone R2 Low Density Residential.

#### **13.4.7. Clause 4.6(4)(a)(b) - Assessment**

The Department issued Planning Circular No. PS18-003 (dated 21<sup>st</sup> 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.

#### **13.4.8. Conclusion**

The written submission from the applicant has adequately demonstrated that the variation of the development standard prescribed by Clause 4.3 is justified pursuant to the relevant matters for consideration prescribed by Clause 4.6.

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

The consent authority may also be satisfied that the proposal is in the public interest, as it is consistent with the objectives of the Height of Buildings development standard and the Low Density Residential (R2) zone.

#### **13.5. Part 6.1: Acid Sulfate Soils**

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

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

#### **13.6. 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 467m<sup>3</sup> of excavation to accommodate the new dual-occupancy. An assessment against the Council’s numeric excavation controls is provided in Section 13.2.3.

In terms of geotechnical and hydrogeological related issues, Council’s Technical Services Engineer has provided the following comments in relation to the proposed level of excavation:



*“A Geotechnical Investigation Report, referenced 32254SCrptrev4, prepared by JK Geotechnics, dated 7 May 2020, Geotechnical Advice - Stabilisation or Replacement of Damaged Retaining Wall, referenced 2810-GR-1-1, prepared by Alliance Geotechnical, dated 2 March 2017 and Geotechnical Advice, referenced 32254SClet, prepared by JK Geotechnics, dated 4 August 2020 has been submitted in support of the application. The proposal involves excavation for alterations and additions including swimming pool up to a depth of about 3m.*

*The report identified the subsurface conditions as:*

- a) Fill to depths of 0.8m to 1.8m*
- b) Aeolian sand – various densities – to depths of 0.5m to 1.8m.*
- c) Sandstone bedrock at 1.9m to 2.3m but not confirmed.*
- d) Groundwater appeared not to be an issue.*
- e) The reports states that, although unlikely, if retaining walls do exceed 3m in height, underpinning and/or rock anchors may be utilised. As such conditions have been applied.*

*The report made comments and recommendations on the following:*

- Inferred Subsurface Profile*
- Dilapidation Survey and Vibration Monitoring*
- Excavation Within Middle and Ground Floor Levels*
- Existing Swimming Pool & Proposed Rainwater Tank*
- Proposed Swimming Pool*
- Batters and Retaining Walls*
- Footings*
- Infiltration Tank & Northern Retaining Wall*
- Further Work*

*Conditions covering these matters as well as others identified by Council have been added to the Referral.*

*Council’s Technical Services has no objection 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 RDCP.*

*Note: Use of any Ground Anchors or underpinning extending beyond site boundaries require the approval of neighbouring properties in writing.”*

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

### **13.7. 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 proposal is acceptable with regard to Part 6.3 of Woollahra LEP 2014.

## 14. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

### 14.1. Chapter B1: Vacluse East Residential Precinct

The objectives of the Vacluse East Residential Precinct require development to respect and enhance the existing elements of the neighbourhood and contribute to the rich mixture of architectural styles and forms. The subject site is located on Olphert Avenue which is characterised by a mixture of different architectural styles and roof forms. In this context the proposal meets the relevant streetscape character and does not result in adverse amenity impacts to adjoining and adjacent residential development. It is considered that the proposed development represents a skilful design that is well-articulated to step down with the topography of the site and an adequately modulated contemporary design that incorporates adequate landscaping elements. Furthermore, the flat roof form minimises bulk and scale of the dwelling-house which is consistent with the one-storey presentation of the existing dwelling to the southern side of Olphert Avenue.

The proposal meets the streetscape character and key elements of the precinct and desired future character objectives of the Vacluse East Residential precinct, as noted in Part B1.11.2 of the Woollahra DCP 2015.

### 14.2. Chapter B3: General Development Controls

#### 14.2.1. Part B3.2: Building Envelope

Site Area: 947.6m <sup>2</sup>	Existing	Proposed	Control	Complies
Front Setback (S) - Lower Ground Floor - Ground Floor - First Floor	>0m 3.4m 0m	>0m 3.4m 0m	0m	YES
Side Setback (W) - Lower Ground Floor - Ground Floor - First Floor	1.1 1m 1m	1.1m 1m 1m	2.3m	NO*
Side Setback (E) - Lower Ground Floor - Ground Floor - First Floor	2.3m 1.1m 0m	2.3m 1.1m 0m	2.3m	NO*
Rear Setback (N) - Lower Ground Floor - Ground Floor - First Floor	31.8m	26.8m 30.8m 31.8m	23.3m	YES

\* Existing non-compliance

#### Part B3.2.2 Front Setback

For alterations and additions to an existing dwelling-house, the existing front setback of 0m applies to development at the subject site. The southern elevation is setback 0m to the front boundary which accords with Council's numeric control.

#### Part B3.2.3 Side Setbacks

A side setback control of 2.3m applies to development to the subject site.

The proposal results in multiple non-compliances with Council's numeric side setback requirement at the eastern and western boundary. The proposal is acceptable for the following reasons:

- The proposed alterations and additions do not alter the side setbacks at each level of the existing dwelling-house and the non-compliances are existing.
- The non-compliances do not result in an unreasonable sense of enclosure to the neighbouring properties and maintains an appropriate separation between the buildings.
- The proposal, as conditioned, does not result in any significant adverse amenity impacts to neighbouring properties or the streetscape beyond that associated with the existing dwelling-house in terms of sense of enclosure, overshadowing, views and privacy.
- Strict compliance with the side setback control would not improve any view impacts from the neighbouring properties.
- The proposal provides adequate screen planting in the side setback areas and complies with the requirements for deep soil landscaping as discussed in Part B3.7.1 of the WDCP 2015.
- The proposal allows external access between the front and rear of the site adjacent to the northern side boundary.

The proposal, as conditioned, satisfies the objectives in Part B3.2.3 of the Woollahra DCP 2015.

#### Part B3.2.4 Rear Setback

A rear setback control of 23.3m applies to development at the subject site and the proposal is compliant with the rear setback control.

#### Part B3.2.5 Wall Height and Inclined Plane

C1 specifies a maximum external wall height of 7.2m with an inclined plane of 45 degrees above this height. Roof eaves can protrude 450mm from the setback of the inclined plane.

C2 A variation to the wall height of 7.2m may be considered where the slope of the site within the building envelope is greater than 15 degrees. The variation will only be considered to walls located nearest to the downslope section of the building envelope, i.e. the section with the lowest existing ground level.

The proposed alterations and additions maintain the existing 9.5m non-compliance at the western side elevation of the dwelling-house and include a non-compliance with the 45 degree inclined plane at the eastern side elevation. The slope of the subject site is greater than 15 degrees and thereby C2 stipulates a variation to Council's numeric control may be permitted. Accordingly, the non-compliances are primarily due to the slope of the land and are therefore considered to be acceptable in this instance. Furthermore, the side elevations are adequately articulated such that the proposal, as conditioned, will not result in any adverse impacts upon the adjoining properties, including sense of enclosure, solar access, views and visual privacy.

The proposal satisfies the objectives of Part B3.2.5 of the Woollahra DCP 2015.

#### **14.2.2. Part B3.3: Floorplate**

Site Area: 947.6m <sup>2</sup>	Proposed	Control	Complies
Maximum Floor Plate	165% (682.5m <sup>2</sup> )	165% (683.7m <sup>2</sup> )	YES

The proposal complies with the maximum floorplate yield in Part B3.3 of the WDCP 2015.

#### 14.2.3. Part B3.4: Excavation

Site Area: 947.6m <sup>2</sup>	Proposed	Control	Complies
Excavation	131.2m <sup>3</sup>	239.5m <sup>3</sup>	YES

The proposal complies with the maximum excavation volume in Part B3.4 of the WDCP 2015.

#### 14.2.4. Part B3.5: Built Form and Context

##### Part B3.5.1 Streetscape Character

The desired future character of the Vacluse East Precinct is outlined in B1.11.2 of the Woollahra DCP 2015. As discussed in Section 14.1, it is considered that the proposal is compatible with the prevailing characteristics of streetscape and does not adversely impact the streetscape character nor the amenity of neighbouring properties. In addition, the proposal contributes to the rich mixture of architectural styles and forms along Olphert Avenue and the wider Vacluse locality. The proposed roof terrace is not considered to result in any adverse streetscape impacts and it is well-integrated with the architecture of the new roof.

The proposal achieves the desired future character of the area and is acceptable with regard to the streetscape character controls in Part B3.5.1 of the Woollahra DCP 2015.

##### 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(b) states 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.

The proposal retains the required amount of sunlight to the area of private open space at the neighbouring properties (14 and 18 Olphert Avenue) and C1(a) is satisfied. The orientation of the subject site would not result in a non-compliance with C1(b) and sunlight is maintained to neighbouring north facing upper level habitable room windows.

The proposal is acceptable with regards to the objectives and controls in Part B3.5.2 of the WDCP 2015.

##### Part B3.5.3 Public and Private Views

C1 states development is to be sited and designed so that significant views and vistas identified in the precinct maps in the Vacluse East Residential Precinct are maintained or enhanced.

C4 states roof forms on the low side of streets are designed to allow public views and add interest to the scenic outlook.

C5 states development must be sited and designed to enable a sharing of views with surrounding private properties, particularly from habitable rooms.

C7 states the design of the roof form must provide for view sharing.

### Public Views

The proposed development does not impact any public views.

### Private Views

The owners of the following adjoining properties have objected to the proposed development on the basis of view loss:

- 18 Olphert Avenue, Vacluse
- 21 Olphert Avenue, Vacluse

To enable a view assessment the applicant erected surveyor certified height poles for the proposed cabana at the rear of the subject site.

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.*

- **18 Olphert Avenue, Vacluse:** The views affected by the proposal are water views that are partially obscured by vegetation and the side boundary tennis court fence. The dwelling-house also obtains views of Sydney Harbour, Middle Head and Manly.
- **21 Olphert Avenue, Vacluse:** The views affected by the proposal are the land and water interface to Sydney Harbour that is partially obscured by vegetation. The dwelling-house also obtains views of Sydney Harbour, Middle Head, Chowder Bay and Manly.

#### **2. From what part of the property are views obtained?**

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

- **18 Olphert Avenue, Vacluse:** The affected views are obtained across the side boundary from the rear private open space and undercroft area. These views are also obtained across the side and rear boundary from the ground floor level balcony in sitting and standing positions.
- **21 Olphert Avenue, Vacluse:** The affected views are obtained across the front boundary from the first floor level master bedroom and balcony in sitting and standing positions.

### 3. What is the extent of the impact?

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

- **18 Olphert Avenue, Vacluse:** The extent of the impact upon existing views has been demonstrated by the red height pole string lines in **Figures 5-8** below. The proposal would result in a loss of water glimpses that are obscured by vegetation and the tennis court fence from the rear private open space area and the undercroft. Expansive views will be maintained from the ground floor level rear balcony of water views to Sydney Harbour, Middle Head and Manly. Overall, it is considered the proposal will have a minor impact on views obtained from this property.



Figure 5: Private open space views across the side boundary at 18 Olphert Avenue





Figure 6: Applicant photomontage of proposed side boundary fence and retaining wall



Figure 7: Undercroft views across the side boundary at 18 Olphert Avenue





Figure 8: Ground floor level rear balcony views across the side boundary

- **21 Olphert Avenue, Vacluse:** The extent of the impact upon existing views has been demonstrated in **Figures 9-10** below. The proposal would result in a loss of water glimpses at the land and water interface that are obscured by vegetation. Expansive views will be maintained from the first floor level master bedroom and balcony of water views to Sydney Harbour, Middle Head, Chowder Bay and Manly. Overall, it is considered the proposal will have a minor impact on views obtained from this property.



Figure 9: First floor level master bedroom views across the front boundary at 21 Olphert Avenue



Figure 10: Ground floor level living room views across the front boundary at 21 Olphert Avenue

#### 4. What is the reasonableness of the proposal that is causing the impact?

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

The Court poses two questions in *Tenacity Consulting v Warringah* (2004) NSWLEC 140 (paragraphs 23-33). The first question relates to whether a non-compliance with one or more planning controls results in view loss. The 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.

The following comments are made with regard to the reasonableness of the proposal:

- The proposal will have a minor impact on views obtained from 18 and 21 Olphert Avenue.
- The level of impact upon existing views from 18 Olphert Avenue is based on surveyor certified height poles and string lines prepared by the Applicant.
- The proposed development presents as a single storey dwelling-house to Olphert Avenue and three storeys to the rear which is compatible with the existing dwelling-house and the neighbouring properties. This is also consistent with the desired future character of the Vaucluse East Residential Precinct.

- The extent of view loss to 18 Olphert Avenue associated with the proposed cabana is considered reasonable on the basis that the existing view is obscured by vegetation and the tennis court fence. The proposal retains the expansive views obtained across the rear boundary from the ground floor level of the dwelling. It has also been established that *the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries*.
- The extent of view loss to 21 Olphert Avenue associated with the roof form is considered reasonable on the basis that the existing view to the land and water interface is obscured by vegetation. The proposal retains panoramic views from the first floor level master bedroom and balcony.
- The proposed height non-compliance with the 9.5m maximum height control is located at the rear portion of the flat roof form. A compliant design with the height control would not improve the view impact to 21 Olphert Avenue and the front of the building which presents as a single storey to Olphert Avenue comprises an envelope less than the envisaged Council height standard.
- The bulk and scale of the proposal including the floor to ceiling heights are considered to be reasonable (the proposal complies with the floorplate control). The proposed alterations and additions will be largely contained within the existing and permissible building envelope except for non-compliances with the side setback and maximum wall height/inclined plane control. It is noted that a compliant design with regards to the side setbacks and the maximum external wall height/inclined plane control would not significantly improve the view impact.
- As discussed in Part B3.7 of the WDCP 2015, the proposal is satisfactory subject to **Conditions C.1(d), (e) and (f)** that require the *Syzygium resilience*, unspecified *Plumeria species* and *Viburnum emerald lustre* be replaced with shorter species to address view impacts to 18 Olphert Avenue.

In light of the above, the proposal is considered to be consistent with the relevant view sharing objectives in Part 3.5.3 of WDCP 2015 and the Planning Principle established by *Tenacity Consulting v Warringah (2004) NSWLEC 140*. The proposal is therefore acceptable with regard to views and vistas.

#### Part B3.5.4 Acoustic and Visual Privacy

C4 states new windows in habitable rooms are to be designed to prevent a direct sightline to the habitable room windows or private open space of an adjacent dwelling within 9m. This can be achieved via window location, layout and separation, screens or translucent glazing to 1.5m sill height.

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

C7 states private open spaces and the trafficable area of roof terraces (at or below the second storey) are to be suitably located and screened to prevent direct views to neighbouring habitable rooms (including bedrooms) and private open space within 9m.

C8 states the acceptability of any elevated balcony, deck or terrace will depend on the extent of its impact, its reasonableness and its necessity.

The proposal is considered satisfactory for the following reasons:

- The alterations and additions to the rear private open space at the lower ground floor level including the new pool and cabana are adequately separated from the private open space of adjoining properties through the provision of deep soil landscaping and fences adjacent to the side and rear boundaries. It is considered that the location of the rear private open space generally maintains the existing layout/situation of neighbouring properties and the configuration of the subject site. As such, no significant adverse privacy impacts are envisaged beyond that associated with the existing site configuration.
- The front and rear facing windows and doors are considered acceptable as no adverse privacy impacts or direct overlooking into neighbouring properties are likely to occur due to the orientation towards the front or rear of the property.
- The new sliding door (W113) to the rumpus room at the eastern side elevation includes privacy louvres which are considered satisfactory with regards to C4.
- Direct views from the living level balcony are obtained to the rear private open space at the adjoining properties. As such, **Condition C.1(b)** requires the inclusion of a 1.5m high translucent glass privacy screen to the eastern and western balustrades.
- The new windows to the master bedroom ensuite at the western side elevation include privacy louvres which satisfies C5 above.
- The new alfresco area at the proposed pool level is enclosed at the side elevations and as such, no direct views to neighbouring properties within 9m are likely to occur. Furthermore, the alfresco area including the new cabana are screened by the solid boundary fence and comply with C7.
- The proposed roof terrace is satisfactory as no sightlines within 9m (as measured horizontally) are obtained to the neighbouring habitable room windows or private open space at 18 Olphert Avenue, thereby complying with control C7. Furthermore, the architectural blade wall on the roof acts as a privacy screen to the neighbouring property at 14 Olphert Avenue.
- The proposed roof terrace is not excessive in area, measuring only 19m<sup>2</sup>, and is not directly accessed off a living or entertaining space. This reduces the intensity of its usage and will reduce its potential to generate an unacceptable acoustic visual or privacy impact. Fundamental to the roof terrace being acceptable, is that the central flat section of the roof is non-trafficable and would not operate as a roof terrace, thereby ensuring that the proposal does not generate unacceptable privacy impacts.
- The location of the pool equipment considered satisfactory, subject to **Condition I.3**.

The proposal, as conditioned, is acceptable with regard to the objectives and controls in Part B3.5.4 of the WDCP 2015.

#### Part B3.5.5 Internal Amenity

The proposal is considered to be satisfactory with regard to the provisions of Part B3.5.5 of Woollahra DCP 2015.

#### **14.2.5. Part B3.6: On-Site Parking**

*O1 To minimise the visual impact of garages, car parking structures and driveways on the streetscape.*

*O2 To ensure that on-site parking does not detract from the streetscape character and amenity.*

C1 states parking must not dominate the street, preserves trees and vegetation and be located within the buildable area.

C4 requires parking to be located within the building envelope.

The proposed alterations and additions maintain the existing width, location and parapet height of the on-site parking structure at the street frontage. In this context, the proposal maintains the existing character and amenity of the streetscape and would not result in any significant adverse visual or amenity impacts to Olphert Avenue.

The proposal is considered to be satisfactory with regard to the provisions of Part B3.6 of Woollahra DCP 2015.

#### 14.2.6. Part B3.7: External Areas

Site Area: 947.6m <sup>2</sup>	Existing	Proposed	Control	Complies
Deep Soil Landscaping – External to buildable area	22% (122.9m <sup>2</sup> )	50% (276.1m <sup>2</sup> )	50% (276m <sup>2</sup> )	YES
Deep Soil Landscaping – Front Setback	0% (0m <sup>2</sup> )	0% (0m <sup>2</sup> )	40% (0m <sup>2</sup> )	YES
Deep Soil Landscaping – Rear Setback	28% (120.7m <sup>2</sup> )	58% (248.8m <sup>2</sup> )	50% (213.2m <sup>2</sup> )	YES

##### Part B3.7.1 Landscaped Area and Private Open Space

In accordance with Part B3.7.1 of the Woollahra DCP 2015, a minimum area of 50% of the site area outside the buildable area and 40% of the front setback area must be provided as deep soil landscaping.

The proposal complies with Council's numeric controls for deep soil landscaping at the subject site and therefore satisfies the relevant controls and objectives in Part B3.7.1 of the WDCP 2015.

The neighbouring property at 18 Olphert Avenue has raised concerns regarding view impacts from the proposed landscaping along the eastern side boundary. The proposed planting along the eastern side boundary contains x8 *Syzygium resilience* that grow to a maximum mature height of 4.5m (RL+58.50), 1x unspecified *Plumeria species* that grows to a maximum mature height of 3.5m (nominated as RL+56.80 on the architectural plans), x29 *Buxus microphylla* that grow to a maximum height of 0.7m (RL+54.70) and x21 *Viburnum emerald lustre* that grow to a maximum mature height of 4m (RL+56.56-57.28).

The maximum mature height of the x8 *Syzygium resilience* would be approximately 3.1m-3.3m higher than the solid side boundary fence adjacent to the third and fourth pillar closest to the rear boundary. As such, the proposal is satisfactory, subject to **Condition C.1(d)** which requires the *Syzygium resilience* adjacent to the third and fourth pillar as highlighted in **Figure 11** below be replaced with a shorter alternative species that attains a maximum mature height of 1.2m. This is to minimise view impacts to the neighbouring property at 18 Olphert Avenue.



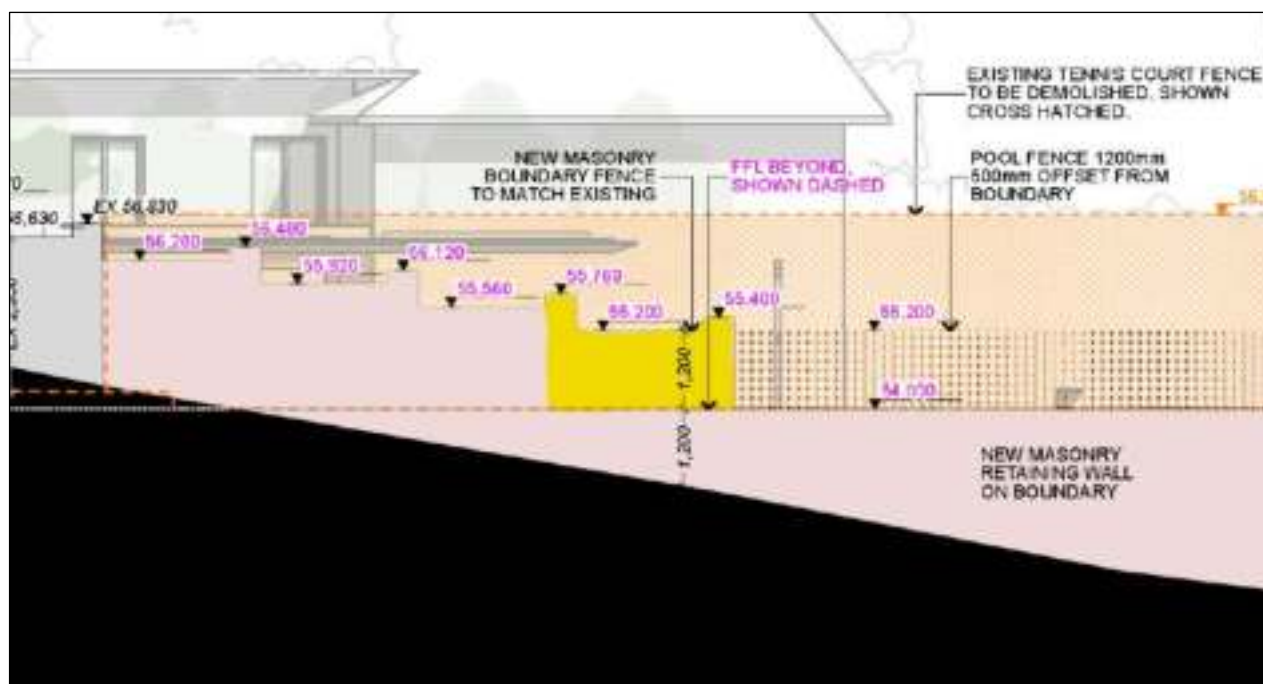


Figure 11: Replacement species required by Condition C.1(x) adjacent to the highlighted area

The maximum mature height of the 1x unspecified *Plumeria species* would be approximately 1.6m higher than the 1.2m high pool fence. As such, the proposal is satisfactory, subject to **Condition C.1(e)** which requires the 1x unspecified *Plumeria species* be replaced with a shorter alternative species that attains a maximum mature height of 1.9m. This is to minimise view impacts to the neighbouring property at 18 Olphert Avenue.

The maximum mature height of the x29 *Buxus microphylla* would be approximately 0.5m lower than the height of the pool fence and as such, no adverse view impacts are likely to occur.

The maximum mature height of the x21 *Viburnum emerald lustre* located adjacent to the rear boundary would be approximately 1.36m-2.08m higher than the 1.2m high pool fence. As such, the proposal is satisfactory, subject to **Condition C.1(f)** which requires the x21 *Viburnum emerald lustre* be replaced with a shorter alternative species that attains a maximum mature height of 1.9m. This is to ensure no adverse view impacts occur to the neighbouring property at 18 Olphert Avenue.

The proposal, as conditioned, is acceptable with the objectives and controls in Part B3.7.1 of the WDCP 2015.

#### Part B3.7.2 Fences

C4 states the height of front fences must not exceed 1.2m if solid and 1.5m if 50% transparent or open.

C9 states side and rear fences must not exceed 1.8m on level sites.

C10 Where there is a difference in ground level in excess of 1.2m either side of the boundary—the height of fences and walls may increase to 1.2m from the level of the high side.

C11 For sloping streets—the height of fences and walls may be averaged and fences and walls may be regularly stepped.

The proposal includes a new solid front wall/fence to the western end of the site as viewed from the street that measures approximately 2.2m high. The new fence (replacing an existing masonry fence of similar height) represents a significant non-compliance with Council's 1.2m height control for solid front fences. Although the proposed new wall/front fence will improve the streetscape appearance by proposing a landscaped setback to the street, a reduction in the overall height of the wall/front fence to a maximum height of RL of 62.500 of AHD is recommended, resulting in a further positive outcome to the streetscape. Refer to **Condition C.1(g)**.

The proposed height (up to 3.65m) of the landscaped metal trellis to the eastern side boundary wall is considered excessive (C9 requires boundary fences to be 1.8m) and **Condition C.1(c)** requires the structure to be deleted. This is to ensure boundary fences between sites provide visual privacy without affecting amenity.

The proposed replacement of the dilapidated retaining wall at the rear boundary has been regularly stepped to reflect the sloping topography of the subject site and the existing retaining wall. This is considered satisfactory with regards to C9 and C10 in that the boundary fence upholds Objective O5 and ensures the boundary wall provides adequate visual privacy to the private open space without affecting the amenity of neighbouring properties in terms of sunlight and views.

The proposed fence to the western side boundary is considered satisfactory on the basis that it replaces the existing masonry wall and is substantially lower than the existing tennis court fence. As shown in **Figure 12** below, the proposed fence maintains the existing view corridor from the ground floor level private open space at the neighbouring property, 18 Olphert Avenue. The proposal therefore upholds Objective O5.

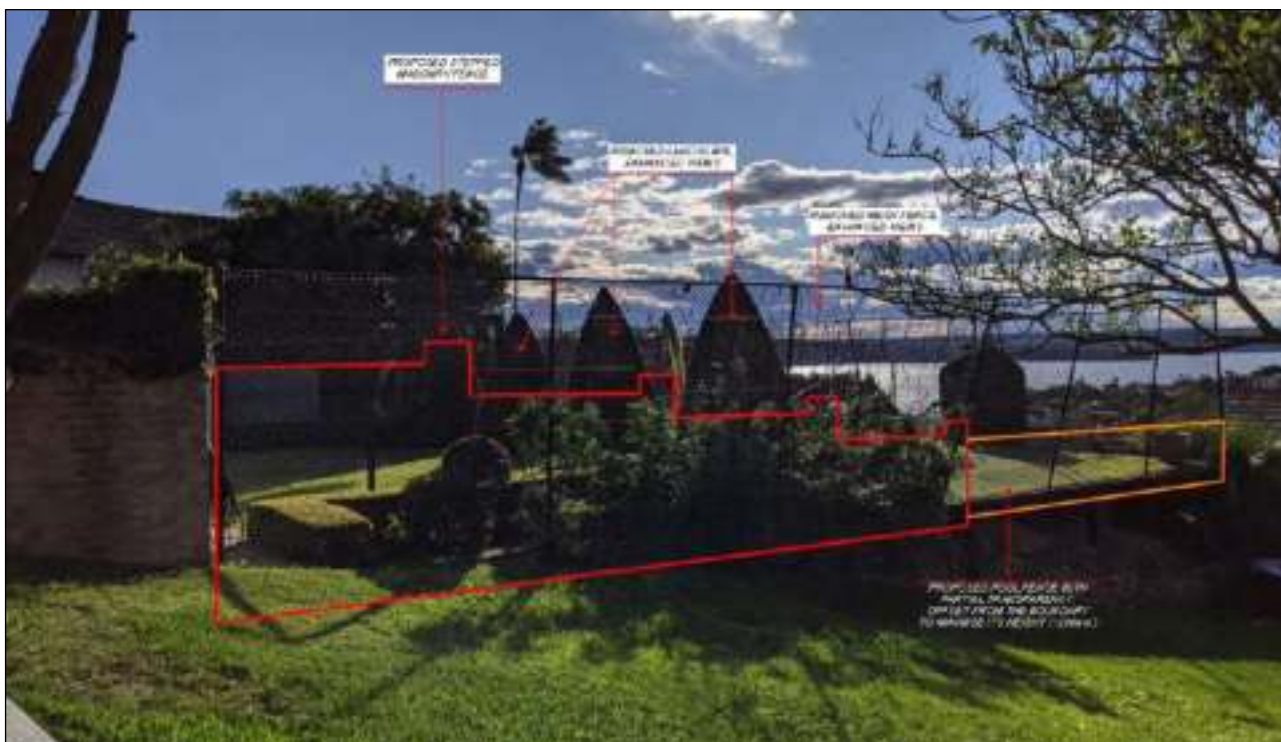


Figure 12: Proposed side boundary fence photo montage

#### Part B3.7.4 Ancillary Development – Swimming Pools

C1 states swimming pools must not occupy the deep soil landscaped area.

C2 states excavation beyond the controls in Section B3.4 is permitted to accommodate a backyard swimming pool, where the pool is outside the building envelope.

C3 states swimming pools (measured from the water edge) must be at least 1.8m from property boundaries.

C4 states swimming pool surrounds must not be more than 1.2m above or below the existing ground level.

C5 states swimming pools must be no deeper than 2m from the pool surround level.

C6 states the location and design of swimming pools and associated works must not adversely impact on prescribed trees (refer to Chapter E3 Tree Management).

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

- The proposed swimming pool does not detract from the deep soil landscaped area in the rear setback which exceeds the control by approximately 35.6m<sup>2</sup>.
- The proposed swimming pool is setback 4m from the northern (rear) boundary, 1.65m from the western (side) boundary and 1.65m from the eastern (side) boundary. The proposed swimming pool setbacks are considered satisfactory as landscaping provides adequate screening of the proposed development from the neighbouring properties.
- The proposed swimming pool is within 1.2m of the existing level surrounds.
- The maximum depth of the swimming pool is 2.2m and therefore **Condition C.1(h)** requires the depth to be reduced to 2m in accordance with C5 and Objective O2 which aims to reduce excavation.
- The proposed swimming pool does not compromise the health of or impact any of the significant trees.

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

#### B3.7.6 Ancillary Development – Outbuildings

C1 states outbuildings must be located within the building envelope or the rear setback.

C2 states the maximum height of outbuildings must be 3.6m and the outbuilding is to be sited a minimum of 1.5m from the side and rear boundaries.

C3 states outbuildings, if located outside the building envelope, must not reduce the deep soil landscaped area and the private open space areas below the minimum required for development, as specified in Section 3.7.1 Landscaped areas and private open space.

The proposed cabana is considered acceptable for the following reasons:

- The proposed cabana is located 1.36m from the eastern side boundary and represents a non-compliance with the 1.5m requirement in C2 above. As discussed in Section 14.2.4 above, the proposed cabana would not result in any significant adverse amenity impacts in terms of views, privacy and sense of enclosure.
- The proposed height of the poolside cabana is 2.6m and therefore compliant with the maximum height of outbuildings specified in C2 above.

- The proposed poolside cabana is located in the rear setback and not visible from the Olphert Avenue streetscape.
- The proposed poolside cabana is located outside the building envelope and does not reduce the deep soil landscaped area and private open space areas below the minimum requirement. Furthermore, the proposed deep soil landscaped area in the rear setback exceeds the control by approximately 35.6m<sup>2</sup>.
- No adverse amenity impacts to neighbouring properties are likely to occur in terms of overshadowing, view loss, acoustic and visual privacy. In addition, landscaping is proposed to screen the poolside cabana from the neighbouring property at 18 Olphert Avenue.

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

### 14.3. Chapter E1: Parking and Access

	Proposed	Control	Complies
Max Number of Car Parking Spaces	3 Spaces	2 Spaces	YES

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

The non-compliance with the maximum number of car spaces is considered satisfactory on the basis that the proposed alterations and additions maintain the existing situation/layout for car parking at the subject site.

Council's Technical Services Engineer has confirmed the proposal is satisfactory and provided the following comments:

- *"Due to the modification of the garages, the existing vehicular crossings cannot be retained. As such the construction of a standard vehicular crossing having a width of 4.7m at property boundary and perpendicular to the road carriageway is required. Council's road reserve fronting the boat and bicycle storage area within the site shall not be utilised for any type of access to this storage area. There shall be no direct access gate to this area fronting Council's road reserve.*
- *As such the proposed permeable paving/grassed crossing fronting the boat and bicycle storage shall be removed, turfed and reinstated with kerb and gutter*
- *The expected traffic generation from the proposed development is typical for the zoning of the site.*
- *The access and parking layout is generally satisfactory subject to the following conditions:*
- *To comply with the "flood protection condition", the garage floor level shall be at or above the level of 61.4m AHD.*
- *The access and parking layout to address the vehicular crossing requirements stated above."*

The proposal, as conditioned, is acceptable with regard to the objectives and controls in Chapter E1 of the Woollahra DCP 2015.

### 14.4. Chapter E2: Stormwater and Flood Risk Management

Council's Technical Services Engineer has confirmed the proposal is satisfactory and provided the following comments in relation to stormwater:

*“Easement refusal considered satisfactory. Title and Dealing documents do not provide any statements that the drainage easement at the rear of the property benefits the subject sit. As such alternate drainage discharge options for the subject site can be considered.*

- *The advice provided within the Geotechnical Investigation Report, referenced 32254SCrptrev4, prepared by JK Geotechnics, dated 7 May 2020, stating that the site is suitable for an absorption system is considered unsatisfactory for the following reasons:*
  - *The report has stated a relatively high absorption rate for the location of the absorption system. However, the absorption rate provided does not comply to Council’s DCP requirements.*
  - *The report has stated that due to rock, the water will discharge directly into the neighbouring property due to the presence of sandstone bedrock at shallow depths. Together with the findings provided within the Geotechnical Advice - Stabilisation or Replacement of Damaged Retaining Wall, referenced 2810-GR-1-1, prepared by Alliance Geotechnical, dated 2 March 2017, it is therefore unclear why the report has deemed the site suitable for an absorption system.*

*In conclusion; based on the findings within the Geotechnical Investigation Report, referenced 32254SCrptrev4, prepared by JK Geotechnics, dated 7 May 2020, the Geotechnical Advice - Stabilisation or Replacement of Damaged Retaining Wall, referenced 2810-GR-1-1, prepared by Alliance Geotechnical, dated 2 March 2017 and the advice from Council’s Drainage Engineer in the email dated 27/05/2020; the downstream property (No.77 Hopetoun Avenue) is presently affected by substantial water flow from No.16 Olphert Avenue, which has also contributed to the damaged retaining wall at the common boundary of the two properties. Therefore, the decision has been made that the site will not be suitable for an absorption system.*

*In this regard, there are no objections to the Stormwater Management Plan, Job No. 2018H0239, Revision P3, prepared by Partridge, dated 03/08/2020 subject to the following conditions;*

- *The additional impervious area shall not exceed 40m<sup>2</sup>. Note: Swimming pool overflow shall automatically discharge to the sewer. Manufacturer’s details shall be provided prior to Construction Certificate approval.*
- *All surface run-off at the rear of the site shall be collected and diverted to the pump-out system.*
- *The rainwater tank volume shall be increased from 32m<sup>3</sup> to 34m<sup>3</sup>.*
- *The pump-out system shall be designed in accordance with AS3500.3*
- *The stormwater discharge from the site shall connect to Council’s underground drainage system. As such, Council’s existing drainage system on Olphert Avenue shall be extended to the site in order to allow for the below ground connection. Council’s underground stormwater system shall be extended from the existing pit situated approximately adjacent to No. 12 Olphert Avenue and No. 73 Hopetoun Avenue. A standard double grated kerb inlet pit (KIP) with a 1.8m precast lintel (in accordance with Council’s standard drawing DR1) shall be constructed within the frontage of the site and at least 0.5m away from any vehicular crossings The extension of the Council’s underground system shall be made by using a maximum 300mm diameter pipe and in accordance with Council’s Specifications unless otherwise amended at the Section 138 Application of the Roads Act 1993. Where the pipe crosses the vehicular crossings of No.14 Olphert Avenue and No.73 Hopetoun Avenue or any other crossing, the crossings shall be reconstructed with the owner of the properties notified.*

*Owner consent is not required. (Refer to email train from Yasas De Silva Team Leader – Infrastructure Asset Management, dated 29/07/2020).*

*The plans shall clearly demonstrate the surface and invert levels of all proposed and existing pits and the gradient of all proposed pipes on longitudinal sections with all stormwater pipes having a minimum 1% gradient. Longitudinal sections (scale 1:100) showing the extension of Council's underground system shall be provided for assessment. All design details and location of all existing services shall be included in the longitudinal section.*

*The concept plan is subject to the submission and approval of Stormwater Management Plan for the site prior to release of the Construction Certificate. Details are to be in accordance with Council's Chapter E2 "Stormwater and Flood Risk Management" DCP and Local Approvals Policy. This is to ensure that site stormwater is disposed in a controlled and sustainable manner.*

*Council's Technical Services Division is satisfied that adequate provision has been made for the disposal of stormwater from the land it is proposed to develop and complies with the provisions Council's Chapter E2 "Stormwater and Flood Risk Management" DCP."*

Subject to the recommended conditions, the proposal is acceptable with regard to the objectives and controls in Chapter E2 of the Woollahra DCP 2015.

#### **14.5. Chapter E3: Tree Management**

Council's Trees and Landscaping Officer has confirmed the proposal is satisfactory, subject to conditions.

#### **14.6. Chapter E5: Waste Management**

Chapter E5 is applicable to all development and seeks to establish waste minimisation and sustainable waste management during demolition and construction phases and throughout the 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**

The proposal is acceptable with regard to Part E5.3 of the Woollahra DCP 2015.



## 14.7. Chapter E6: Sustainability

C1 states the solar energy system must meet the following requirements:

- a) Is in line with the roof surface or no more than 300mm above and parallel with the roof surface.
- b) Is located behind the front setback and not visible from the street.
- c) Does not involve mirrors or lenses to reflect or concentrate sunlight.

C2 states the location of the solar energy system must not have an unreasonable visual impact on:

- a) The streetscape and scenic quality of the area.
- b) Visual quality of the area when viewed from the harbour or a public recreation area.
- c) Amenity of adjoining and adjacent properties.
- d) Existing harbour and city views obtained from private properties.

The proposed solar energy panels are to be located on the 7% pitched roof surface of the dwelling house. Due to the topography of the subject site and neighbouring built form, the proposed panels would be suitably screened from the streetscape. The scenic quality of the area is retained and the proposal does not adversely impact any views obtained from neighbouring properties.

The proposed solar energy panels are therefore satisfactory, subject to **Condition C.1(i)** that requires the panels to be installed in line with roof surface and no more than 300mm above and parallel with the roof surface.

The proposal, as conditioned, is acceptable with regard to the solar energy system controls and objectives in Part E6.3 of the Woollahra DCP 2015.

## 15. SECTION 7.12 CONTRIBUTION PLANS

### 15.1. 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. Refer to **Condition C.2**.

Cost of Works	Rate	Contribution Payable
\$3,364,209.00	1%	\$33,642.09

## 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. The proposal is considered to be acceptable, subject to **Condition E.2**.

## **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 form conditions of consent.

## **17. THE LIKELY IMPACTS OF THE PROPOSAL**

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

## **18. THE SUITABILITY OF THE SITE**

The site is suitable for the proposed development.

## **19. THE PUBLIC INTEREST**

The proposal is considered to be in the public interest.

## **20. CONCLUSION**

The proposal is acceptable against the relevant considerations under Section 4.15 for the following reasons:

## **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 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 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

THAT Council, as the consent authority, grant development consent to Development Application No. 510/2019/1 for alterations and additions to the existing dwelling including new swimming pool and cabana on land at 16 Olphert Avenue Vacluse, 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)
DA101 (Rev C)	Site Plan	De Moyer Architecture	31/07/2020
DA204 (Rev C)	Proposed Roof Plan		31/07/2020
DA204 (Rev C)	Proposed Living Level		31/07/2020
DA206 (Rev C)	Proposed Bedrooms Level		31/07/2020
DA207(Rev C)	Proposed Pool Level		31/07/2020
DA208 (Rev D)	Pool Details		31/07/2020
DA300 (Rev A)	South Elevation		18/12/2020
DA301 (Rev B)	North Elevation		31/07/2020
DA302 (Rev C)	East Elevation		31/07/2020
DA303 (Rev C)	West Elevation		31/07/2020
DA304 (Rev C)	Boundary Fencing Elevations		31/07/2020
DA400 (Rev C)	Section A		31/07/2020
DA401 (Rev B)	Section B		30/01/2020
DA402 (Rev C)	Section C		31/07/2020
DA501 (Rev A)	External Finishes Schedule		18/12/2019
DA700 (Rev B)	Driveway Details		31/07/2020
DA701 (Rev B)	Waste Management Plan		31/07/2020
A362284_02	BASIX Certificate	NSW Department of Planning and Infrastructure	28/10/2019
	Site Waste Minimisation and Management Plan	De Moyer Architecture	18/12/2019
Job No. 2018H0239, Revision P3	Stormwater Management Plan	Partridge	03/08/2020
32254SCrptrev4	Geotechnical Investigation Report	JK Geotechnics	07/05/2020
2810-GR-1-1	Geotechnical Advice - Stabilisation or Replacement of Damaged Retaining Wall	Alliance Geotechnical	02/03/2017
32254SClet	Geotechnical Advice	JK Geotechnics	04/08/2020

**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 No Underpinning works (Special Condition)**

This development consent does NOT give approval to any works outside the boundaries of the subject site including any underpinning works to any structures on adjoining properties.

## **B. Conditions Which Must Be Satisfied Prior to the Demolition of Any Building or Construction**

### **B.1 Construction Certificate Required Prior to Any Demolition**

Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is "commencement of erection of building" pursuant to section 6.6 of the *Act*.

In such circumstance all conditions in Part C and Part D of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the issue of a Construction Certificate, appointment of a Principal Certifier, and Notice of Commencement under the *Act*.

**Note:** See *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.  
Standard Condition: B1 (Autotext BB1)

### **B.2 Identification of Hazardous Material**

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

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

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

**Note:** This condition is imposed to protect the health and safety of all persons while works are being undertaken and to ensure all safety measures have been identified and are in place to protect all parties in the immediate vicinity of the site.  
Standard Condition: B6

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

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

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



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

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

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

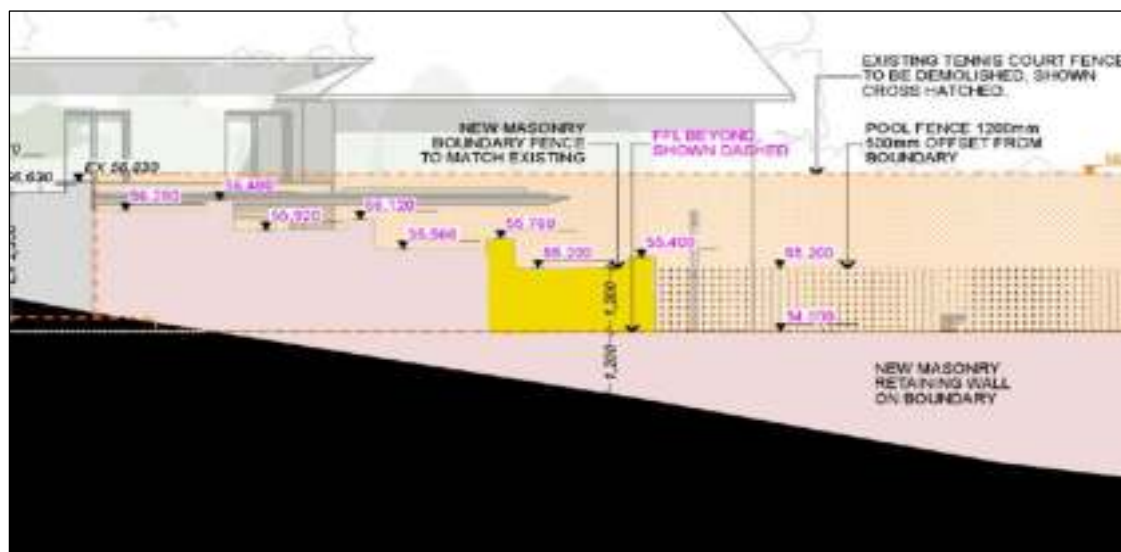
**Note:** If the Applicant or Owner fails to submit the asset condition report required by this condition and damage is occasioned to public assets adjoining the site, Council will deduct from security any costs associated with remedying, repairing or replacing damaged public infrastructure. Nothing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

## **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 construction of a full width vehicular crossing having a width of 4.7m at the property boundary and perpendicular to the road carriageway in accordance with Council's standard driveway drawing RF2-D. Note: Council's road reserve fronting the boat and bicycle storage area within the site must not be utilised for any type of access to this storage area. As such, there must be no direct access to this area fronting Council's road reserve.
- b) To avoid direct overlooking to the neighbouring private open space and/or habitable room windows a 1.5m high translucent glass privacy screen must be installed (as measured from the finished floor level of the balcony) along the eastern and southern ends of the living level balcony.
- c) To ensure boundary fences between sites provide visual privacy without affecting amenity, the landscaped metal trellis to the eastern side boundary wall must be deleted.
- d) To ensure a satisfactory view sharing outcome, the *Syzygium resilience* adjacent to the third and fourth pillar at the eastern side boundary fence as highlighted in yellow in the figure below, must be replaced with a species that attains a maximum mature height not exceeding 1.2m.



- e) To ensure a satisfactory view sharing outcome, the 1x unspecified *Plumeria species* adjacent to the eastern side boundary fence must be replaced with a species that attains a maximum mature height not exceeding 1.9m.
- f) To ensure a satisfactory view sharing outcome, the x21 *Viburnum emerald lustre* adjacent to the eastern side boundary fence must be replaced with a species that attains a maximum mature height not exceeding 1.9m.
- g) To ensure a satisfactory streetscape outcome, the wall/front fence to Olphert Avenue (western end) must be reduced in height to a maximum RL of 62.500 of AHD.
- h) In order to reduce excavation, the maximum depth of the swimming pool must be 2m.
- i) In order to minimise the visual impact of the solar energy system, the solar energy panels must be in line with the roof surface and no more than 300mm above and parallel with the roof surface, and must not involve mirrors or lenses to reflect or concentrate sunlight.

**Note:** The effect of this condition is that it requires design changes and/or further information to be provided with the Construction Certificate drawings and specifications to address specific issues identified during assessment under section 4.15 of the *Act*.

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

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

Standard Condition: C4 (Autotext CC4)

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

The Certifying Authority must not issue any certificates under section 6.4 of the *Act* until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees prior to the issue of a Construction Certificate, Subdivision Certificate or Occupation Certificate, as will apply.

Description	Amount	Indexed	Council Fee Code
<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</b> -making good any damage caused to any property of the Council	\$83,525	No	T115
<b>Infrastructure Works Bond</b> -completing any public work required in connection with the consent.	\$52,000	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)	\$33,642.09 + 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	\$480	No	
Security Administration Fee	\$194	No	T16
<b>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</b>	\$169,841.09 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.3 BASIX Commitments**

The Applicant must submit to the Certifying Authority BASIX Certificate No. A362284\_02 with any application for a Construction Certificate.

**Note:** Where there is any proposed change in the BASIX commitments the Applicant must submit of a new BASIX Certificate to the Certifying Authority and Council. If any proposed change in the BASIX commitments are inconsistent with development consent (see: clauses 145 and 146 of the *Regulation*) the Applicant will be required to submit an amended development application to Council pursuant to section 4.55 of the *Act*.

All commitments in the BASIX Certificate must be shown on the Construction Certificate plans and specifications prior to the issue of any Construction Certificate.

**Note:** Clause 145(1)(a1) of the *Environmental Planning and Assessment Regulation 2000* provides: "A certifying authority must not issue a Construction Certificate for building work unless it is satisfied of the following matters: (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires".  
Standard Condition: C7

#### C.4 Road and Public Domain Works

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

- a) The stormwater discharge from the site shall connect to Council's underground drainage system. As such, Council's existing drainage system on Olphert Avenue shall be extended to the site in order to allow for the below ground connection. Council's underground stormwater system shall be extended from the existing pit situated approximately adjacent to No. 12 Olphert Avenue and No. 73 Hopetoun Avenue. A standard double grated kerb inlet pit (KIP) with a 1.8m precast lintel (in accordance with Council's standard drawing DR1) shall be constructed within the frontage of the site and at least 0.5m away from any vehicular crossings. The extension of the Council's underground system shall be made by using a maximum 300mm diameter pipe and in accordance with Council's Specifications unless otherwise amended at the Section 138 Application of the Roads Act 1993. Where the pipe crosses the vehicular crossings of No.14 Olphert Avenue and No.73 Hopetoun Avenue or any other crossing, the crossings shall be reconstructed/reinstated with the owner of the properties notified. Owner consent is not required.  
The plans shall clearly demonstrate the surface and invert levels of all proposed and existing pits and the gradient of all proposed pipes on longitudinal sections with all stormwater pipes having a minimum 1% gradient. Longitudinal sections (scale 1:100) showing the extension of Council's underground system shall be provided for assessment. All design details and location of all existing services shall be included in the longitudinal section.  
**Note:** the vehicular crossing shall have a minimum 1m clearance from the existing Telstra Pit. As such written approval from Telstra shall be provided to either have the pit remain in its current location or for the pit to be relocated.
- b) Reconstruction of a full width vehicular crossing having a width of **4.7m** at property boundary and perpendicular to the road carriageway in accordance with Council's standard driveway drawing RF2-D.  
**Note:** Council's road reserve fronting the boat and bicycle storage area within the site shall not be utilised for any type of access to this storage area. As such the proposed permeable paving/grassed crossing fronting the boat and bicycle storage shall be removed, turfed and reinstated with kerb and gutter.
- c) A design longitudinal surface profile for the proposed driveway must be submitted for assessment.
- d) Removal and replacement of the existing concrete footpath for the full width of the property in accordance with Council's standard drawing RF3.
- e) Removal and replacement of all cracked or damaged kerb and gutter for the full width of all property in accordance with Council's standard drawing RF3.
- f) Removal of any driveway crossings and kerb laybacks which will be no longer required.  
**Note:** the proposed permeable paving/grassed crossing fronting the boat and bicycle storage shall also be removed, turfed and reinstated with kerb and gutter.
- g) Reinstatement of footpath, kerb and gutter to match existing.

- h) Where a grass verge exists, the balance of the area between the footpath and the kerb over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of Couch turf.

**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. Advise* of this Consent titled *Roads Act Application*.  
Standard Condition: C13

### C.5 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.6 Structural Adequacy of Existing Supporting Structures

A certificate from a professional engineer (structural engineer), certifying the adequacy of the existing supporting structure to support the additional loads proposed to be imposed by the development, must be submitted with the Construction Certificate application.

**Note:** This condition is imposed to ensure that the existing structure is able to support the additional loads proposed. Standard Condition: C35 (Autotext CC35)



### C.7 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.8 Engineer Certification (Special Condition)

This development consent does NOT give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties.

Any structural design is not to incorporate any underpinning works which encroaches outside the boundaries of the subject property.

### C.9 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.10 Ground Anchors

This development consent does NOT give approval to any ground anchors encroaching onto adjoining private properties. Use of any Ground Anchors extending beyond site boundaries requires the approval of neighbouring private properties in writing.

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.11 Parking Facilities

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.

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)

### **C.12 Stormwater Management Plan (site greater than 500m<sup>2</sup>)**

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 the Stormwater Management Plan, Job No. 2018H0239, Revision P3, prepared by Partridge, dated 03/08/2020, other than amended by this and other conditions;
  - a. The additional impervious area shall not exceed 40m<sup>2</sup>. Note: Swimming pool overflow shall automatically discharge to the sewer. Manufacturer's details shall be provided prior to Construction Certificate approval.
  - b. All surface run-off at the rear of the site shall be collected and diverted to the pump-out system.
  - c. The rainwater tank volume shall be increased from 32m<sup>3</sup> to minimum 34m<sup>3</sup>.
- b) The discharge of stormwater, by direct connection, to back of a new Council kerb inlet pit on Olphert Avenue in accordance with the following;
  - a. The stormwater discharge from the site shall connect to Council's underground drainage system. As such, Council's existing drainage system on Olphert Avenue shall be extended to the site in order to allow for the below ground connection. Council's underground stormwater system shall be extended from the existing pit situated approximately adjacent to No. 12 Olphert Avenue and No. 73 Hopetoun Avenue. A standard double grated kerb inlet pit (KIP) with a 1.8m precast lintel (in accordance with Council's standard drawing DR1) shall be constructed within the frontage of the site and at least 0.5m away from any vehicular crossings. The extension of Council's underground system shall be made by using a maximum 300mm diameter pipe and in accordance with Council's Specifications unless otherwise amended at the Section 138 Application of the Roads Act 1993. The plans shall clearly demonstrate the surface and invert levels of all proposed and existing pits and the gradient of all proposed pipes on longitudinal sections with all stormwater pipes having a minimum 1% gradient. Longitudinal sections (scale 1:100) showing the extension of Council's underground system shall be provided for assessment. All design details and location of all existing services shall be included in the longitudinal section.
- c) Compliance the objectives and performance requirements of the BCA,
- d) Any rainwater tank (see Note below) required by BASIX commitments including Their overflow connection to the Stormwater Drainage System,
- e) General compliance with Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management, and
- f) Provision of a rainwater tank having a minimum volume of 34m<sup>3</sup> and a pump-out system with a minimum storage volume of 16.4m<sup>3</sup>. The pump-out system shall be designed in accordance with AS3500.3

Note: the volumes shall be calculated to the top of water level only.

**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.

The layout plan must include:

- a) All pipe layouts, dimensions, grades, lengths and material specification,
- b) Location of the rainwater tank and pump-out system,
- 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 Council's drainage infrastructure, and
- f) Overland flow paths over impervious areas.

Stormwater Management Systems

The rainwater tank and pump-out system utilised within the site shall address:

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

Subsoil drainage

The subsoil drainage is to address:

- a) Subsoil drainage details,
- b) Clean out points, and
- c) Discharge point.

Where any new *Stormwater Drainage System* crosses the footpath area within any road, separate approval under section 138 of the *Roads Act* 1993 must be obtained from Council for those works prior to the issue of any *Construction Certificate*.

All *Stormwater Drainage System* work within any road or public place must comply with Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* dated February 2012.

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

**Note:** The collection, storage and use of rainwater is to be in accordance with *Standards Australia HB230-2008 "Rainwater Tank Design and Installation Handbook"*.  
Standard Condition: C.51 (Autotext CC51)

### C.13 Non-Gravity Drainage Systems

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 the non-gravity drainage systems (charged, siphon, pump/sump systems) being designed in accordance with section 6.2.4 – “Non-gravity drainage systems” of Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.

**Note:** The Woollahra DCP is available from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au).  
Standard Condition: C.52 (Autotext CC52)

### 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 on the 1 in 100 year AEP flood level and the 1 in 20 AEP flood level, detailing:

- a) The Garage floor shall be at or above the level of 61.4m AHD.
- b) All flood protection measures shall be inspected and certified as fit for purpose after 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 Swimming and Spa Pools – Child Resistant Barriers

The Construction Certificate plans and specifications required by clause 139 of the *Regulation* must demonstrate compliance (by showing the proposed location of all child-resistant barriers and the resuscitation sign) with the provisions of the *Swimming Pools Act 1992* and the Building Code of Australia.

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

**Note:** A statement to the effect that isolation swimming pool fencing complying with AS1926 will be installed does not satisfy this condition. The location of the required barriers and the sign must be detailed upon the *Construction Certificate* plans.  
Standard Condition: C55 (Autotext CC55)

## C.16 Swimming and Spa Pools – Backwash

The Construction Certificate plans and specification required to be submitted pursuant to clause 139 of the *Regulation* must detail the connection of backwash to Sydney Waters sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

**Note:** The plans must show the location of Sydney Water’s sewer, the yard gully or any new connection to the sewer system including a detailed cross section of the connection complying with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

**Note:** The discharge of backwash water to any stormwater system is water pollution and an offence under the *Protection of the Environment Operations Act 1997*. The connection of any backwash pipe to any stormwater system is an offence under the *Protection of the Environment Operations Act 1997*.  
Standard Condition: C56 (Autotext CC56)

## 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 the Structural Engineer.

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

- a) No. 14 Olphert Avenue
- b) No. 18 Olphert Avenue
- c) No. 77 Hopetoun Avenue



The dilapidation reports must be completed and submitted to the *Certifying Authority* for approval. An approved copy of the reports shall be submitted to Council with the *Notice of Commencement* prior to the commencement of any *development work*.

Where excavation of the site will extend below the level of any immediately adjoining building the *principal contractor* or *owner builder* must give the adjoining building owner(s) a copy of the dilapidation report for their building(s) and a copy of the *notice of commencement* required by Section 6.6(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.

**Note:** Also refer to the Dilapidation Report Advising for more information regarding this condition  
Standard Condition: D4 (Autotext DD4)

### D.3 Dilapidation Reports for Public Infrastructure

To clarify the existing state of public infrastructure prior to the commencement of any development (including prior to any demolition), the Principal Contractor must submit a dilapidation report, prepared by a professional engineer, on Council's infrastructure within and near the development site.

The dilapidation report must be submitted to Council prior to the commencement of any work and include:

- a) photographs showing any existing damage to the road pavement fronting the site,
- b) photographs showing any existing damage to the kerb and gutter fronting the site,
- c) photographs showing any existing damage to the footway including footpath pavement fronting the site,
- d) photographs showing any existing damage to retaining walls within the footway or road,
- e) closed circuit television/video inspection (in DVD format) of public stormwater drainage systems fronting, adjoining or within the site, and
- f) the full name and signature of the professional engineer.

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.

The dilapidation report must specify (with supporting photographic/DVD evidence) the exact location and extent of any damaged or defective public infrastructure prior to the commencement of any work. 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 Principal Contractor fails to submit the dilapidation 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: D5 (Autotext DD5)

#### D.4 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.5 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.

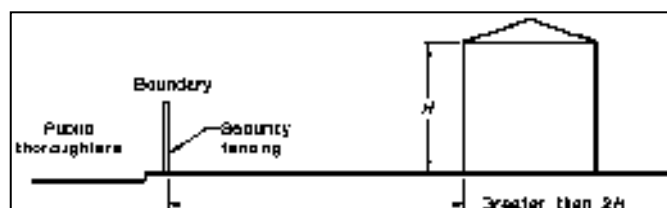
**Note:** The Principal Contractor or Owner must allow not less than four to six weeks (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under the clause 22 of the *Transport Administration (General) Regulation 2000* 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.

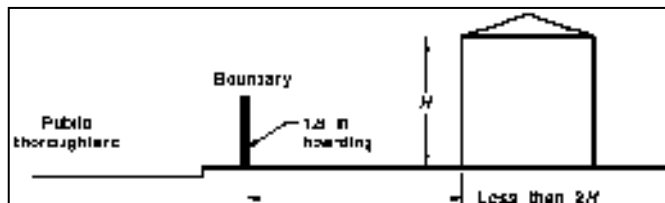
Standard Condition: D10 (Autotext DD10)

#### D.6 Security Fencing, Hoarding and Overhead Protection

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



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

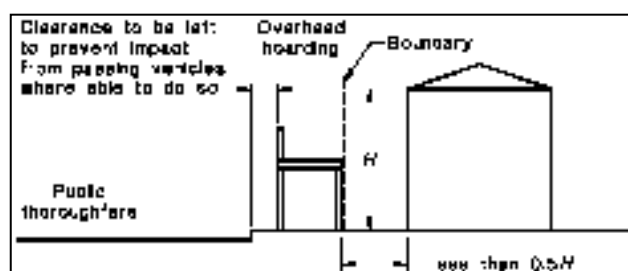


Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure and the facing facade protected by heavy-duty scaffolding, unless either:

- a) the vertical height above footpath level of the structure being demolished is less than 4.0m; 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 pay all fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

The Principal Contractor or Owner-builder must ensure that overhead protective structures are installed and maintained in accordance with 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)

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

**Note:** The Principal Contractor or Owner must allow not less than two (2) weeks from the date of making a hoarding application for determination. Any approval for a hoarding or overhead protection under the *Roads Act 1993* will be subject to its own conditions and fees.

Standard Condition: D11 (Autotext DD11)

## D.7 Site Signs

The Principal Contractor or Owner-builder must ensure that the sign/s required by clauses 98A and 227A of the *Regulation* is/are erected and maintained at all times.

Clause 98A of the *Regulation* provides:

### ***Erection of signs***

- For the purposes of section 4.17(11) of the *Act*, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - a. showing the name, address and telephone number of the Principal Certifier for the work, and
  - b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - c. stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the *Act*, to comply with the Building Code of Australia.

Clause 227A of the *Regulation* provides:

### ***Signs on development sites***

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

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

**Note:** Clause 227A imposes a penalty exceeding \$1,000 if these requirements are not complied with.

**Note:** If Council is appointed as the Principal Certifier it will provide the sign to the Principal Contractor or Owner-builder who must ensure that the sign is erected and maintained as required by clause 98A and clause 227A of the *Regulation*.

Standard Condition: D12 (Autotext DD12)

## D.8 Toilet Facilities

Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided:

- a) must be a standard flushing toilet, and
- b) must be connected to a public sewer, or

- c) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council, or
- d) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.

The provision of toilet facilities in accordance with this condition must be completed before any other work is commenced.

In this condition:

**accredited sewage management facility** means a sewage management facility to which Division 4A of Part 3 of the *Local Government (Approvals) Regulation 1993* applies, being a sewage management facility that is installed or constructed to a design or plan the subject of a certificate of accreditation referred to in clause 95B of the *Local Government (Approvals) Regulation 1993*.

**approved by the Council** means the subject of an approval in force under Division 1 of Part 3 of the *Local Government (Approvals) Regulation 1993*.

**public sewer** has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

**sewage management facility** has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

**Note:** This condition does not set aside the requirement to comply with SafeWork NSW requirements.  
Standard Condition: D13 (Autotext DD13)

## D.9 Erosion and Sediment Controls – Installation

The Principal Contractor or Owner-builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:

- 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.10 Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the *Act*)**

The erection of the building in accordance with this development consent must not be commenced until:

- a) 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.11 Notification of Home Building Act 1989 Requirements**

- a) For the purposes of section 80A (11) of the *Act*, the requirements of this condition are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the Home Building Act 1989.
- b) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- In the case of work for which a *principal contractor* is required to be appointed:
    - the name and licence number of the principal contractor, and
    - the name of the insurer by which the work is insured under Part 6 of that Act,
  - In the case of work to be done by an owner-builder:
    - the name of the owner-builder, and
    - if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- c) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.
- d) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.

Standard Condition: D17 (Autotext DD17)

## **E. Conditions Which Must Be Satisfied During Any Development Work**

### **E.1 Compliance with BCA and Insurance Requirements under the [Home Building Act 1989](#)**

For the purposes of section 4.17(11) of the *Act*, the following condition is prescribed in relation to a development consent for development that involves any building work:

- a) that the work must be carried out in accordance with the requirements of the Building Code of Australia (BCA),
- b) in the case of residential building work for which the [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 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.4 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.5 Hours of Work –Amenity of the Neighbourhood

- a) No *work* must take place on any Sunday or public holiday.
- b) No *work* must take place before 7am or after 5pm any weekday.
- c) No *work* must take place before 7am or after 1pm any Saturday.
- 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.6 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.7 Maintenance of Environmental Controls**

The Principal Contractor or Owner-builder must ensure that the following monitoring, measures and controls are maintained:

- a) erosion and sediment controls,
- b) dust controls,
- c) dewatering discharges,
- d) noise controls,
- e) vibration monitoring and controls,
- f) ablutions.

Standard Condition: E11

## **E.8 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.9 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.10 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.11 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.12 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.13 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.14 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.15 Prohibition of Burning

There must be no burning of any waste or other materials. The burning of copper chrome arsenate (CCA) or pentachlorophenol (PCP) treated timber is prohibited in all parts of NSW.

All burning is prohibited in the Woollahra local government area.

**Note:** Pursuant to the *Protection of the Environment Operations (Clean Air) Regulation 2010* all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.  
Standard Condition: E22 (Autotext EE22)

### E.16 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.17 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.18 Swimming and Spa Pools – Temporary Child Resistant Barriers and other Matters**

Temporary child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and Building Code of Australia where any swimming pool or spa pool, as defined by the *Swimming Pools Act 1992*, contains more than 300mm in depth of water at any time.

Permanent child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and the Building Code of Australia as soon as practical.

Backwash and any temporary dewatering from any swimming pool or spa pool as defined by the *Swimming Pools Act 1992* must be discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

**Note:** This condition does not prevent Council from issuing an order pursuant to section 23 of the *Swimming Pool Act 1992* or taking such further action as necessary for a breach of this condition or the *Swimming Pools Act 1992*.  
Standard Condition: E26

### **E.19 Site Waste Minimisation and Management – Demolition**

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

- a) the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,
- b) an area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements),
- c) provide separate collection bins and/or areas for the storage of residual waste,
- d) clearly 'signpost' the purpose and content of the bins and/or storage areas,
- e) implement measures to prevent damage by the elements, odour, health risks and windborne litter, and
- f) minimise site disturbance, limiting unnecessary excavation.

When implementing the SWMMP the Applicant must ensure:

- a) footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval,
- b) any material moved offsite is transported in accordance with the requirements of the *Protection of the Environment Operations Act 1997*,
- c) waste is only transported to a place that can lawfully be used as a waste facility,
- d) generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the NSW Environment Protection Authority, and relevant occupational health and safety legislation administered by SafeWork NSW, and
- e) evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained.

**Note:** Materials that have an existing reuse or recycling market should not be disposed of in a land fill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.  
Standard Condition: E31 (Autotext EE31)

## **E.20 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.21 Existing Drainage Easement (Special Condition)**

No building or other structure must be placed over the existing inter-allotment drainage easement or stormwater system or within the zone of influence taken from the invert of any pipe.

The Principal Contractor or Owner-builder must locate all stormwater drainage systems without causing any damage to the system and ensure its protection. The Owner, Principal Contractor or Owner-builder must not obstruct or otherwise remove, disconnect or render inoperable the stormwater drainage system.

Works such as fences must not obstruct the natural floodway or alter the natural floodway in such a way as to direct or concentrate stormwater on to neighbouring properties.

## **E.22 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.23 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, Part 1: 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.24 Disposal of Asbestos and Hazardous Waste**

Asbestos and hazardous waste, once classified in accordance with **Condition E.23** 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.25 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.26 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.27 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)
<i>Backhousia citriodora</i> (Lemon-scented Myrtle)	Rear yard adjacent to the northern boundary	100 litre	8 x 4

## 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 Occupation Certificate (section 6.9 of the Act)

A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 6.10 of the Act) unless an Occupation Certificate has been issued in relation to the building or part.

**Note:** New building includes an altered portion of, or an extension to, an existing building.  
Standard Condition: F1 (Autotext FF1)

### F.2 Commissioning and Certification of Systems and Works

The Principal Contractor or Owner-builder must submit to the satisfaction of the Principal Certifier works-as-executed (WAE) plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA confirming that the works, as executed and as detailed, comply with the requirement of this consent, the Act, the Regulations, any relevant construction certificate, the BCA and relevant Australian Standards.

Works-as-executed plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA must include but may not be limited to:

- a) Certification from the supervising professional engineer that the requirement of the Geotechnical/Hydrogeological conditions and report recommendations were implemented and satisfied during development work.
- b) All flood protection measures.
- c) All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1: *Off-Street car parking*.
- d) All stormwater drainage and storage systems.
- e) All mechanical ventilation systems.
- f) All hydraulic systems.
- g) All structural work.
- h) All acoustic attenuation work.
- i) All waterproofing.
- j) Such further matters as the Principal Certifier may require.

**Note:** This condition has been imposed to ensure that systems and works as completed meet development standards as defined by the *Act*, comply with the BCA, comply with this consent and so that a public record of works as execute is maintained.

**Note:** The PC may require any number of WAE plans, certificates, or other evidence of suitability as necessary to confirm compliance with the *Act*, *Regulation*, development standards, BCA, and relevant Australia Standards. As a minimum WAE plans and certification is required for stormwater drainage and detention, mechanical ventilation work, hydraulic services (including but not limited to fire services).

**Note:** The PC must submit to Council, with any Occupation Certificate, copies of WAE plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA upon which the PC has relied in issuing any Occupation Certificate.

Standard Condition: F7 (Autotext FF7)

### F.3 Commissioning and Certification of Public Infrastructure Works

The Principal Contractor or Owner-builder must submit, to the satisfaction of Council, certification from a professional engineer that all public infrastructure works have been executed in compliance with this consent and with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012).

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

Standard Condition F9 (Autotext FF9)

### F.4 Swimming and Spa Pools – Permanent Child Resistant Barriers and other Matters

Prior to filling any swimming pool, as defined by the *Swimming Pools Act 1992*:

- a) Permanent child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and the Building Code of Australia.
- b) The swimming pool must be registered in accordance with section 30B of the *Swimming Pools Act 1992* on the NSW Government Swimming Pool Register.
- c) The Principal Contractor or Owner must either obtain a certificate of compliance issued pursuant to section 22D of the *Swimming Pools Act 1992* or an appropriate Occupation Certificate authorising use of the swimming pool.
- d) Public pools must comply with the *NSW Health Public Swimming Pool and Spa Pool Guidelines* in force at that time and private pools are encouraged to comply with the same standards as applicable.
- e) Water recirculation and filtration systems must be installed in compliance with AS 1926.3-2010: *Swimming pool safety - Water recirculation systems*.

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

Water recirculation and filtration systems must be connected to the electricity supply by a timer that limits the systems operation such that it does not operate before 8 am or after 8 pm on any Sunday or public holiday or before 7 am or after 8 pm on any other day.

**Note:** NSW Health guidelines and fact sheets are available at  
[www.health.nsw.gov.au/environment/publicpools/Pages/default.aspx](http://www.health.nsw.gov.au/environment/publicpools/Pages/default.aspx)  
Standard Condition: F13 (Autotext FF13)

## **F.5 Swimming Pool Fencing**

Swimming pool fencing is to be constructed in accordance with AS1926-2012 Australian Standard Swimming Pool Safety Part 1 – *Safety Barriers for Swimming Pools*.

**Note:** Pools commenced or completed after May 2013 must meet Part 3.9.6 of the BCA AS1926.1-2012 and AS1926.2-2012  
Standard Condition: F20 (Autotext FF20)

## **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 (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. A362284\_02.

**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 Dilapidation Report for Public Infrastructure Works

The Principal Contractor must submit a follow up dilapidation report, prepared by a professional engineer, on Council's infrastructure within and near the development site to Council upon completion of the work.

The Final Occupation Certificate must not be issued until Council's Civil Works Engineer is satisfied that the works have been satisfactorily completed and the Principal Certifier has been provided with correspondence from Council to this effect.

The dilapidation report must include:

- a) photographs showing any existing damage to the road pavement fronting the site,
- b) photographs showing any existing damage to the kerb and gutter fronting the site,
- c) photographs showing any existing damage to the footway including footpath pavement fronting the site,
- d) photographs showing any existing damage to retaining walls within the footway or road,
- e) closed circuit television/video inspection (in DVD format) of public stormwater drainage systems fronting, adjoining or within the site, and
- f) the full name and signature of the professional engineer.

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.



The dilapidation report must specify (with supporting photographic/DVD evidence) the exact location and extent of any damaged or defective public infrastructure. If the required report is not submitted then Council will assume any damage to any infrastructure in the immediate vicinity of the site was caused by the principle contractor and Owner carrying out work under this consent.

**Note:** If the Principal Contractor fails to submit the dilapidation 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: H14 (AutotextHH14)

## **H.5 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 *PCA* detailing:

- a) Compliance with conditions of development consent relating to stormwater;
- b) The structural adequacy of the Rainwater Tank and Pump-out system;
- c) That the works have been constructed in accordance with the approved design and will provide the retention storage volume and attenuation in accordance with the submitted calculations;
- d) Pipe invert levels and surface levels to Australian Height Datum;
- 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.
- f) 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 rainwater tank and pump-out system incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered at the Land and Property Information NSW.

**Note:** The required wording of the Instrument can be downloaded from Council's web site [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au). The PCA 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 Maintenance of BASIX Commitments**

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. A362284\_02.

**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.2 Outdoor Lighting – Residential

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.

**Note:** This condition has been imposed to protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting in public places.

**Note:** This condition has been imposed to control the obtrusive effects of outdoor lighting.  
Standard Condition: I49

## I.3 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

## I.4 Swimming and Spa Pools – Maintenance

Swimming and spa pools must be maintained:

- a) in compliance with the *Swimming Pools Act 1992* and the Building Code of Australia with regard to the provision of child-resistant barriers and resuscitation signs,
- b) in compliance with the NSW Health “Public Swimming Pools and Spa Pools Advisory Document” in force at that time. Private pools are encouraged to comply with the same standards as applicable,
- c) in compliance with AS 1926.3-2010 *Swimming pool safety - Water recirculation and filtration systems*,
- d) with backwash being discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996, and
- e) with a timer that limits the recirculation and filtration systems operation such that it does not emit noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
  - before 8 am or after 8 pm on any Sunday or public holiday, or
  - before 7 am or after 8 pm on any other day.

**Note:** Child-resistant barriers, resuscitation signs, recirculation and filtration systems and controls systems require regular maintenance to ensure that life safety, health and amenity standards are maintained.

**Note:** The NSW Health public swimming pools and spa pools guidelines are available at [www.health.nsw.gov.au/environment/publicpools/Pages/default.aspx](http://www.health.nsw.gov.au/environment/publicpools/Pages/default.aspx)  
Standard Condition: I30

## **I.5 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 retention 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 the Council;
- e) Carry out the matters referred to in paragraphs (b) and (d) at the Owners 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 the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant;
- 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 the Council or its agents at all times and on reasonable notice at the Owner's cost to enter the land with equipment, machinery or otherwise to carry out the works required by those obligations;
- 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

## **J. Miscellaneous Conditions**

Nil.

## **K. Advisings**

### **K.1 Criminal Offences – Breach of Development Consent and Environmental Laws**

Failure to comply with this development consent and any condition of this consent is a **criminal offence**. Failure to comply with other environmental laws is also a criminal offence.

Where there is any breach Council may without any further warning:

- a) Issue Penalty Infringement Notices (On-the-spot fines);
- b) Issue notices and orders;
- c) Prosecute any person breaching this consent; and/or
- d) Seek injunctions/orders before the courts to restrain and remedy any breach.

#### Warnings as to potential maximum penalties

Maximum penalties under NSW environmental laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

#### Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council's policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order.

This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

**Note:** The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of the *Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious.  
Standard Advising: K1 (Autotext KK1)

## **K.2 Dial Before You Dig**



The Principal Contractor, Owner-builder or any person digging may be held financially responsible by the asset owner should they damage underground pipe or cable networks. Minimise your risk and dial 1100 Before You Dig or visit [www.1100.com.au](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 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.7 Appeal**

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Ms T Ward, Senior Assessment Officer, on (02) 9391 7016.

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.8 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.9 Recycling of Demolition and Building Material**

It is estimated that building waste, including disposable materials, resulting from demolition, excavation, construction and renovation, accounts for almost 70% of landfill. Such waste is also a problem in the generation of dust and the pollution of stormwater. Council encourages the recycling of demolition and building materials.

Standard Condition: K17 (Autotext KK17)



### **K.10 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.11 Pruning or Removing a Tree Growing on Private Property**

The Woollahra Development Control Plan 2015 (DCP), Chapter E3 –Tree Management, may require that an application be made to Council prior to pruning or removing any tree. The aim is to secure the amenity of trees and preserve the existing landscape within our urban environment.

Before you prune or remove a tree, make sure you read all relevant conditions. You can obtain a copy of the Woollahra DCP from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or call Council on 9391 7000 for further advice.

Standard Condition: K19 (Autotext KK19)

### **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 requested and may be used by them in the event of a dispute relating to damage allegedly due to the carrying out of the development.
- b) This condition cannot prevent neighbouring buildings being damaged by the carrying out of the development.
- c) Council will not be held responsible for any damage which may be caused to adjoining buildings as a consequence of the development being carried out.
- d) Council will not become directly involved in disputes between the developer, its contractors and the owners of neighbouring buildings.
- e) In the event that access for undertaking the dilapidation survey is denied the Applicant is to demonstrate in writing to the satisfaction of the Principal Certifier that all reasonable steps were taken to obtain access to the adjoining property. The dilapidation report will need to be based on a survey of what can be observed externally.

Standard Advising: K23 (Autotext KK23)

### **K.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)

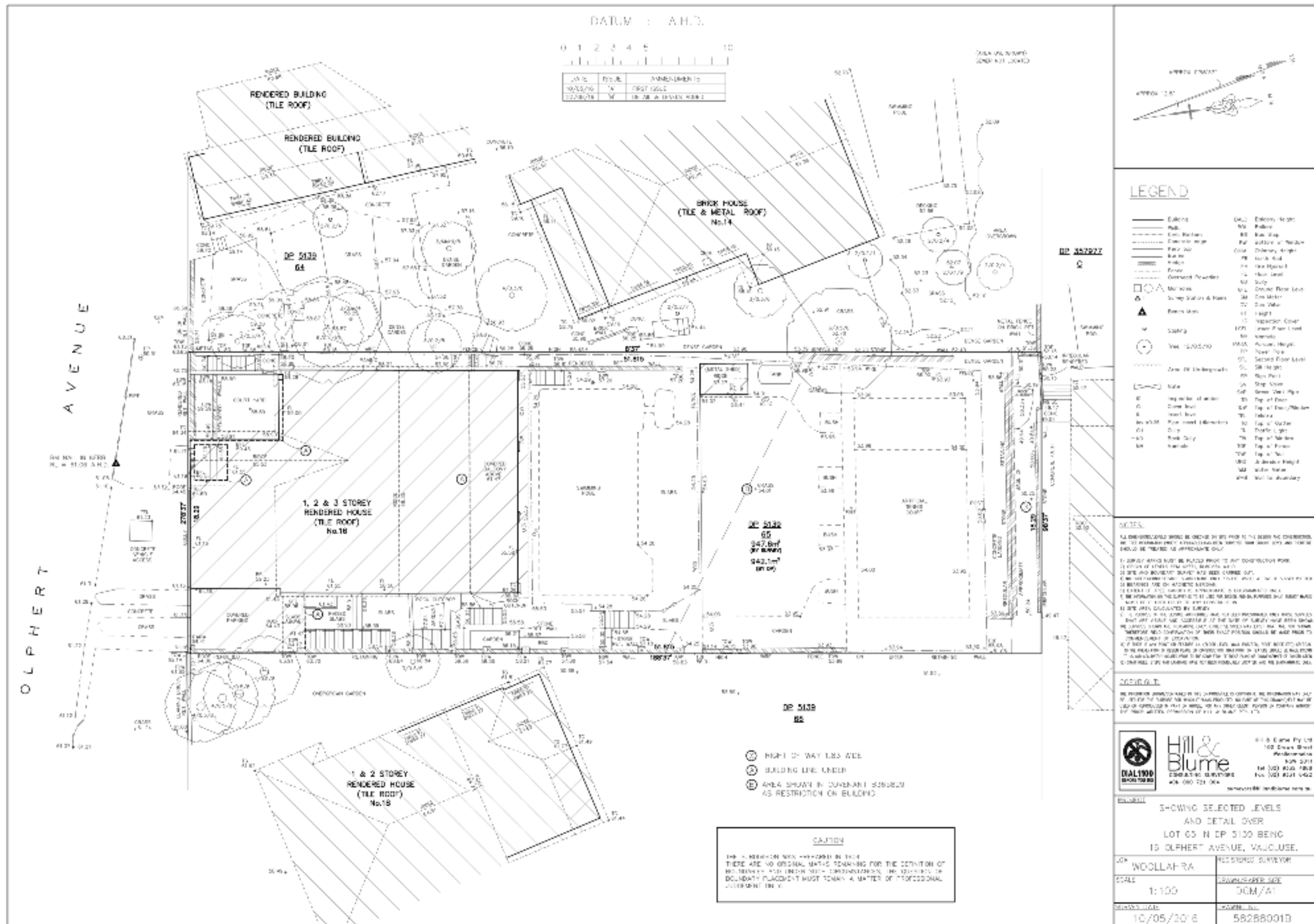
#### **K.14 Mailboxes**

Council has been alerted to an increase in mailbox theft, and as such, all new development, being new dwelling houses and residential flat buildings, are encouraged to have lockable mail boxes.

Standard Advising: K25 (Autotext KK25)

#### **Annexures**

1. Survey, Plans and Elevations [↓](#) 
2. Clause 4.6 Written Submission [↓](#) 
3. Technical Services Referral Response [↓](#) 
4. Drainage Referral Response [↓](#) 
5. Trees and Landscaping Referral Response [↓](#) 







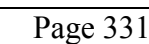
17 AUGUST 2020  
EXTENSIVE ALTERATIONS & ADDITIONS  
INCLUDING NEW SWIMMING POOL & CABANA TO  
16 OLPHERT AVE, VAUCLUSE NSW 2030  
**DEVELOPMENT APPLICATION**

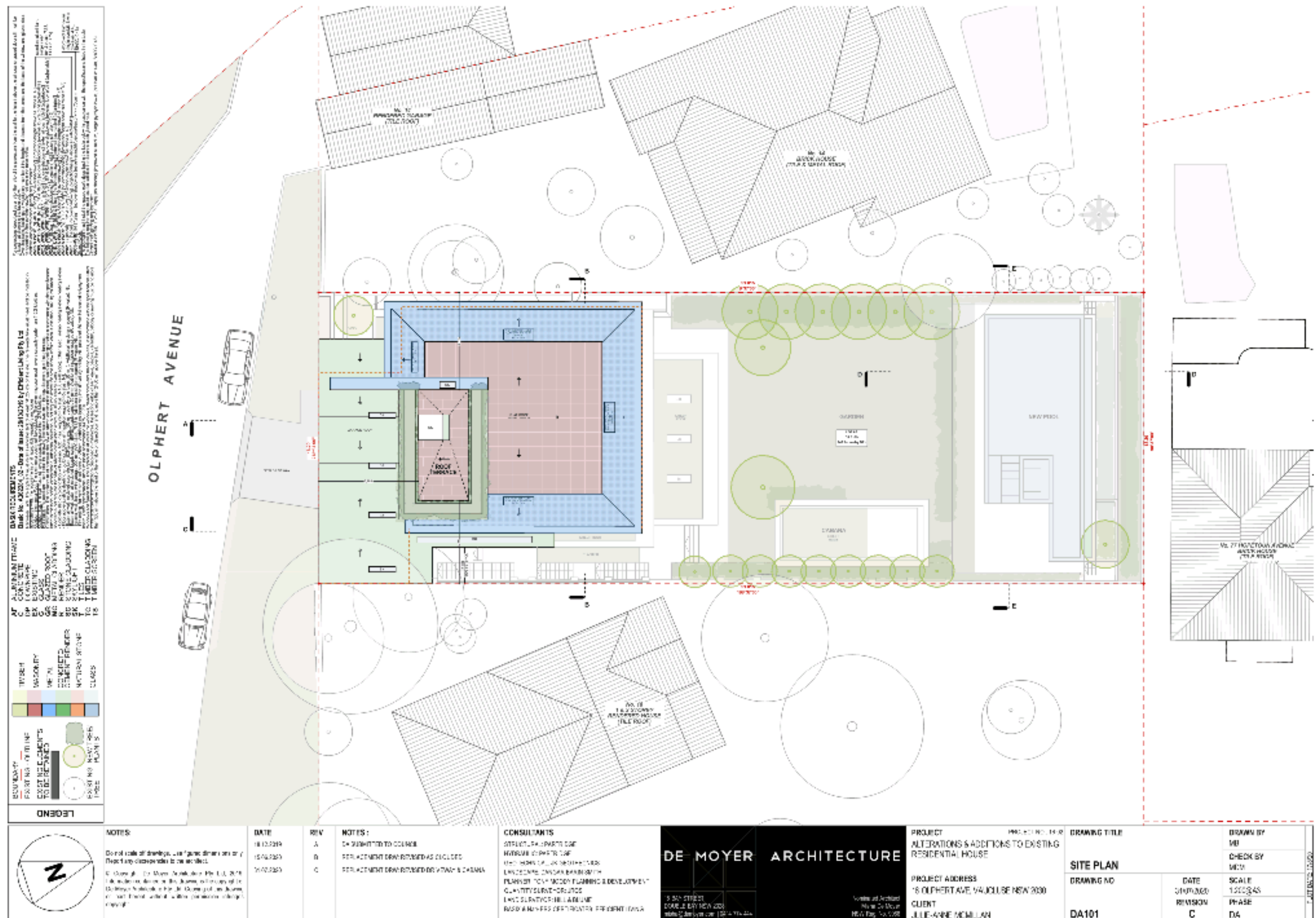


**ARCHITECTURAL PLANS**  
by DE MOYER ARCHITECTURE

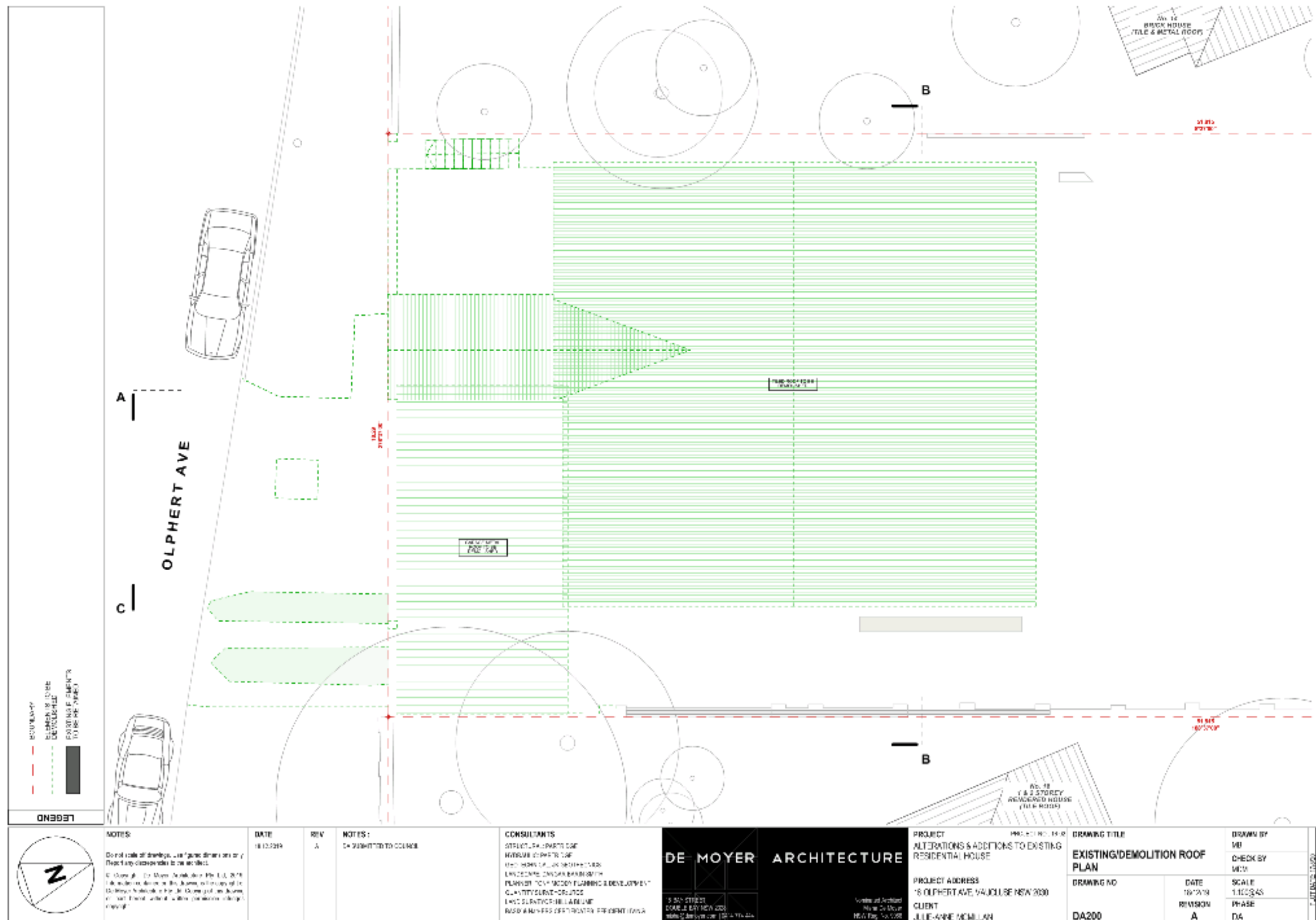
NO.	DRAWING NAME	SCALE	R/W	DATE
DA100	SITE PLAN - V&B	1:100	C	31/07/2019
DA101	SITE PLAN	1:200	C	31/07/2020
DA200	EXISTING DEMOLITION ROOF PLAN	1:100	A	18/12/2019
DA201	EXISTING DEMOLITION LIVING LEVEL	1:100	A	18/12/2019
DA202	EXISTING DEMOLITION BEDROOMS LEVEL	1:100	A	18/12/2019
DA203	EXISTING DEMOLITION POOL DECK	1:100	A	18/12/2019
DA300	PROPOSED ROOF PLAN	1:100	C	31/07/2020
DA301	PROPOSED LIVING LEVEL	1:100	C	31/07/2020
DA302	PROPOSED BEDROOMS LEVEL	1:100	C	31/07/2020
DA303	PROPOSED POOL LEVEL	1:100	C	31/07/2020
DA304	POOL DETAILS	1:100	B	31/07/2020
DA305	POOL PARTITION	1:100	A	18/12/2019
DA306	NORTH ELEVATION	1:100	B	31/07/2020
DA307	EAST ELEVATION	1:100	C	31/07/2020
DA308	WEST ELEVATION	1:100	C	31/07/2020
DA309	BOUNDARY FENCING ELEVATIONS	1:200	C	31/07/2020
DA310	SECTION A	1:100	C	31/07/2020
DA311	SECTION B	1:100	B	18/12/2019
DA312	SECTION C	1:100	C	31/07/2020
DA313	PICTOGRAPHS		D	15/07/2020
DA314	EXTERNAL FINISHES SCHEDULE		A	18/12/2019
DA315	FLOOR PLANS + SHED COMPLIANCE DRAWINGS	1:200	C	28/04/2020
DA316	DECKING + LANDSCAPE COMPLIANCE DRAWINGS	1:200	B	28/04/2020
DA317	HEATING AND COOLING COMPLIANCE DRAWINGS	1:200 1:100	C	28/04/2020
DA318	VIEW ANALYSIS FROM NO 1 OLPHERT AVENUE		A	18/12/2019
DA319	VIEW ANALYSIS FROM NO 13 OLPHERT AVENUE		A	18/12/2019
DA320	VIEW ANALYSIS FROM NO 15 OLPHERT AVENUE		A	18/12/2019
DA321	VIEW ANALYSIS FROM NO 21 OLPHERT AVENUE		A	18/12/2019
DA322	SECTION A - SHED SECTION	1:200	B	18/12/2019
DA323	SECTION B - SHED SECTION	1:200	B	18/12/2019
DA324	SECTION C - SHED SECTION	1:200	B	18/12/2019
DA325	EXCAVATION CALCULATION	1:200	D	31/07/2020
DA326	VIEW ANALYSIS FROM NO 15 OLPHERT AVE		A	31/07/2020
DA327	VIEW ANALYSIS BOUNDARY		A	31/07/2020
DA328	VIEW ANALYSIS TO HIGH VOLTAGE Pylon SUBSTATION		A	31/07/2020
DA329	PROPOSED LANDSCAPE PLANT SPECIFICATIONS		A	18/12/2019
DA330	DRIVEWAY DETAILS	1:100 1:50	B	31/07/2020
DA331	WASTE MANAGEMENT PLAN	1:200	D	31/07/2020



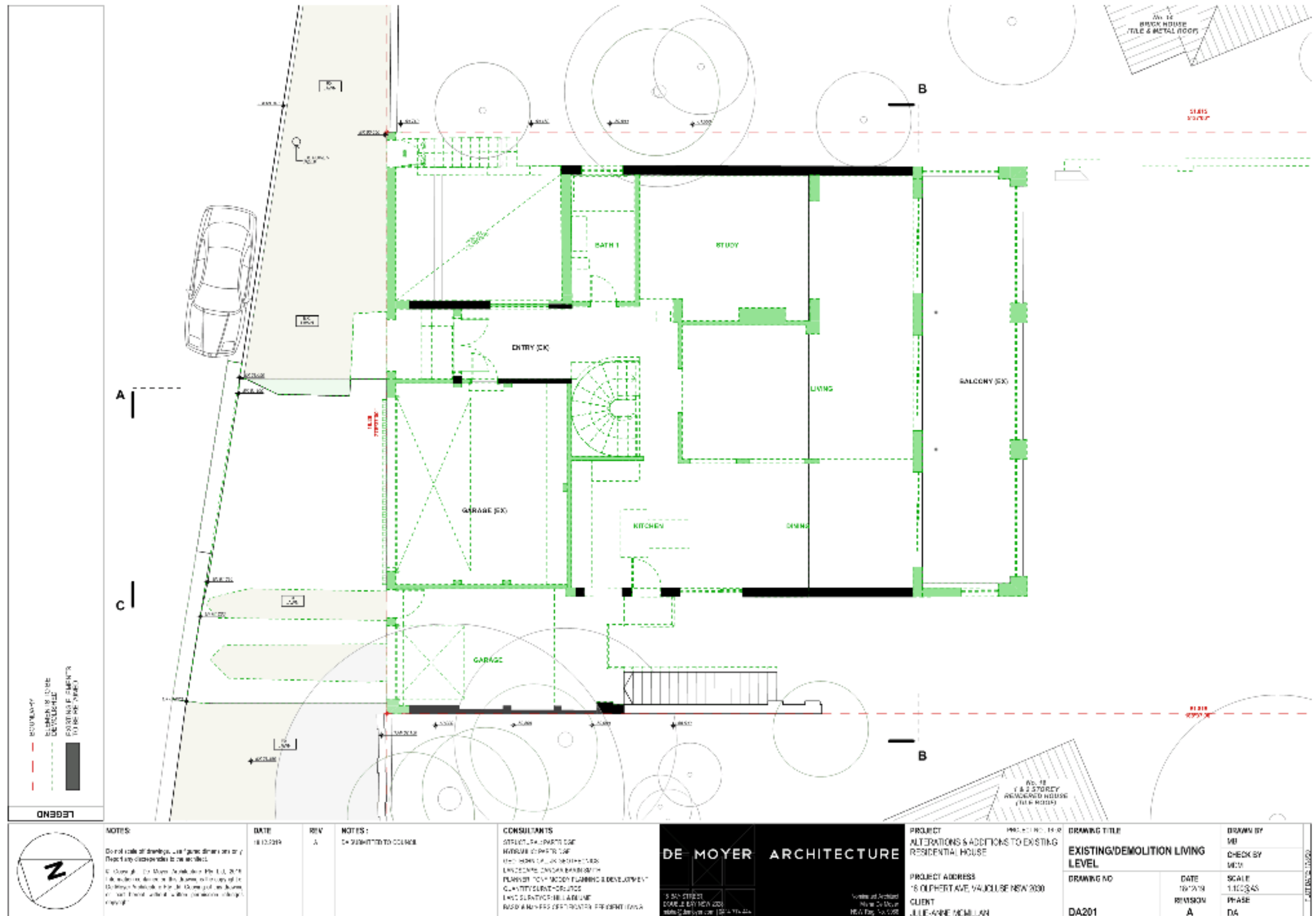


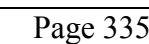




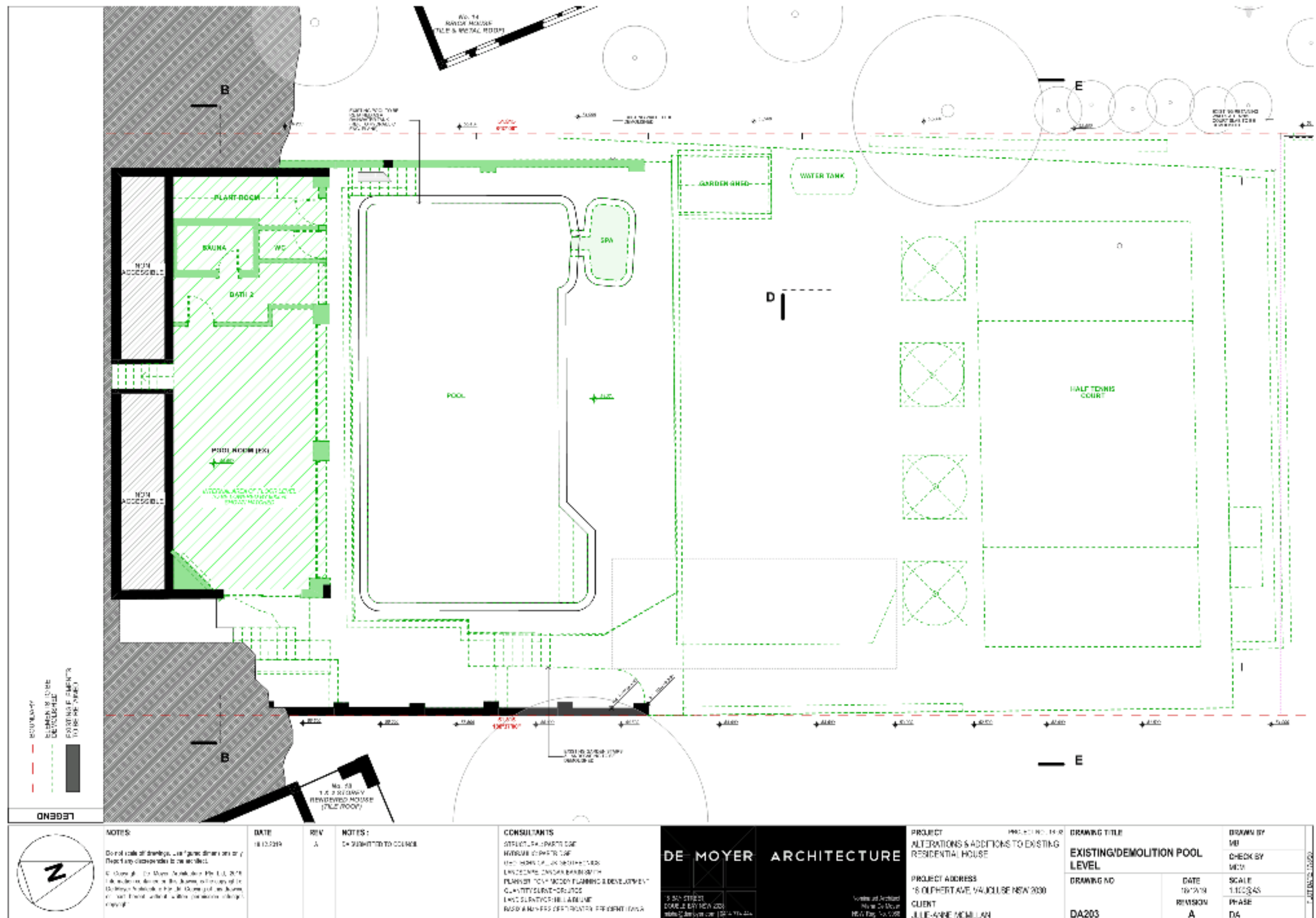


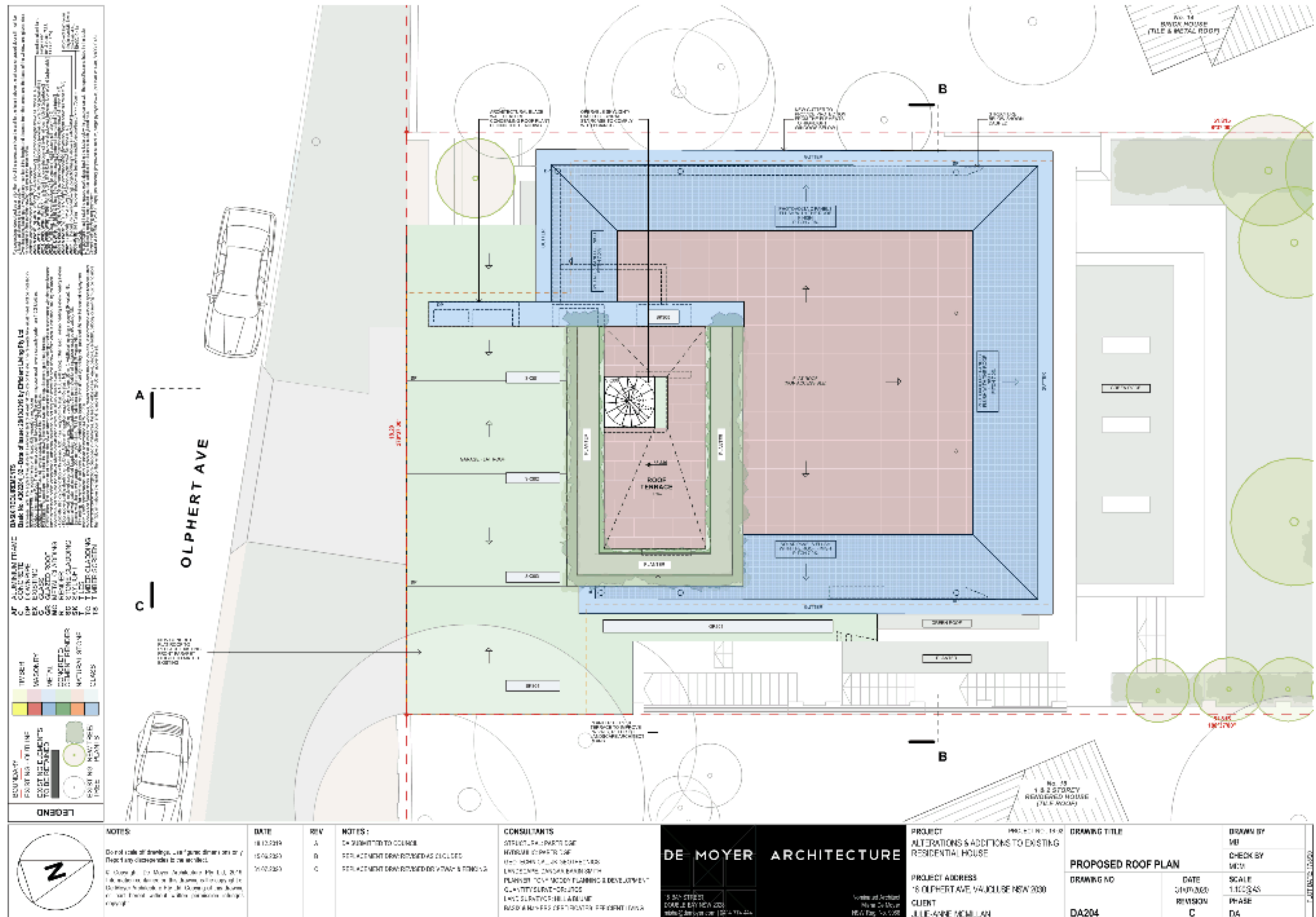




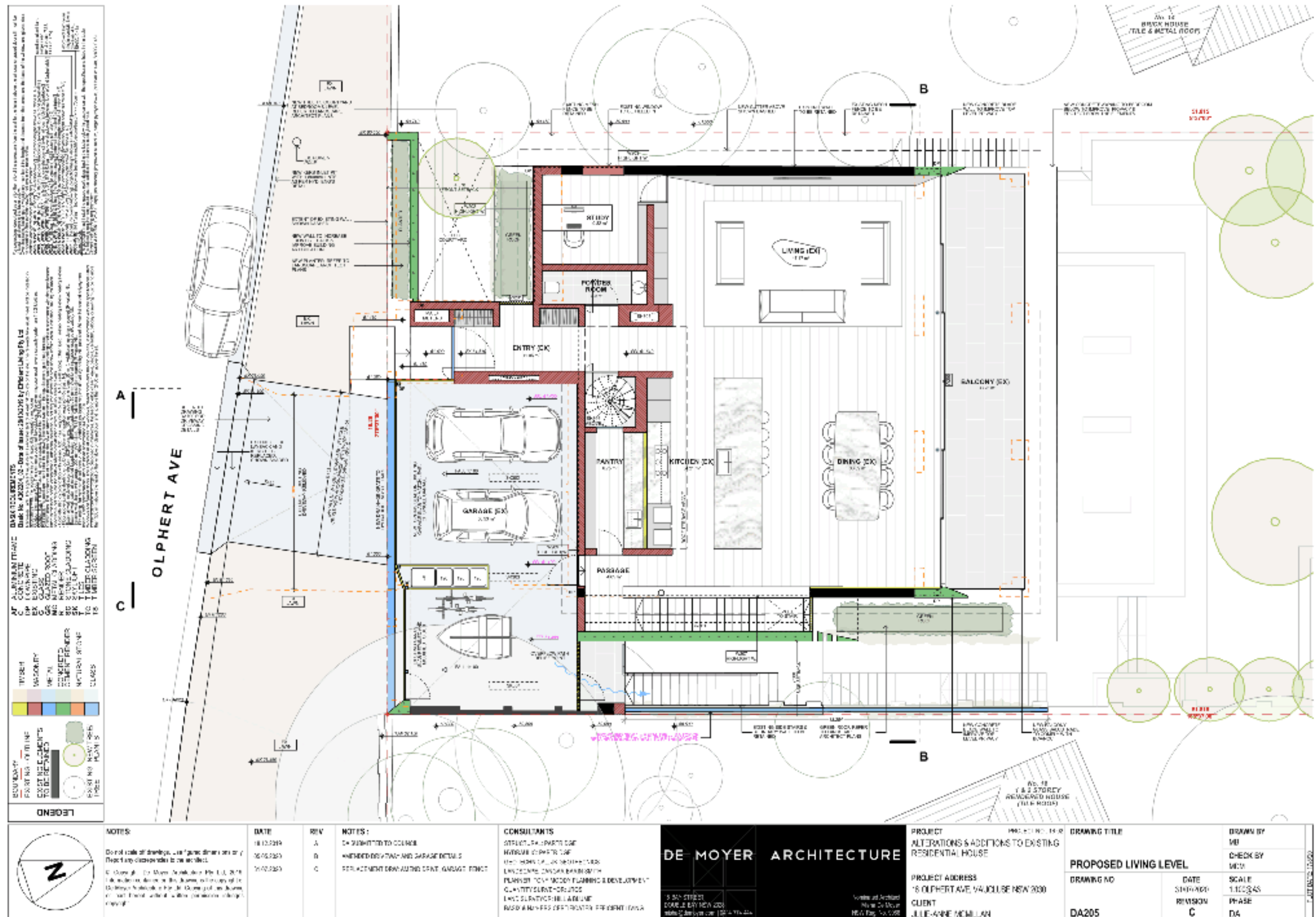




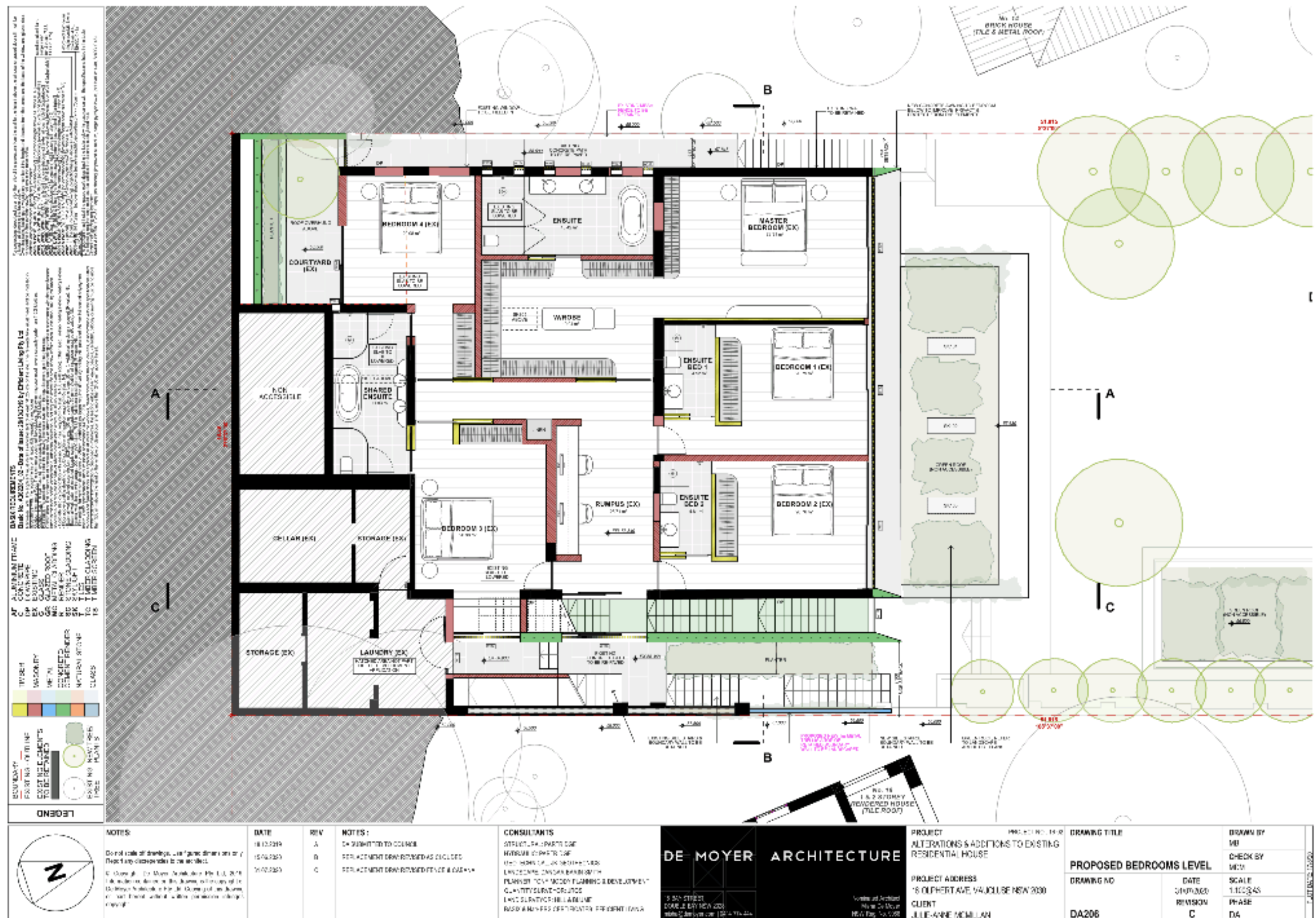




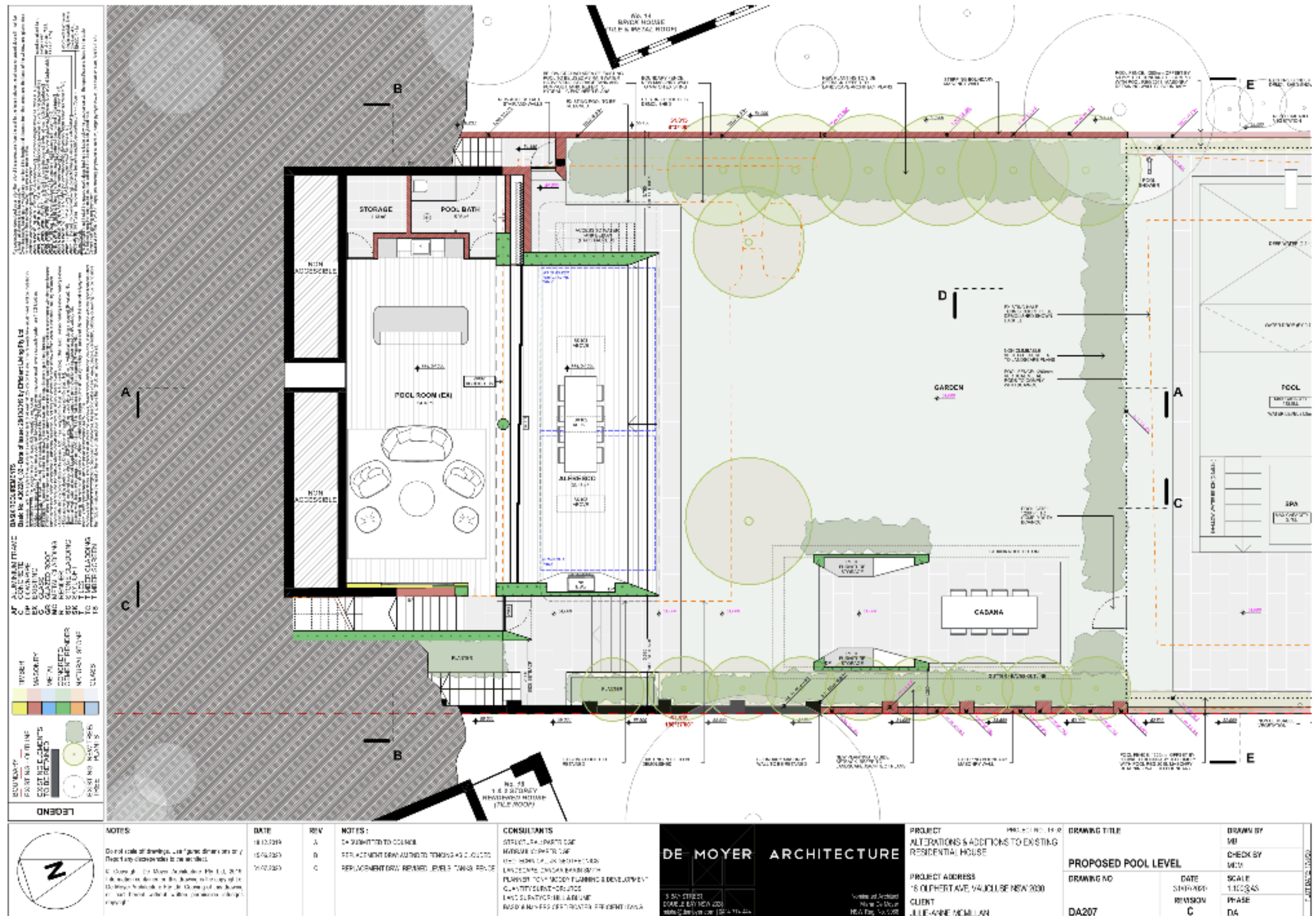




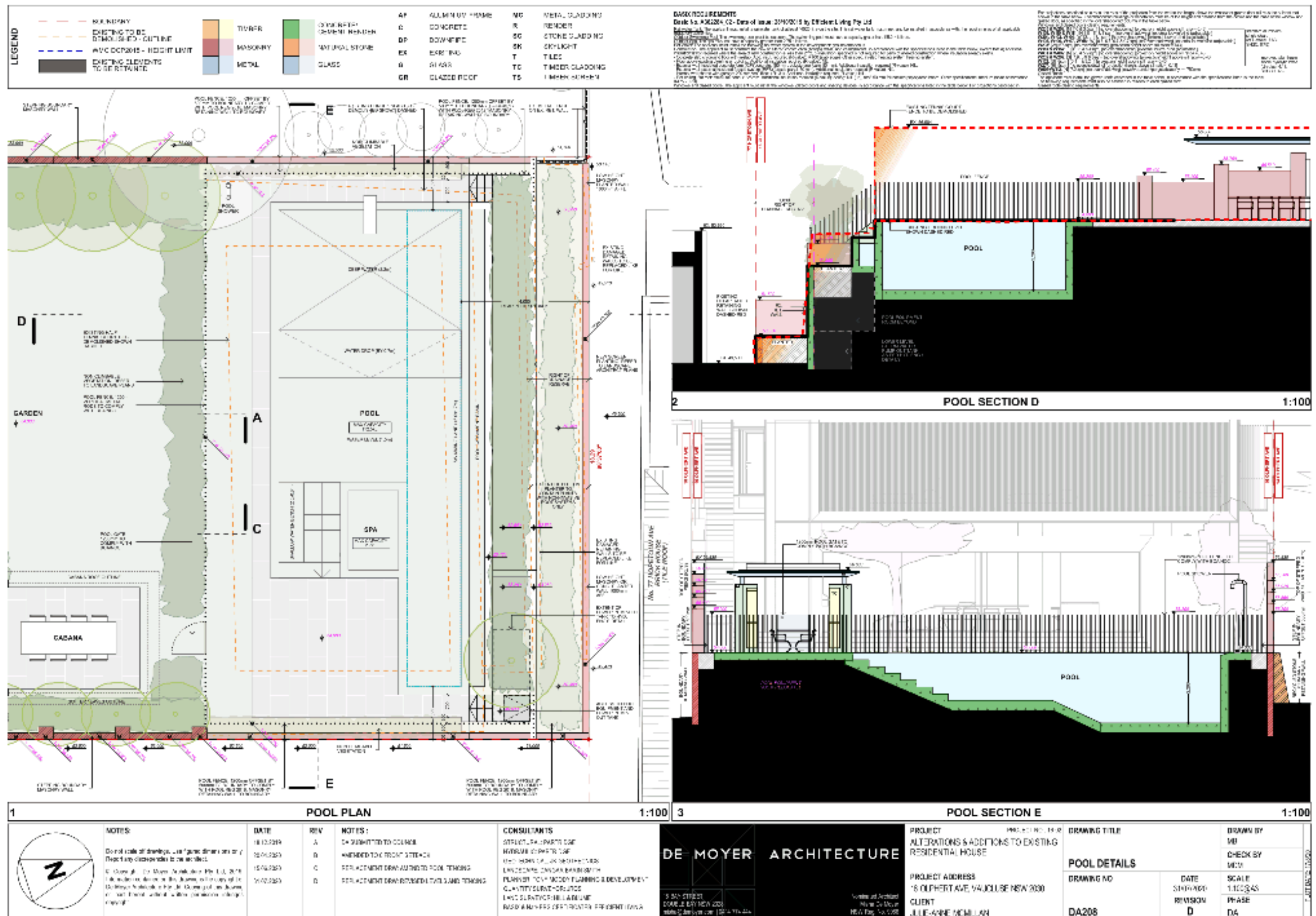


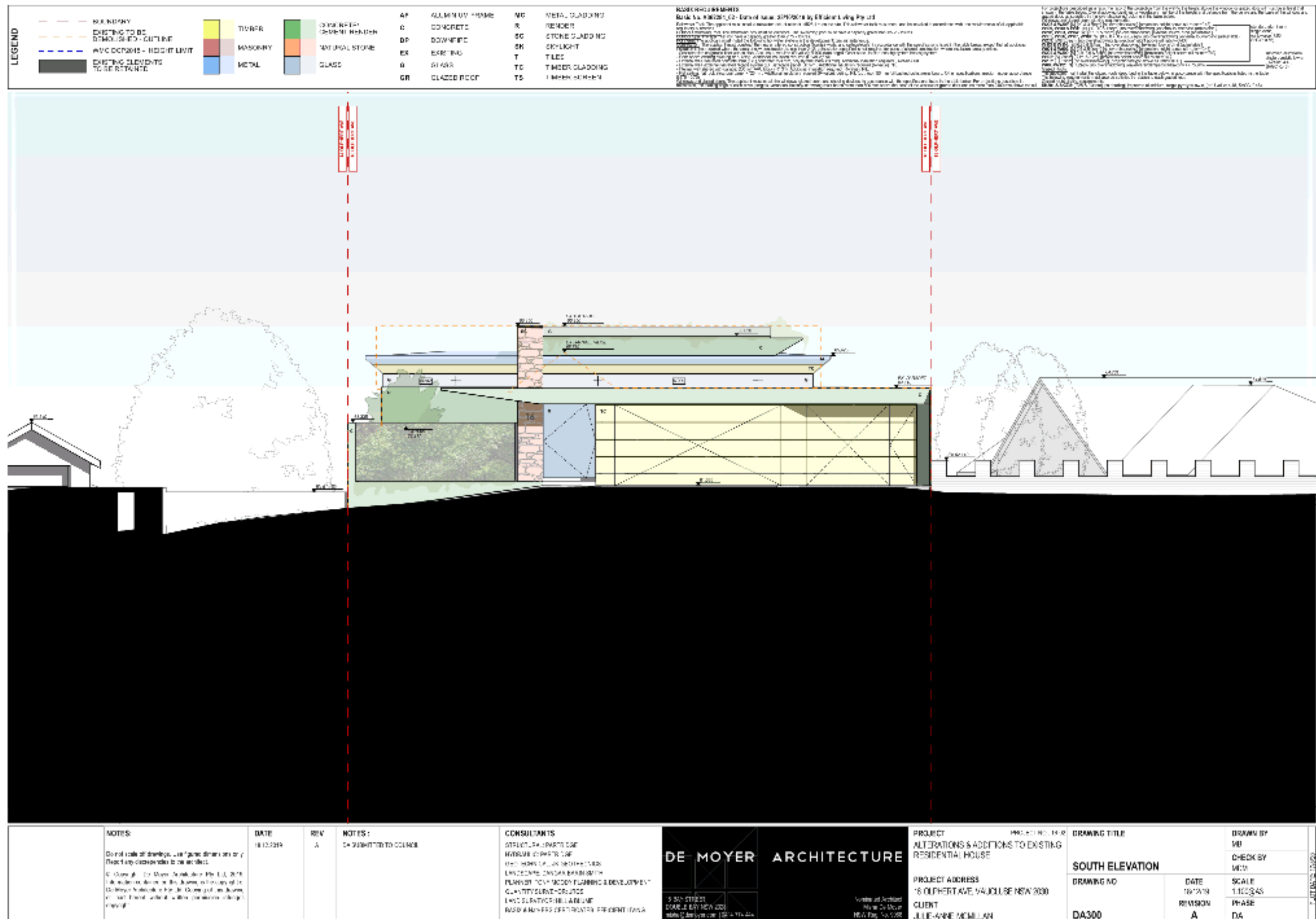




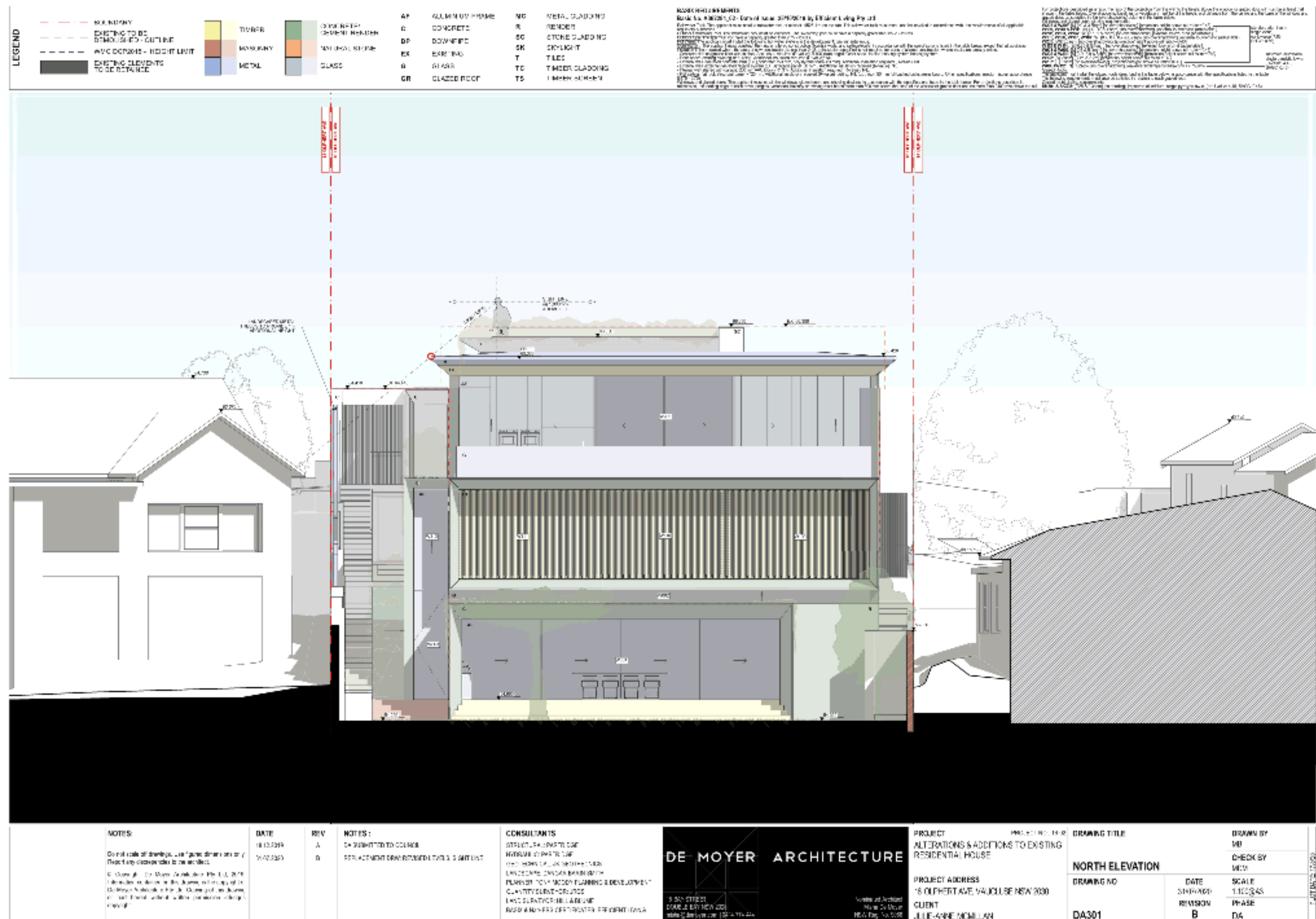


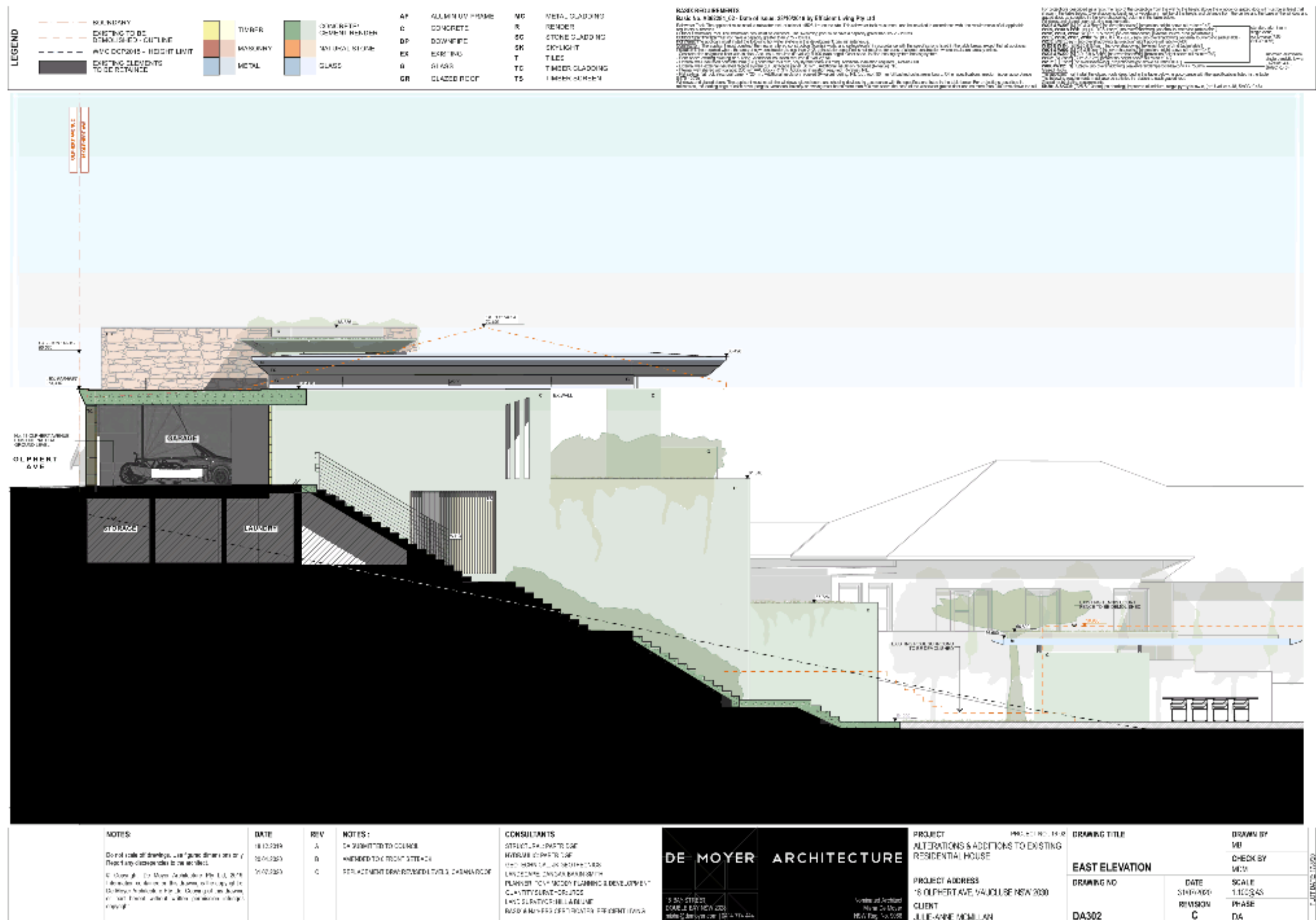


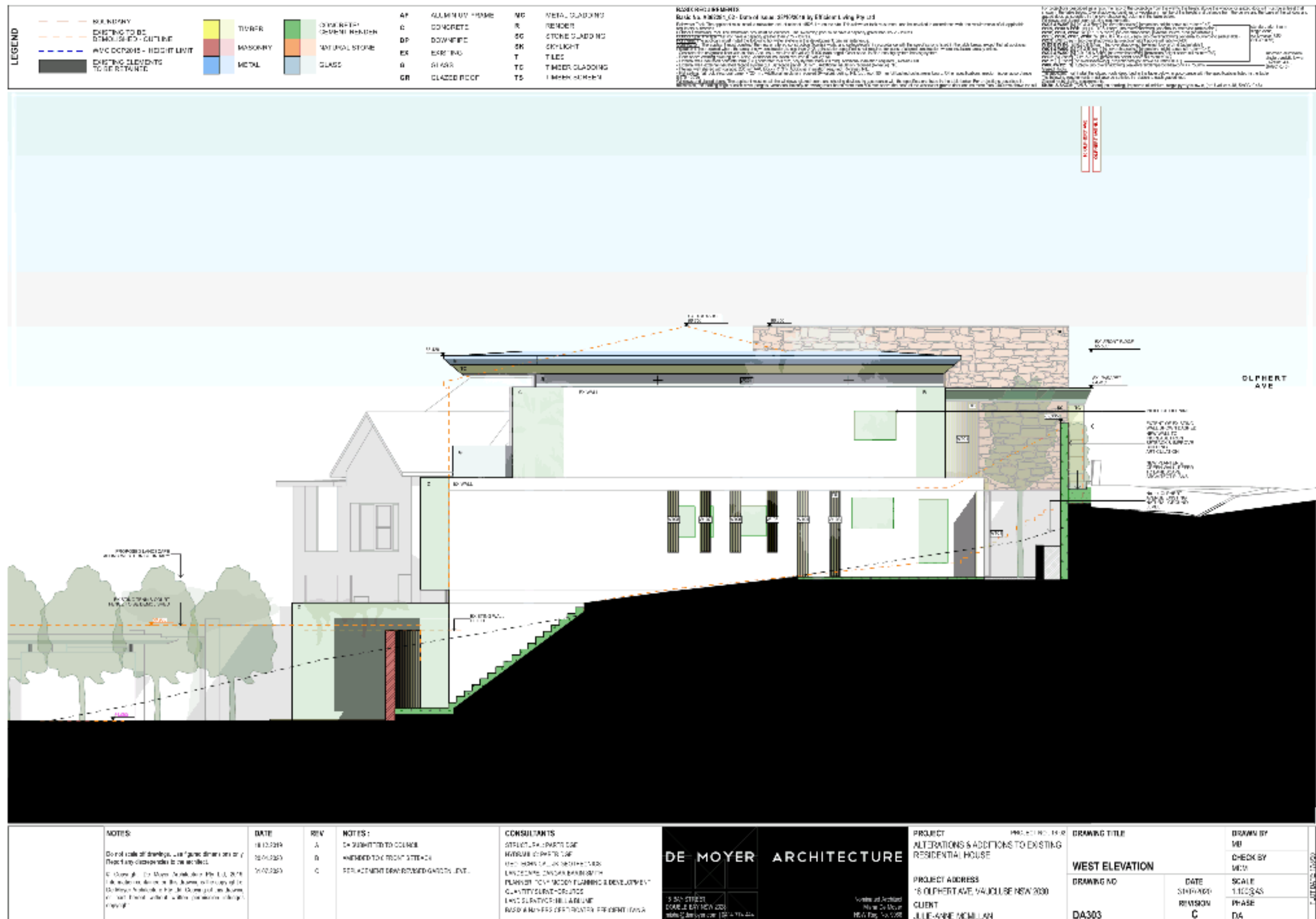




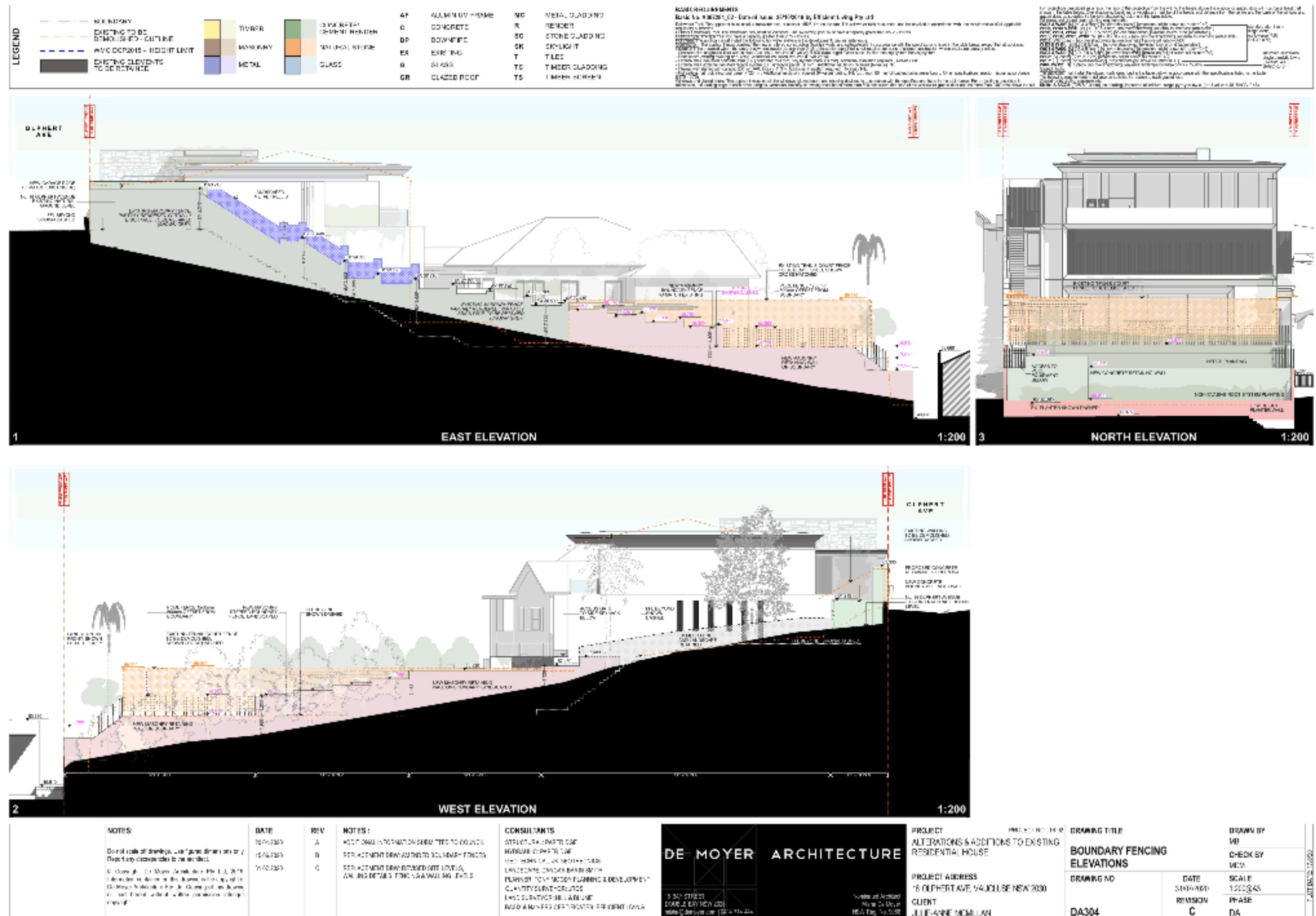


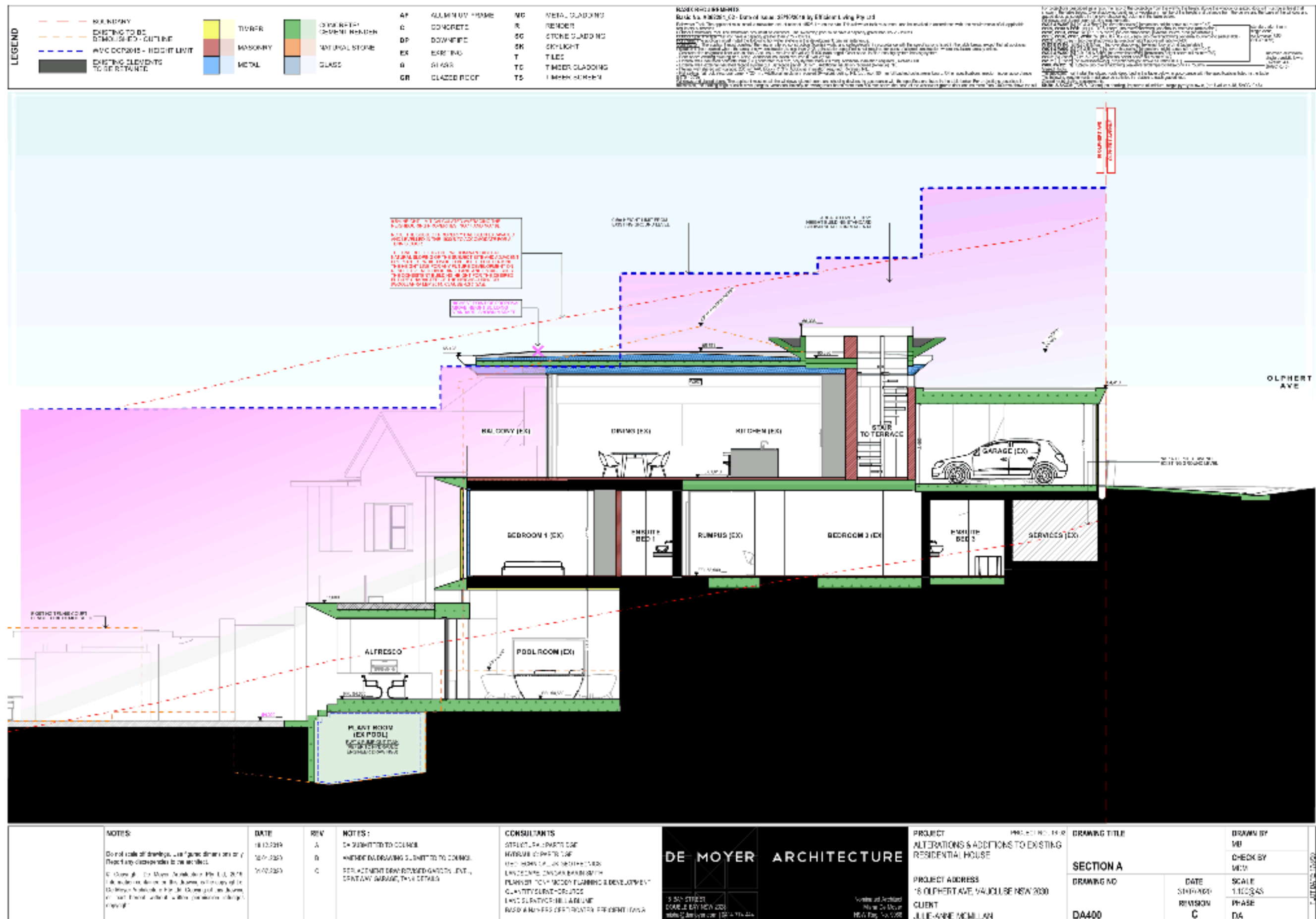




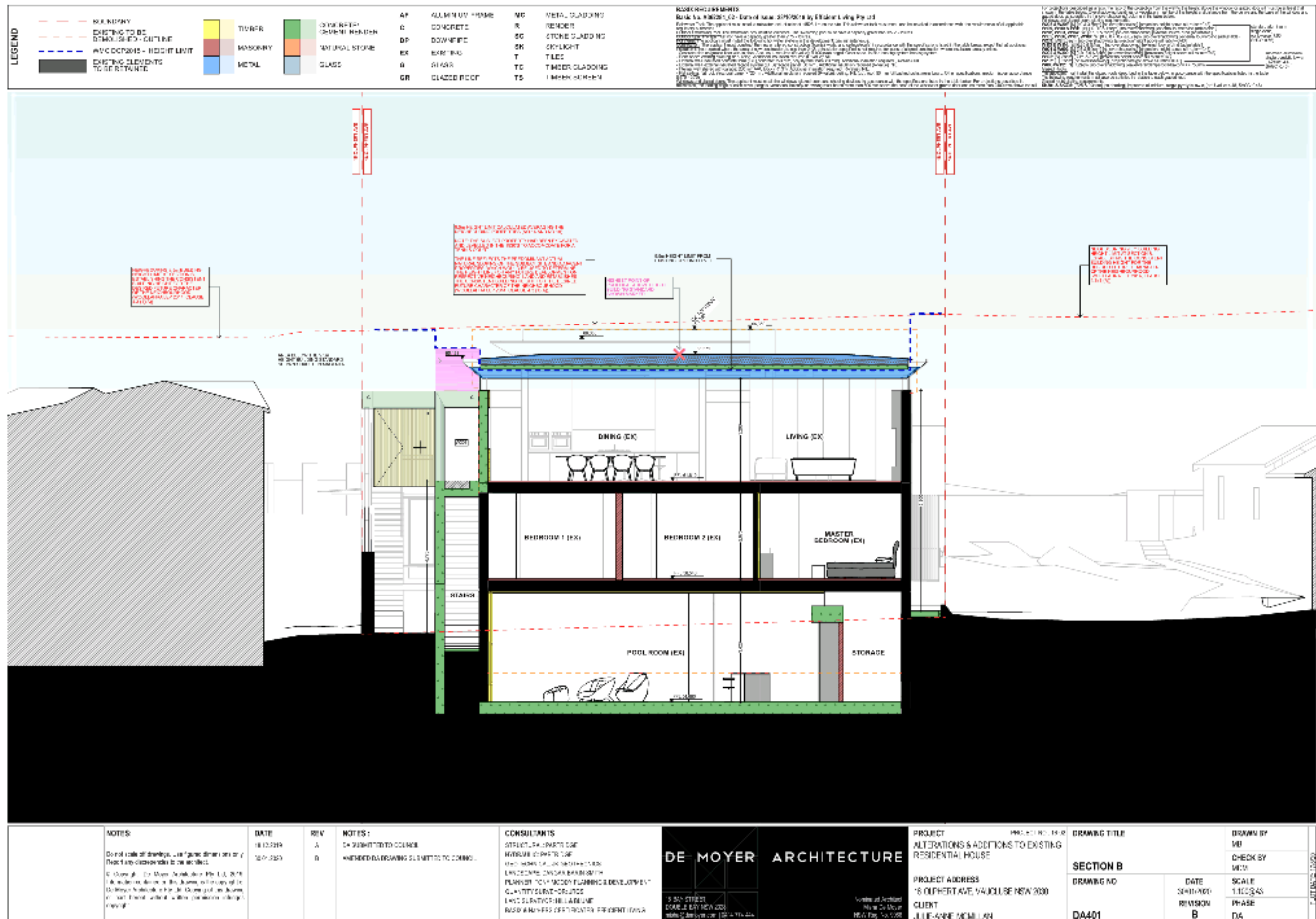


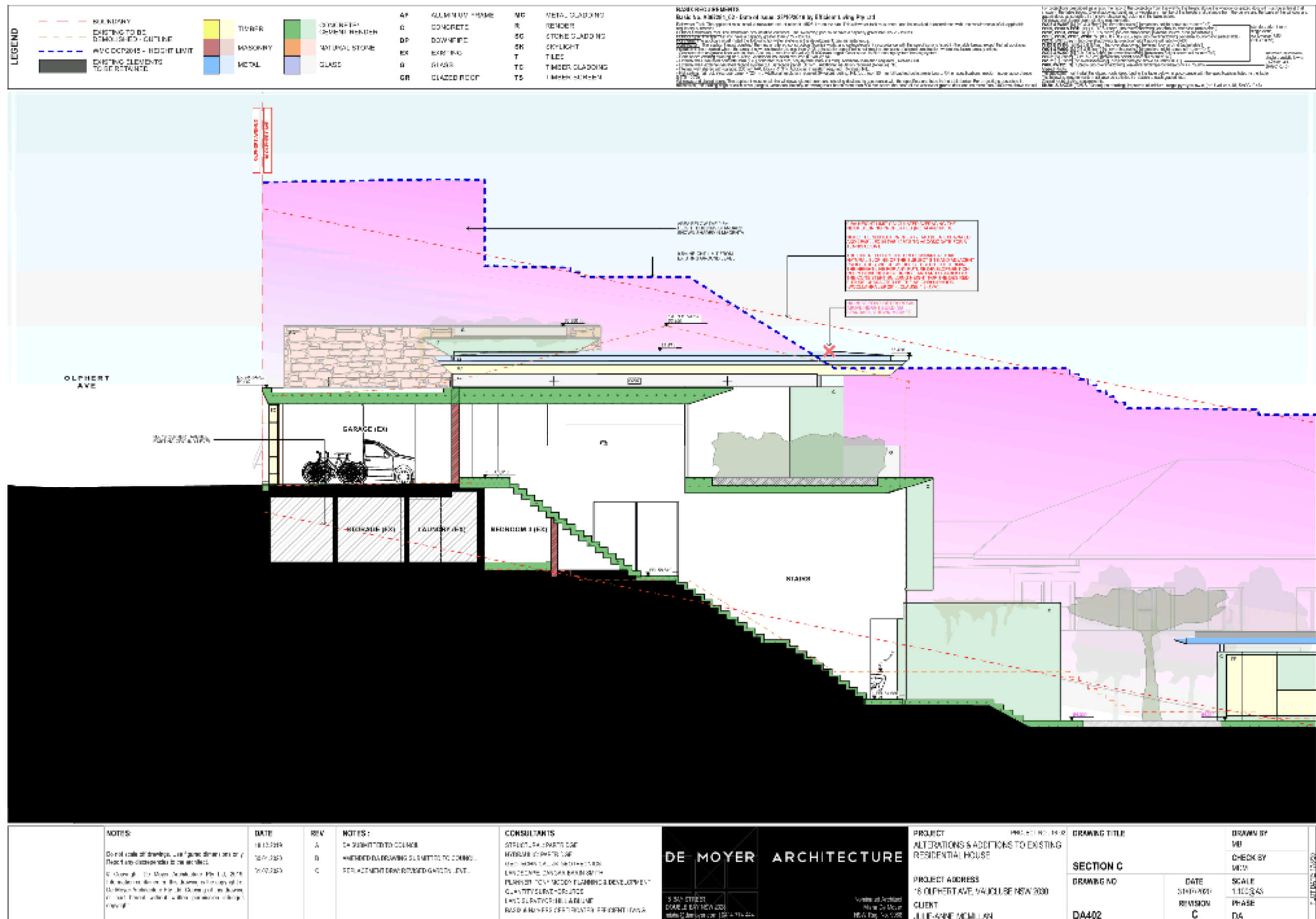










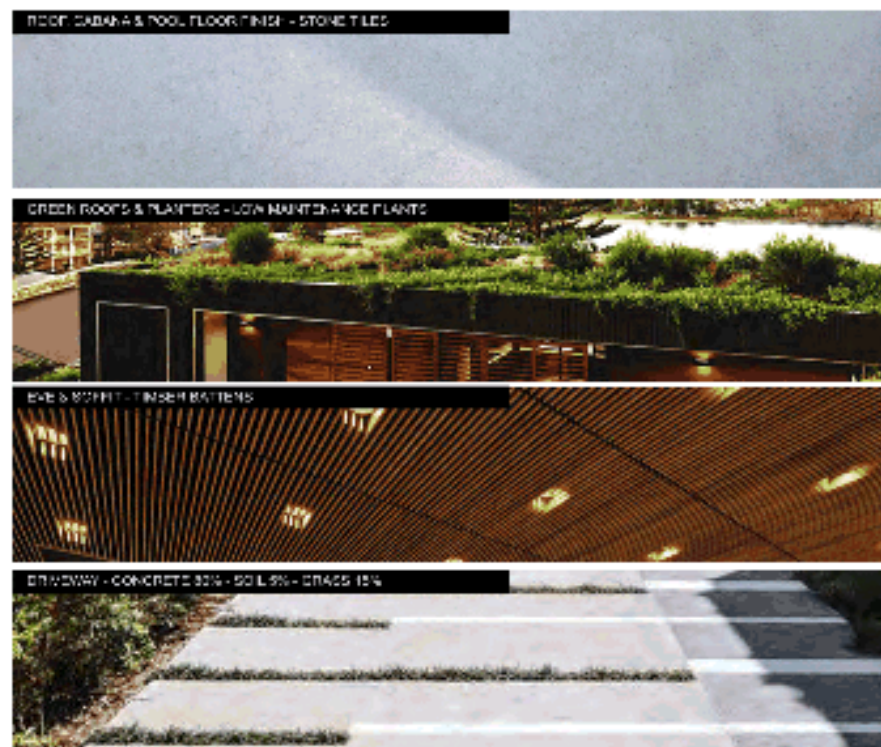






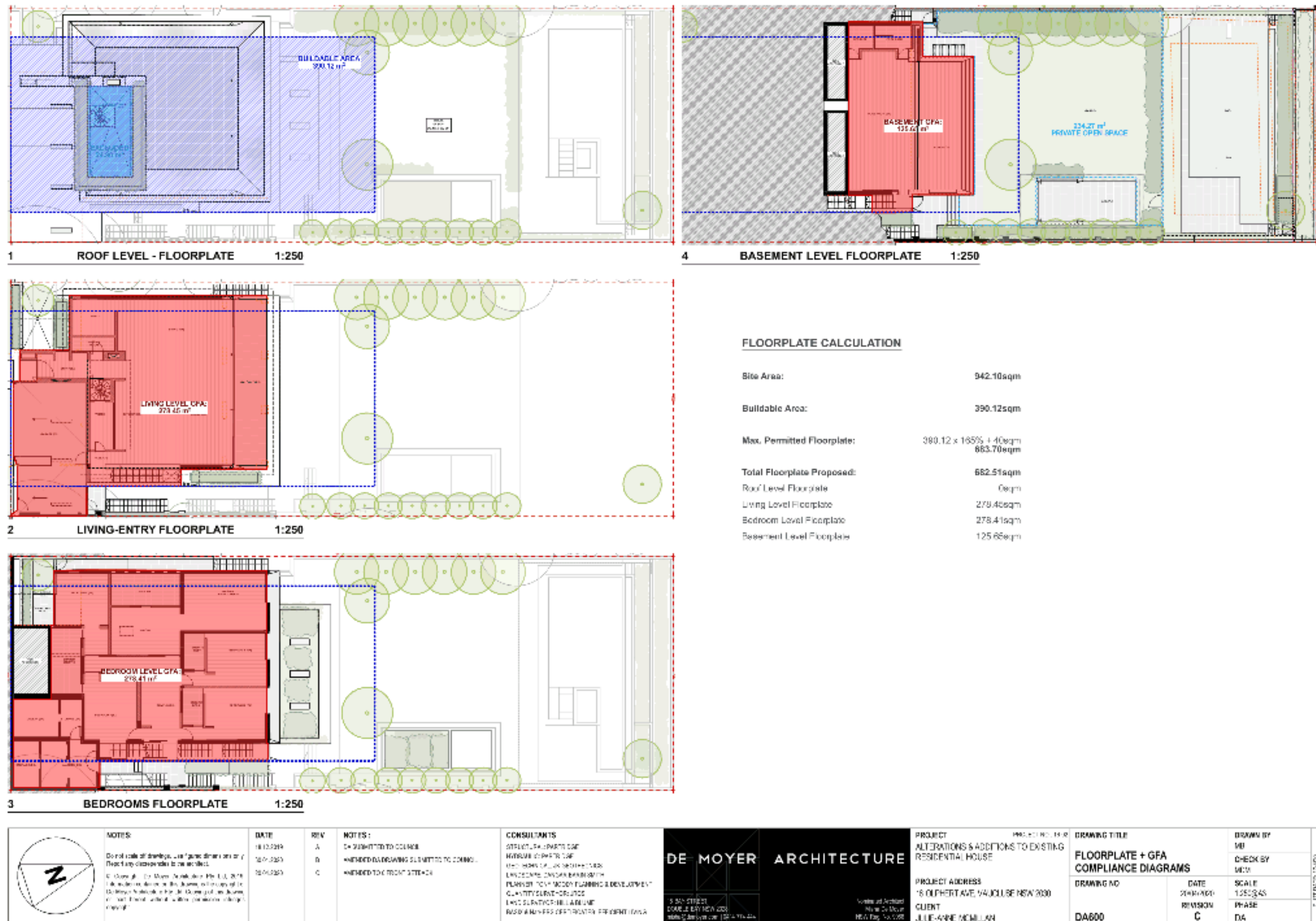
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								<b>DRAWING NO</b>  DA500	<b>DATE</b> 19/06/2020 <b>REVISION</b> B	

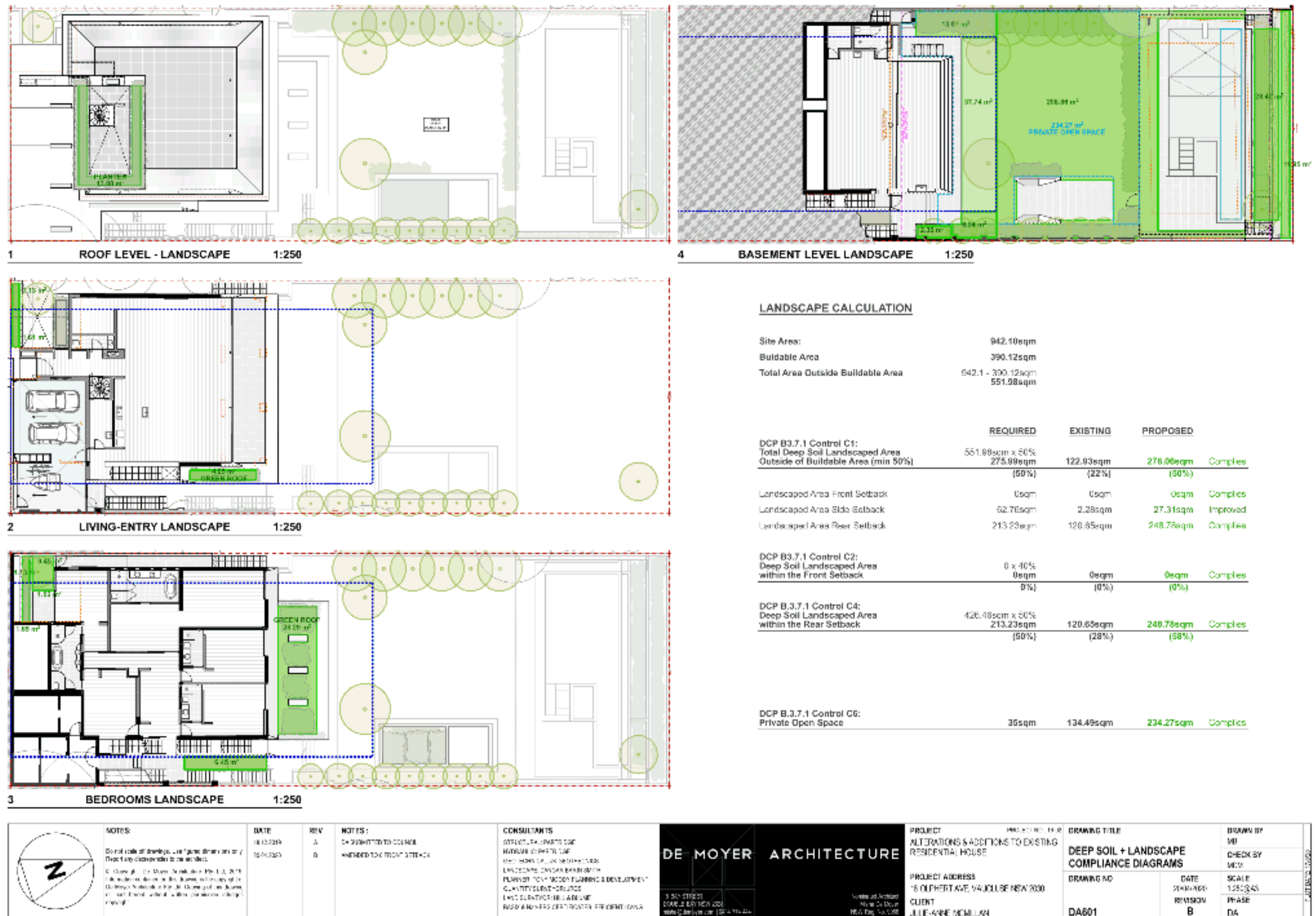




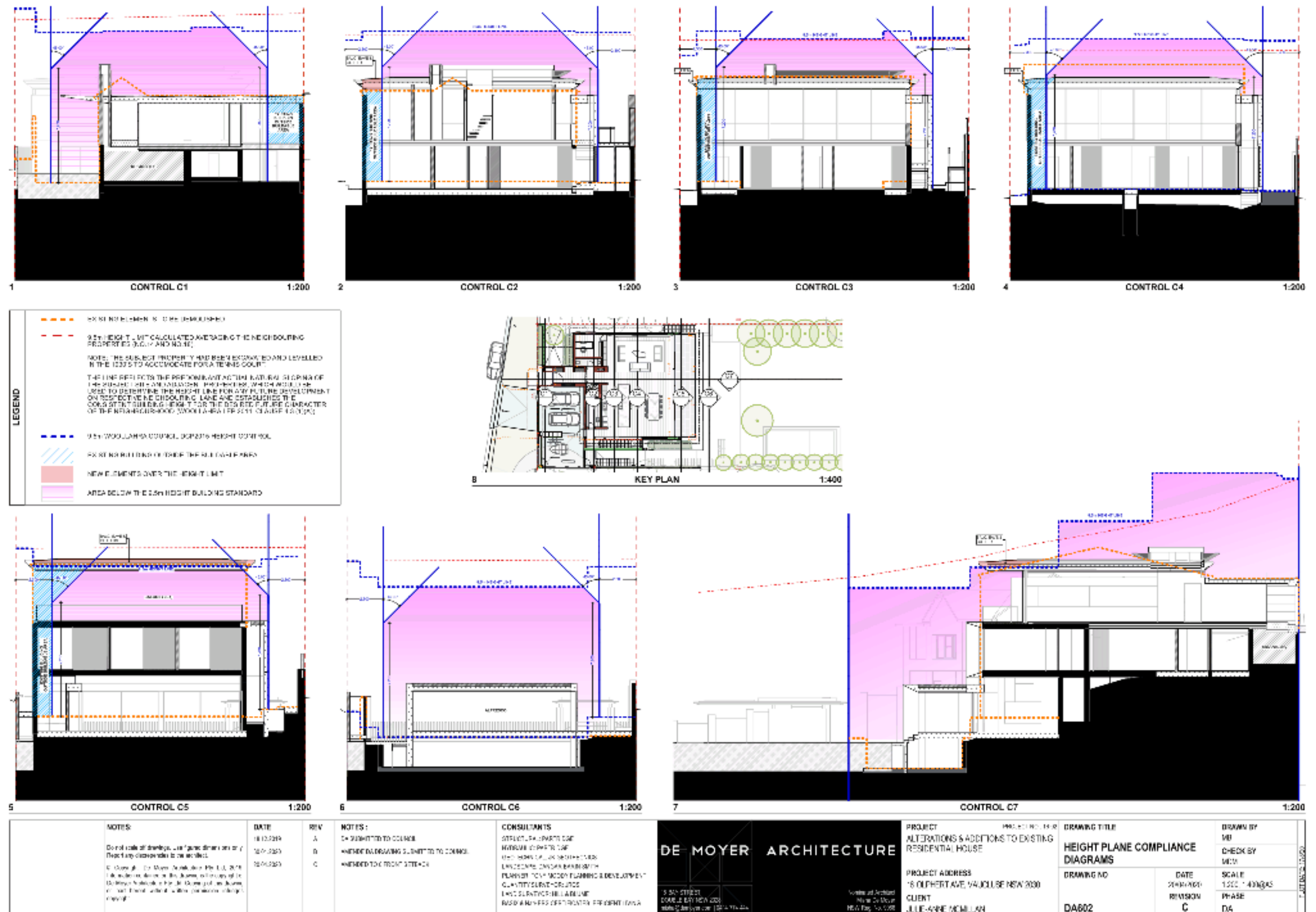
<p><b>NOTES:</b></p> <p>Do not scale drawings, use figures drawn on any Plans any correspondence to the architect.</p> <p>© Copyright © De Moys Architects Pty Ltd, 2019. All drawings are the property of De Moys Architects Pty Ltd. All rights reserved. No part of this publication may be reproduced without permission in writing.</p>	<p><b>DATE:</b></p> <p>18.12.2019</p>	<p><b>REV:</b></p> <p>A</p>	<p><b>NOTES:</b></p> <p>04 SUBMITTED TO COUNCIL</p>	<p><b>CONSULTANTS:</b></p> <p>STREET, 54 OLIPHANT AVE HUBBARD STREET, 100 100 OLIPHANT AVE, NEWCASTLE ENGLAND, ENGLAND PLANNING, CIVIL, MECHANICAL, ELECTRICAL, PLUMBING &amp; DEVELOPMENT CONSULTANTS 100 OLIPHANT AVE, NEWCASTLE ENGLAND, ENGLAND</p>		<p><b>PROJECT:</b></p> <p>ALTERATIONS &amp; ADDITIONS TO EXISTING RESIDENTIAL HOUSE</p> <p><b>PROJECT ADDRESS:</b></p> <p>54 OLIPHANT AVE, NEWCASTLE NSW 2060</p> <p><b>CLIENT:</b></p> <p>JULIE-ANNE McILLAN</p>	<p><b>DRAWING TITLE:</b></p> <p>EXTERNAL FINISHES SCHEDULE</p> <p><b>DRAWING NO:</b></p> <p>DA501</p> <p><b>DATE:</b></p> <p>18/12/19</p> <p><b>REVISION:</b></p> <p>A</p> <p><b>DRAWN BY:</b></p> <p>MB</p> <p><b>CHECK BY:</b></p> <p>MB</p> <p><b>SCALE:</b></p> <p>1:1</p> <p><b>PHASE:</b></p> <p>04</p>
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	<div>DRAWING NO</div> <div>DA603</div>	<div>DATE</div> <div>18/12/19</div>	<div>REVISION</div> <div>A</div>	<div>SCALE</div> <div>@A3</div>	<div>PHASE</div> <div>DA</div>	<div>CHECK BY</div> <div>NOM</div>	<div>PROJECT DATE: 18/12/19</div>		





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								DRAWING NO DA504	DATE 18/12/19 REVISION A	CHECK BY MEM SCALE @A3 PHASE DA



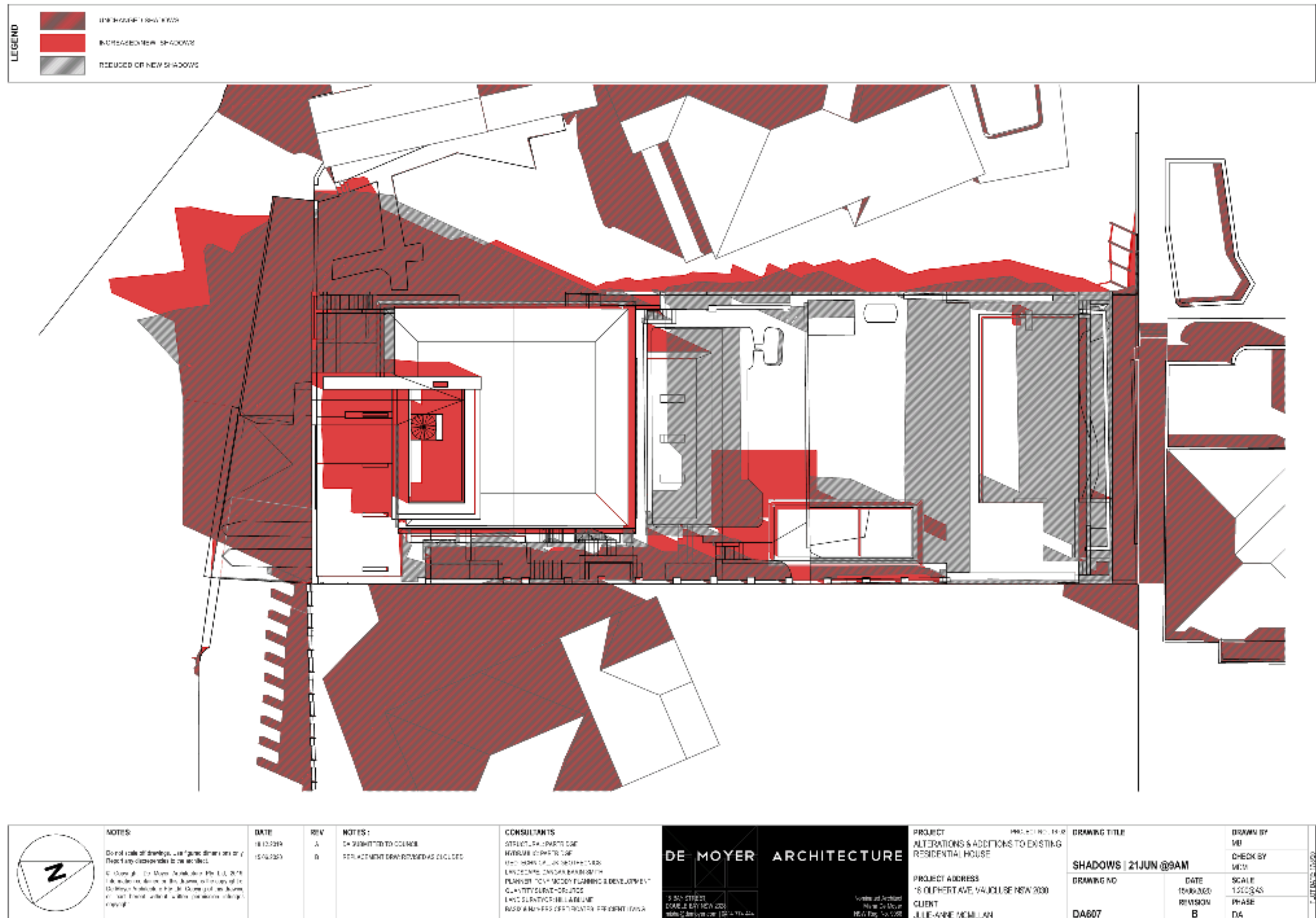


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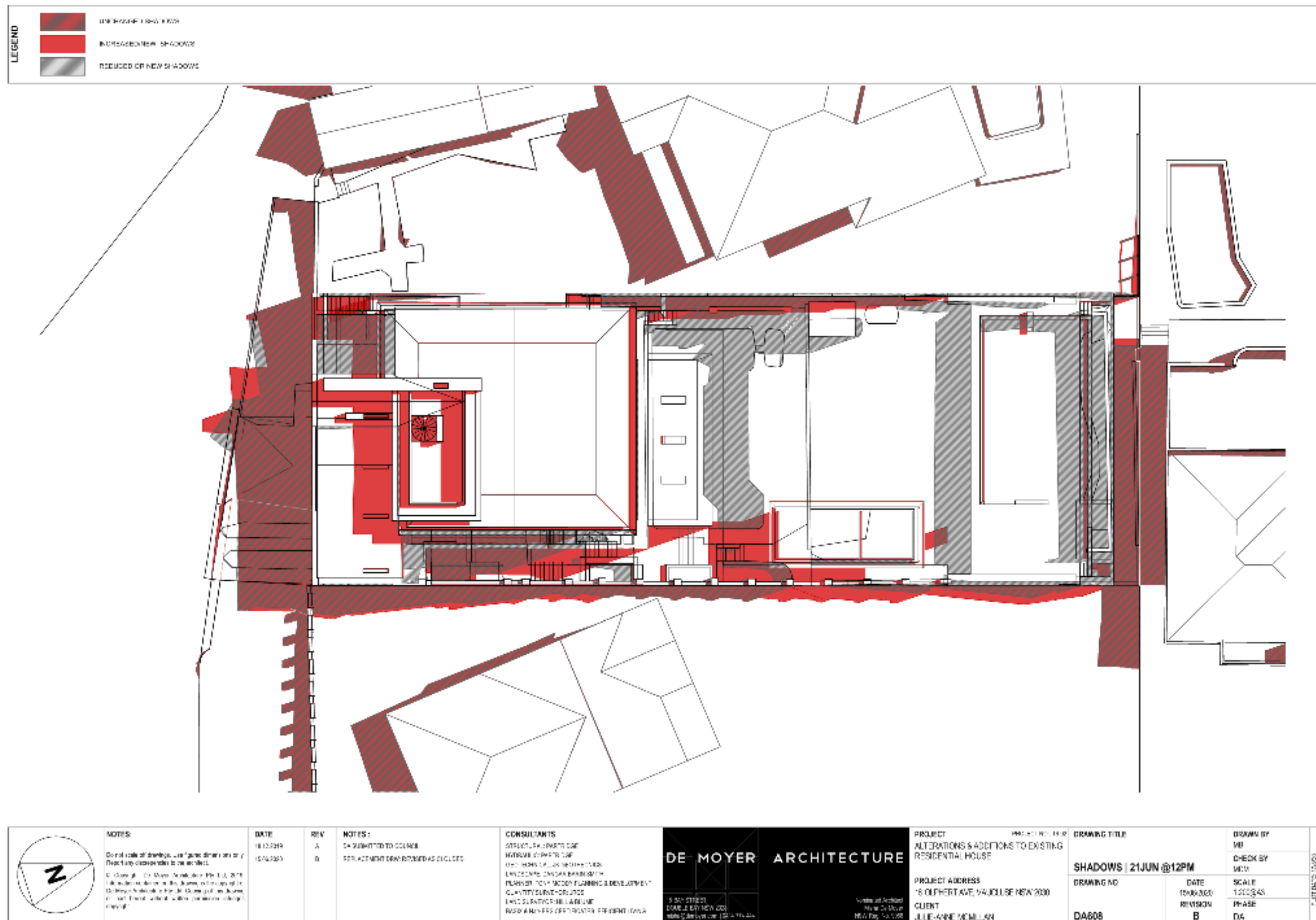


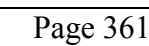
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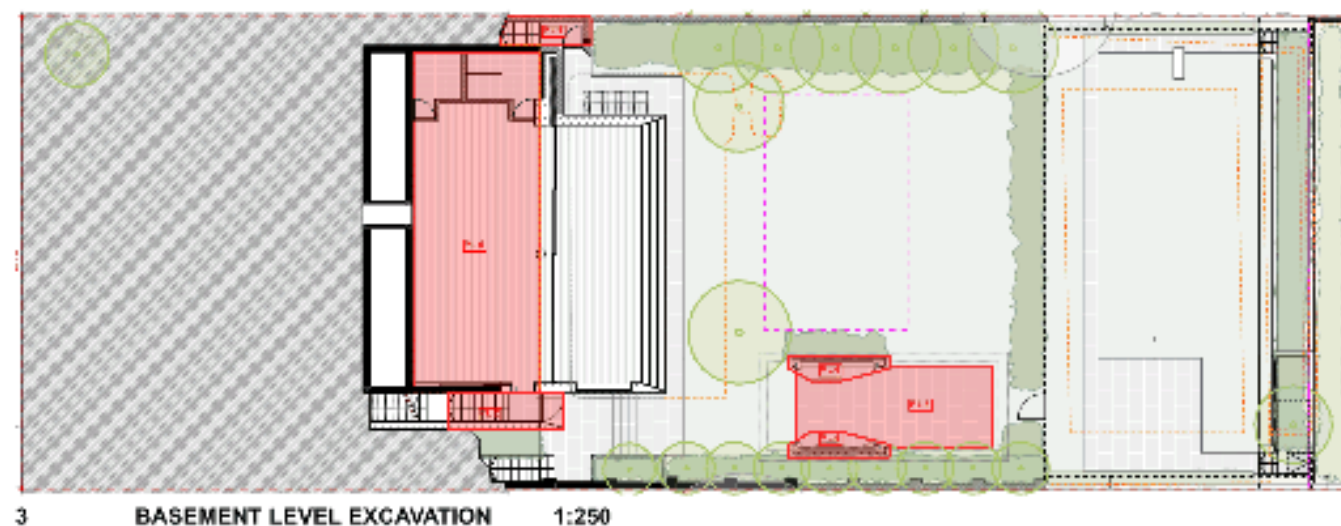
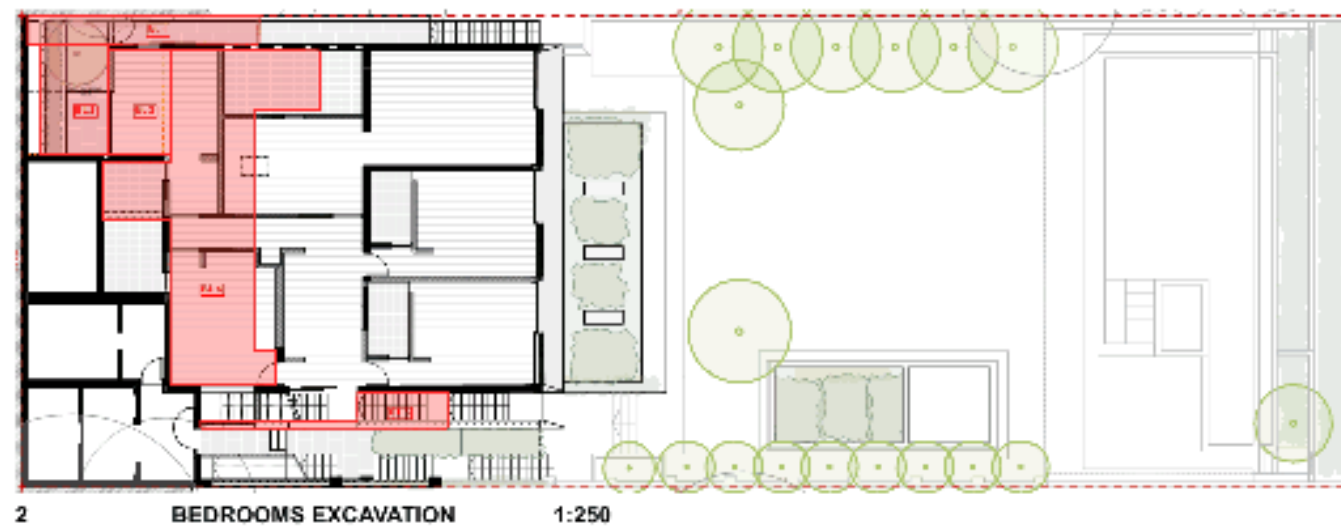
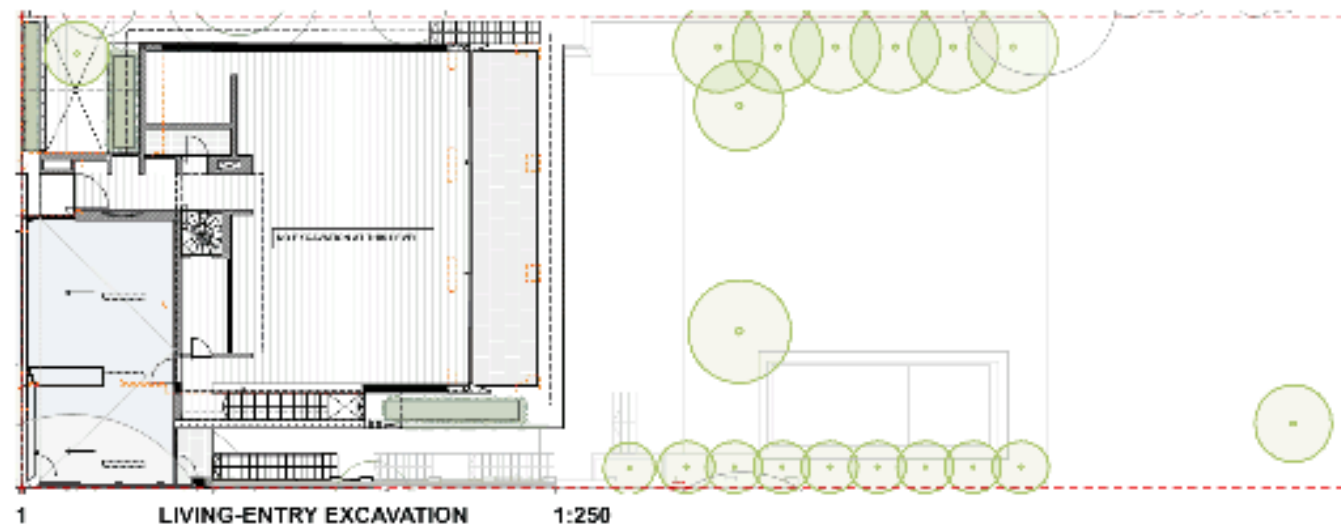












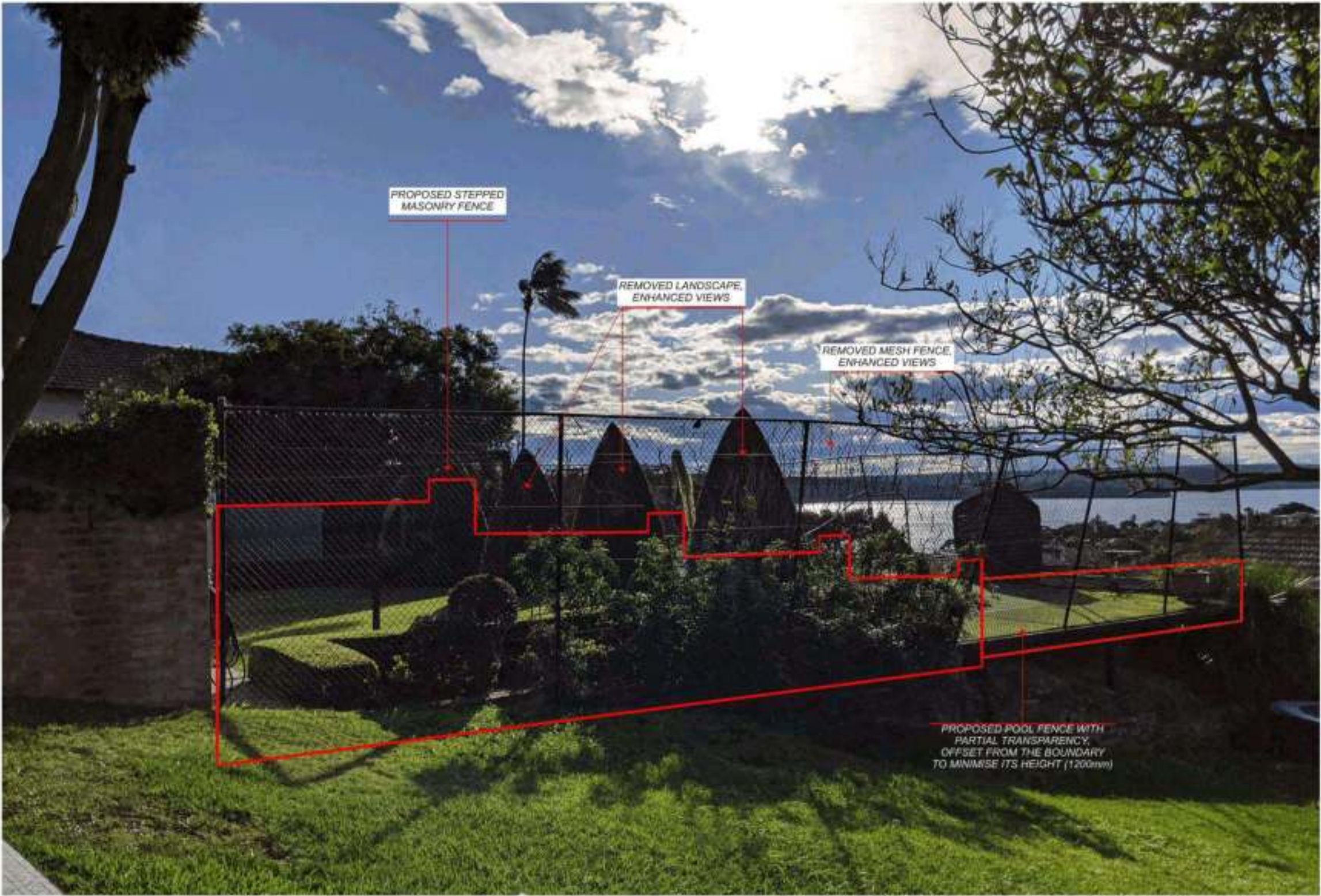
#### EXCAVATION CALCULATION

Site Area:	942.10sqm
Maximum volume of excavation:	238.4m <sup>3</sup>
Total Proposed Excavation:	138.8m <sup>3</sup>
BL1 - AREA: 9.67m <sup>2</sup> DEPTH: VARIES	6.4m <sup>3</sup>
BL2 - AREA: 11.30m <sup>2</sup> DEPTH: VARIES	4.3m <sup>3</sup>
BL3 - AREA: 9.83m <sup>2</sup> DEPTH: 0.5m	4.9m <sup>3</sup>
BL4 - AREA: 33.0m <sup>2</sup> DEPTH: 0.3m	27.6m <sup>3</sup>
BL5 - AREA: 5.62m <sup>2</sup> DEPTH: VARIES	5.6m <sup>3</sup>
PL1 - AREA: 3.74m <sup>2</sup> DEPTH: VARIES	8.5m <sup>3</sup>
PL2 - AREA: 5.25m <sup>2</sup> DEPTH: VARIES	3.5m <sup>3</sup>
<b>PL3 - AREA: 17.88m<sup>2</sup> DEPTH: 1.47m</b>	<b>26.3m<sup>3</sup></b>
PL4 - AREA: 6.38m <sup>2</sup> DEPTH: 0.3m	1.9m <sup>3</sup>
PL5 - AREA: 20.89m <sup>2</sup> DEPTH: 0.175m	3.7m <sup>3</sup>
PL6 - AREA: 64.21m <sup>2</sup> DEPTH: 1.10m	70.6m <sup>3</sup>

INFILTRATION SYSTEM DETELED

	<b>NOTES:</b> Do not scale drawings, use figures dimensions only. Rectangular dimensions to be marked. E. O'Connell, 100 Mares, Woollahra NSW 1581, 2018 1. All dimensions shown on this drawing are to the center of the building unless otherwise stated. 2. All dimensions shown on this drawing are to the center of the building unless otherwise stated.	<b>DATE:</b> 18/01/2020 <b>REV:</b> A B	<b>NOTES:</b> ALL DIMENSIONS SHOWN ARE TO CENTER. ALL DIMENSIONS SHOWN ARE TO CENTER. ALL DIMENSIONS SHOWN ARE TO CENTER.	<b>CONSULTANTS:</b> STREET, PARKWAYS & CO. ARCHITECTS & PLANNERS 100 MARES, WOOLLAHRA NSW 1581, 2018 1. All dimensions shown on this drawing are to the center of the building unless otherwise stated. 2. All dimensions shown on this drawing are to the center of the building unless otherwise stated.	<b>DE MOYER ARCHITECTURE</b> 100 MARES, WOOLLAHRA NSW 1581, 2018 1. All dimensions shown on this drawing are to the center of the building unless otherwise stated. 2. All dimensions shown on this drawing are to the center of the building unless otherwise stated.	<b>PROJECT:</b> ALTERATIONS & ADDITIONS TO EXISTING RESIDENTIAL HOUSE <b>PROJECT ADDRESS:</b> 18 OLIPHANT AVE, WAJULUSE NSW 2020 <b>CLIENT:</b> JULIE-ANNE MCILLAN	<b>DRAWING TITLE:</b> EXCAVATION CALCULATION <b>DRAWING NO:</b> DA610 <b>DATE:</b> 18/01/2020 <b>REVISION:</b> B	<b>DRAWN BY:</b> MD <b>CHECK BY:</b> MD <b>SCALE:</b> 1:250 <b>PHASE:</b> DA





SOURCE: WOOLLAHRA COUNCIL, VIEW LOSS PHOTOS, IMAGE IMG\_20200623\_143806, DATED JUNE 23RD, 2020

<b>NOTES:</b>  Do not scale off drawings. Use figured dimensions only. Reveal any discrepancies to the architect.  © Copyright De Moyer Architecture Pty Ltd, 2020. Information contained on this drawing is the copyright of De Moyer Architecture Pty Ltd. Copying or part thereof without written permission infringes copyright.	<b>DATE</b> 31.07.2020	<b>REV</b> A	<b>NOTES:</b> ADDITIONAL INFORMATION SUBMITTED TO COUNCIL	<b>CONSULTANTS</b> STRUCTURAL: IMITREUSE HYDRAULIC: PARTRIDGE GEOTECHNICAL: JK GEOTECHNICALS LANDSCAPE: DANGAR BARN SMITH PLANNER: TONY MOODY PLANNING & DEVELOPMENT QUANTITY SURVEYOR: JESS LAND SURVEYOR: HILL & BLUNE BASIN & NANNERS CERTIFICATES: EFFICIENT LIVING	<b>DE MOYER ARCHITECTURE</b>  15 BAY STREET DOUBLE BAY NSW 2028 tel: 02 9399 0000 www.demoyer.com.au	<b>PROJECT</b> ALTERATIONS & ADDITIONS TO EXISTING RESIDENTIAL HOUSE  <b>PROJECT ADDRESS</b> 16 OLPHERT AVE, VAUCLUSE NSW 2030  <b>CLIENT</b> JULIE-ANNE MCILLAN	<b>PROJECT NO:</b> 16-02  <b>DRAWING TITLE</b> VIEW ANALYSIS FROM No.18 OLPHERT AVE  <b>DRAWING NO</b> DA611	<b>DATE</b> 31.07.2020 <b>REVISION</b> A	<b>DRAWN BY</b> MB <b>CHECK BY</b> MEM <b>SCALE</b>  <b>PHASE</b> DA





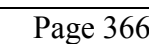
<b>NOTES:</b>  Do not scale off drawings. Use figured dimensions only. Reveal any discrepancies to the architect.  © Copyright: De Moyer Architecture Pty Ltd. 2020. Information contained on this drawing is the copyright of De Moyer Architecture Pty Ltd. Copying or part based or part based without written permission infringes copyright.	<b>DATE</b> 31.07.2020	<b>REV</b> A	<b>NOTES:</b> ADDITIONAL INFORMATION SUBMITTED TO COUNCIL	<b>CONSULTANTS</b> STRUCTURAL: PARTRIDGE HYDRAULIC: PARTRIDGE GEOTECHNICAL: JK GEOTECHNICAL LANDSCAPE: DARGAR BARN SMITH PLANNER: TONY MOODY PLANNING & DEVELOPMENT QUANTITY SURVEYOR: JRG LAND SURVEYOR: HILL & BLUM BASIS & NARRATIVE CERTIFICATES: EFFICIENT LIVING	<div><div>DE MOYER ARCHITECTURE</div><div><div>15 BAY STREET</div><div>DOUBLE BAY NSW 2028</div><div>PHONE: 02 9396 1000 FAX: 02 9396 1001</div></div><div><div>Registered Architect</div><div>Member of the NSW Architects' Board</div></div></div>	<b>PROJECT</b> ALTERATIONS & ADDITIONS TO EXISTING RESIDENTIAL HOUSE  <b>PROJECT ADDRESS</b> 16 OLIPHANT AVE, VAUCLUSE NSW 2030  <b>CLIENT</b> JULIE-ANNE MCWILLAN	<b>PROJECT NO:</b> 16-02	<b>DRAWING TITLE</b>  VIEW ANALYSIS BOUNDARY		<b>DRAWN BY</b> MB	
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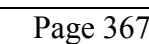




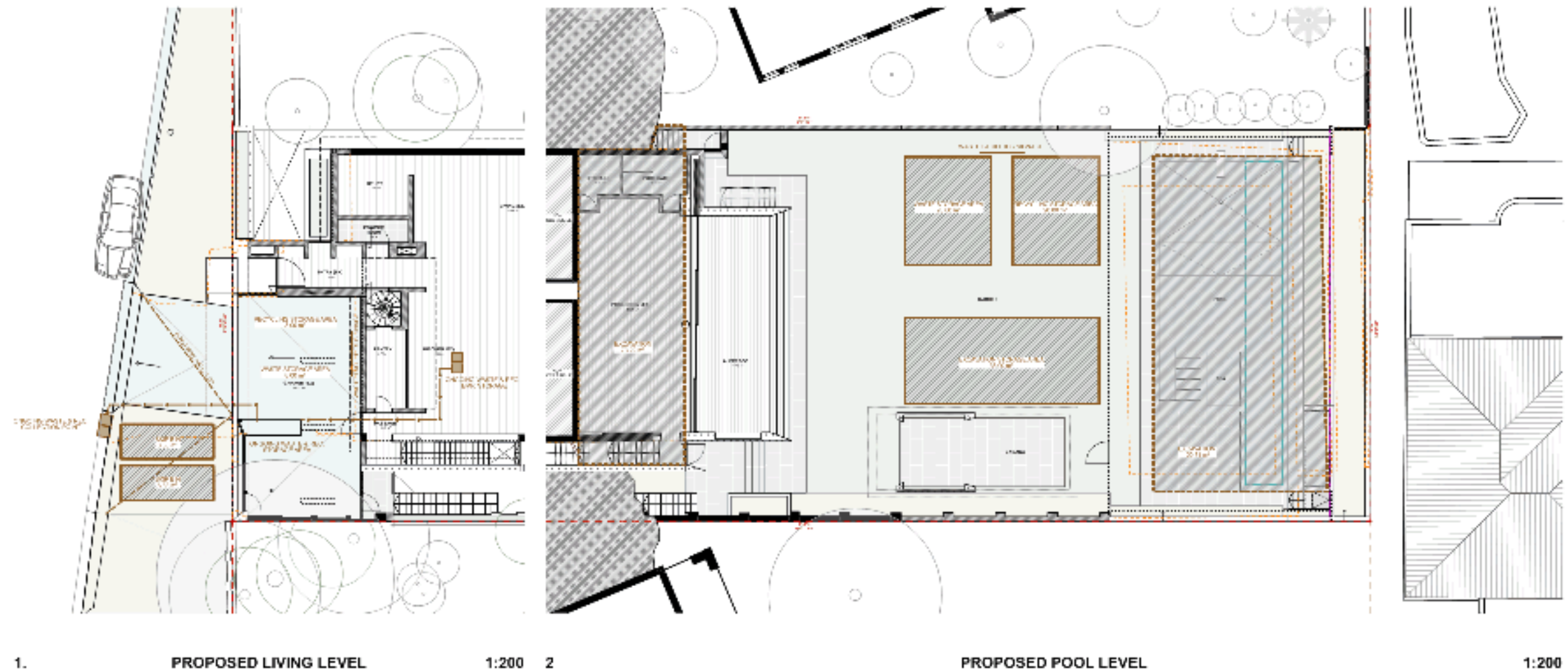
<div>NOTES:</div> <div>Do not scale off drawings. Use figured dimensions only. Report any discrepancies to the architect.</div> <div>© Copyright: De Moyer Architecture Pty Ltd. 2019. Information contained on this drawing is the copyright of De Moyer Architecture Pty Ltd. Copying of this drawing or part thereof without permission infringes copyright.</div>	<div>DATE</div> <div>31.07.2020</div>	<div>REV</div> <div>A</div>	<div>NOTES:</div> <div>ADDITIONAL INFORMATION SUBMITTED TO COUNCIL</div>	<div>CONSULTANTS</div> <div>STRUCTURAL: PARTISAGE HYDRAULIC: PARTISAGE GEOTECHNICAL: JK GEOTECHNICAL LANDSCAPE: DARGAN BIRAN SMITH PLANNER: TONY MOODY PLANNING &amp; DEVELOPMENT QUANTITY SURVEYOR: JESS LAND SURVEYOR: HILL &amp; BLUME BANK &amp; NABORS CERTIFICATES: EFFICIENT LIVING</div>	<div>DE MOYER ARCHITECTURE</div> <div>15 BAY STREET DOUBLE BAY NSW 2028 info@demoyer.com.au 02 939 129 466</div> <div>Memorised Architect Member of the New South Wales Architects Board No. 9386</div>	<div>PROJECT</div> <div>ALTERATIONS &amp; ADDITIONS TO EXISTING RESIDENTIAL HOUSE</div> <div>PROJECT ADDRESS 16 OLPHERT AVE, VAUCLUSE NSW 2030</div> <div>CLIENT JULIE-ANNE MCWILLAN</div>	<div>PROJECT NO - 16-03</div>	<div>DRAWING TITLE</div> <div>VIEW ANALYSIS 1m HIGH ADDITIONAL SOUTH FENCING</div>		<div>DRAWN BY</div> <div>MB</div>	
								<div>DRAWING NO</div> <div>DA613</div>	<div>DATE</div> <div>31.07.2020</div>	<div>CHECK BY</div> <div>NEM</div>	<div>SCALE</div>
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## CLAUSE 4.6 REQUEST



For:

Request for Variation of the Height of Buildings Development Standard under Clause 4.6 of Woollahra Local Environmental Plan 2014.

At:

Lot 65 DP5139, 16 Olphert Avenue, Vaucluse

**TONY MOODY**

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CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT STANDARD  
18 Ophert Avenue, Vaucluse

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This Clause 4.6 Request was prepared by:

Director	TONY MOODY <i>BTP(UNSW) LL.B (Hons)(UTS) MPA</i>
Assistant Planner	SPYRO GERANGELOS <i>BCPM(UTS)</i>
Reference	19056TM

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Tony Moody Planning and Development

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16 Olphert Avenue, Vaucluse

## 1.0 INTRODUCTION

This Clause 4.6 Request is made pursuant to Clause 4.6 of Woollahra Local Environmental Plan 2014 (LEP 2014) and seeks to justify contravention of the Height of Buildings Standard under Clause 4.3 of LEP 2014 in support of a proposed development described as *“Proposed Alterations and Additions, including Significant Internal Alterations to an Existing Dwelling, and proposed Construction of a New Swimming Pool and Cabana”* at 16 Olphert Avenue, Vaucluse (subject site).

The architectural plans to which this Clause 4.6 Request relate are the plans lodged with the current Development Application (DA), plus the attached amended drawings:

- DA400, Revision B, dated 30 January, 2020
- DA401, Revision B, dated 30 January, 2020
- DA402, Revision B, dated 30 January, 2020
- DA602, Revision B, dated 30 January, 2020

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## 2.0 FRAMEWORK FOR ASSESSING A CLAUSE 4.6 REQUEST

Clause 4.6 of LEP 2014 provides as follows:

### ***Clause 4.6 – Exceptions to Development Standards***

#### ***4.6 Exceptions to development standards***

*(1) The Objectives of this clause are as follows:*

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

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

*(3) Development consent must not be granted 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.*

*(5) In deciding whether to grant concurrence, the Secretary must consider:*

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- (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.*
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
  - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
  - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note.** *When this Plan was made it did not include all of these zones.*
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*
  - (a) a development standard for complying development,*
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,*
  - (c) clause 5.4.*

**Comment:**

It is noted that the above Clause 4.6 under LEP 2014 is a clause that is part of the Standard Instrument throughout New South Wales.

The provisions of the standard Clause 4.6 have been the subject of judicial consideration in a number of judgements of the Land and Environment Court (Court) and the NSW Court of Appeal.

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A very useful summary of the framework for assessing a Clause 4.6 Request is outlined in the judgement of his Honour, Justice Moore of the Court in *Rebel MHI Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191 (*Rebel*). At paragraphs 44-47, Justice Moore sets out “the framework for assessing a Clause 4.6 Request” which is outlined below:

“The framework for assessing a cl 4.6 request

44. In his recent decision in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*), Preston CJ addressed the decision-making approach to be undertaken by a consent authority when assessing the adequacy of a request for a dispensation from compliance with a development standard in a local environmental plan. The power to grant such a dispensation is given by cl 4.6 of a local environmental plan. Clause 4.6 is a standard provision in local environmental plans throughout New South Wales. It takes a common form which his Honour set out, at [8], and as I also have, relevantly, earlier at [17].

45. His Honour set out (between [5] and [29]) a comprehensive analysis of the approach to be taken to determining a request made pursuant to cl 4.6.

46. For me to grant development consent for this development as it contravenes the permitted maximum building height development standard, cl 4.6(4)(a) requires me to be satisfied that:

1. The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development (cl 4.6(3)(a) and cl 4.6(4)(a)(i)); **and**
2. 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)); **and**
3. The proposed development will be in the public interest because it is consistent with the objectives of the standard in question - set out in cl 4.3 of the LEP (cl 4.6(4)(a)(ii)); **and**
4. The proposed development will be in the public interest because it is consistent with the objectives of the R4 High Density Residential Zone (cl 4.6(4)(a)(iii)).

47. For the first of the above matters, Preston CJ made it clear, in *Initial Action* at [25], that the Court need not be directly satisfied that compliance is unreasonable or unnecessary and sufficient environmental planning grounds exist, but rather that it “only indirectly form the opinion of satisfaction that the applicant’s written request has adequately addressed” those matters.”

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Accordingly, this Clause 4.6 Request must satisfy the following: -

- (1) That the Clause 4.6 Request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development.
- (2) That the Clause 4.6 Request adequately establishes sufficient environmental planning grounds to justify contravening the development standard.
- (3) That the proposed development will be in the public interest because it is consistent with the Objectives of the Height of Buildings Standard.
- (4) That the proposed development will be in the public interest because it is consistent with the Objectives of the Low Density R2 zone.

As noted above, Justice Moore followed the previous decision of his Honour, Chief Justice Preston in *Initial Action* in which the Chief Justice *“addressed the decision-making approach to be undertaken by a consent authority when assessing the adequacy of a request for a dispensation from compliance with a development standard in a Local Environmental Plan”*.

A recent decision of the NSW Court of Appeal has further considered the construction of Clause 4.6 (4)(a)(i), with particular relevance as to state of satisfaction necessary to be held by the consent authority in considering a Clause 4.6 Request (*Al Mafia Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 at [21]-[24]).

More recently, Commissioner Dickson in *Raissis v Randwick City Council* [2019] NSWLEC 1040 (*Raissis*) referred to the seminal decision of his Honour, Chief Justice Preston in *Initial Action*.

As noted in paragraphs 19 and 20 in *Raissis*, Commissioner Dickson advised that: *“for there to be power to grant development consent for a development that contravenes a development standard, I must be satisfied that:*

- *The proposed development will be consistent with the Objectives of the zone (cf 4.6(4)(a)(ii)),*
- *The proposed development will be consistent with the Objectives of the standard in question (cf 4.6(4)(a)(iii)),*
- *The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cf 4.6(3)(a) and cf 4.6(4)(a)(i)), and*



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- *The written request adequately demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).*

20. *Further at cl 4.6(4)(a)(ii), the Court must be satisfied that the development will be in the public interest because it is consistent with the Objectives of the Building Separation standard and the Objectives of the B3 zone: Initial Action v Woollahra Municipal Council [2018] NSWLEC 118 (Initial Action) at [26]."*

Clearly, Commissioner Dickson followed the previous Court judgements in *Initial Action* and *Rebel*.

The following sections of this Clause 4.6 Request seek to address the matters listed in (1)-(4) above in the judgement of Justice Moore in *Rebel* in relation to the proposed variation of the Height of Buildings Standard for this DA.

It is also relevant to consider the Objects of Section 1.3 of the Environmental Planning and Assessment Act (the Act) which states 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*

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*increased opportunity for community participation in environmental planning and assessment.*

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### 3.0 THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT

#### *Clause 4.3 Height of Buildings Standard*

*(1) The Objectives of this clause are as follows:*

- (a) to establish building heights that are consistent with the desired future character of the neighbourhood.*
- (b) to establish a transition in scale between zones to protect local amenity,*
- (b) to minimise the loss of solar access to existing buildings and open space,*
- (c) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*
- (d) to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.*

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

- (2A) Despite subclause (2) and clause 4.3A, the maximum height of a dwelling house, dual occupancy or semi-detached dwelling on land in Zone R3 Medium Density Residential is 9.5 metres.*
- (2B) Despite subclause (2) and clause 4.3A, the maximum height of a building on a battle-axe lot on land in Zone R3 Medium Density Residential is 9.5 metres.*

#### **Comment:**

Pursuant to Clause 4.3 of LEP 2014, the Height of Buildings Standard applicable to the proposed development and the subject site is 9.5m.

The term “*building height*” is defined in the Dictionary of LEP 2014 as follows:

**“*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) 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.*

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*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”*

The term “ground level (existing)” is defined in the Dictionary of LEP 2014 as follows:

*“ground level (existing) means the existing level of a site at any point.”*

Based on the architectural plans referred to in page 3 of this Clause 4.6 Request, the proposed development has a proposed maximum building height of 9.991m above existing ground level which represents a 0.491m breach of the 9.5m Height of Buildings Standard. The degree of breach is only 5.1%, which is a numerically very minor breach.

For the reasons outlined in this Clause 4.6 Request, I consider that variation of the Height of Buildings Standard is eminently reasonable in the circumstances of the proposed development.

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#### **4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?**

I consider that compliance with the Height of Buildings Standard in Clause 4.3 of LEP 2014 is unreasonable and unnecessary in the circumstances of the proposed development for the following reasons:

- Whilst there is a breach of the Height of Buildings Standard, the breach is a very minor numerical breach. The great majority of the proposed dwelling is also significantly below the 9.5m Height of Buildings Standard. Please refer to the relevant architectural plans which clearly evidence the fact that the breach is only very minor and the great majority of the proposed dwelling is significantly below the 9.5m Height of Buildings Standard.
- The maximum building height is located over a minor portion of the proposed roof, located at the northern section of the proposed roof. Furthermore, the breaching portion will not be readily visible from the public domain and adjoining properties as indicated in the various view analysis drawings lodged with the current DA.
- The proposed dwelling is strongly articulated on its external facades.
- The proposed development does not create adverse unreasonable impacts on adjoining properties or the public domain as outlined in this Clause 4.6 Request and my accompanying Statement of Environmental Effects (SEE).
- I also consider that there are positive Environmental Planning Grounds and Positive Outcomes to justify contravention.
- For the reasons outlined in my SEE, the proposed development *‘is of a height and scale that achieves the desired future character of the neighbourhood’* for the following reasons:
  - (i) The proposed development will present itself as a single storey structure when viewed from Olphert Avenue. In fact, the current DA will result in a reduction in the overall height of the existing dwelling when viewed from the street, despite the introduction of the proposed roof top terrace, due to the removal of the existing pitch roof to be replaced with a proposed flat roof.
  - (ii) The single storey presentation of the existing dwelling when viewed from the street will remain, but in a more visually appealing form.



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- (iii) For the reasons outlined in my SEE, the proposed development will not have an adverse impact on the public domain. On this point, I consider that the proposed dwelling will result in a significant improvement compared to the existing dwelling in terms of its visual aesthetics when viewed from the public domain.
- (iv) There is no impact on the public domain in terms of public views of Sydney Harbour and surrounding areas.
- (v) For the reasons outlined in my SEE, I consider that there is no unreasonable impact on solar access to existing adjoining buildings and their open space areas.
- (vi) For the reasons outlined in my SEE, I consider that there are no unreasonable impacts on views, privacy, overshadowing or visual intrusion/impact on existing adjoining buildings and their open space areas.

Please refer to additional comments in my SEE in support of this Clause 4.6 Request.

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## 5.0 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

In *Initial Action*, his Honour, Chief Justice Preston provides the following guidance in paragraph 23:

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

The environmental planning grounds that justify contravening the Height of Buildings Standard for the current DA include, but are not limited to, the following:

- Whilst there is a breach of the Height of Buildings Standard, the breach is a very minor numerical breach. The great majority of the proposed dwelling is significantly below the 9.5m Height of Buildings Standard. Please refer to the relevant architectural plans.
- The proposed dwelling is strongly articulated on the external facades.
- The proposed development is consistent with the Object of the Act ‘to promote the orderly and economic use and development of land’ as it provides for more modern accommodation on the subject site generally within the existing footprint whilst respecting the character of the locality and adjoining premises.
- The proposed development will result in a significant increase in the area and quality of landscaping on the subject site compared to the existing situation, including the front setback area fronting Ophert Avenue.
- The visual aesthetics of the proposed development will be significantly improved compared to the existing building. Of particular note is the proposed flat roof, which will provide a more visually appealing dwelling.
- The use of attractive external finishes, particularly the proposed flat roof and modified garage door, will increase variety to the existing building and positively contribute to the streetscape and the public domain.

Please refer to additional comments later in this Clause 4.6 Request.

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18 Ophert Avenue, Vaucluse

## **6.0 THE PROPOSED DEVELOPMENT WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE PARTICULAR STANDARD.**

The Objectives of the Height of Buildings Standard are:

*(1) The Objectives of this clause are as follows:*

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

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

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

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

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

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

*(2A) Despite subclause (2) and clause 4.3A, the maximum height of a dwelling house, dual occupancy or semi-detached dwelling on land in Zone R3 Medium Density Residential is 9.5 metres.*

*(2B) Despite subclause (2) and clause 4.3A, the maximum height of a building on a battle-axe lot on land in Zone R3 Medium Density Residential is 9.5 metres.*

### **Comment:**

Notwithstanding the breach of the Height of Buildings Standard, I consider that the Objectives of the Height of Buildings Standard are satisfied for the following reasons:

- (a) The proposed height is consistent with adjoining buildings and the desired future character for the reasons outlined in my SEE and this Clause 4.6 Request.*
- (b) The subject site is within the R2 Low Density Residential zone and the proposal is of a height and scale which achieves the desired future character of the neighbourhood.*

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CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT STANDARD  
18 Olphert Avenue, Vaucluse

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- (c) The proposed dwelling will continue to present itself as a single storey structure when viewed from Olphert Avenue.
- (d) For the reasons outlined in my SEE and this Clause 4.6 Request, the proposed development will not have an adverse impact on the public domain.
- (e) I consider that the proposed development will result in an improvement compared to the existing development in terms of its visual aesthetics when viewed from the public domain.
- (f) For the reasons outlined in this Clause 4.6 Request and my SEE, there is no unreasonable impact on the amenity of existing adjoining dwellings and their open space areas.
- (g) The breach is very minor in numerical terms and the great majority of the proposed dwelling is significantly below the 9.5m Height of Buildings Standard.
- (h) The breaching portion will not be readily visible from the public domain and adjoining properties.

CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT STANDARD  
18 Ophert Avenue, Vaucluse

## **7.0 PROPOSED DEVELOPMENT WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES FOR DEVELOPMENT WITHIN THE ZONE**

The Objectives of the R2 Low Density zone are:

### **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:**

As previously advised, the zoning of the subject site is R2 Low Density Residential.

The existing dwelling, comprising a 2-3 storey dwelling, is a permissible development under the R2 Low Density zone. Accordingly, the proposed alterations and additions to the existing dwelling also constitute a permissible development.

For the reasons outlined in my SEE, I consider that the proposed development satisfies the relevant Objectives of the R2 Low Density Residential zone. I particularly note the following:

- As to the first Objective, I consider that the proposed alterations and additions assist in providing housing for the needs of the community within a low density residential environment.
- The second Objective is not applicable.
- As to the third Objective, I consider that the proposed development is compatible with the character and amenity of the surrounding neighbourhood for the reasons outlined in this Clause 4.6 Request and my SEE. I particularly note the range of positive outcomes arising from the proposed development which are outlined in this Clause 4.6 Request and my SEE.



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CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT STANDARD  
18 Ophert Avenue, Vaucluse

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- I consider that the proposed development, notwithstanding the breach of the Height of Buildings Standard, is of a satisfactory height and scale and achieves the desired future character of the neighbourhood for the reasons outlined in my SEE. Please also refer to additional comments provided in this Clause 4.6 Request and my SEE.
- Whilst there is a breach of the Height of Buildings Standard, the breach is a very minor numerical breach. Most importantly, the great majority of the proposed dwelling is significantly below the 9.5m Height of Buildings Standard.
- The proposed dwelling is strongly articulated on the external façades.

CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT STANDARD  
18 Ophert Avenue, Vaucluse

## **8.0 STATE OR REGIONAL ENVIRONMENTAL PLANNING SIGNIFICANCE AND THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD**

The contravention of the Height of Buildings Standard in the circumstances of this application does not raise any matter of significance for State or regional environmental planning.

CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT STANDARD  
18 Ophert Avenue, Vaucluse

## 9.0 POSITIVE OUTCOMES OF THE PROPOSED DEVELOPMENT

I consider that the proposed development provides positive outcomes including, but not limited to, the following:

- The visual aesthetics of the proposed development will be significantly improved compared to the existing dwelling for the reasons outlined in my SEE.
- The use of attractive external finishes will increase variety to the existing building and positively contribute to the streetscape and the public domain.
- The existing pitch roof will be replaced with a flat roof and rooftop terrace, reducing the visual impact of the front façade and reducing the existing breaches of the Building Envelope Controls.
- Whilst there is a breach of the Height of Buildings Standard, the breach is a very minor numerical breach. The great majority of the proposed dwelling is significantly below the 9.5m Height of Buildings Standard.
- The proposed dwelling is strongly articulated on the external façades.
- The replacement front fence is to be recessed back from its current location on the front boundary.
- The proposed garages will be in the same location as the existing garages, whilst providing a new façade and entry doors to provide a greater level of access.
- The area and quality of landscaping throughout the subject site will be increased through the removal of the existing pool and concrete slab, artificial tennis court and the implementation of additional planter beds.
- The existing landform will remain unchanged in terms of cut and fill, except for minor level changes to portions of the bedroom level and ground floor, minor works for the proposed alfresco area and minor excavation for the proposed new pool.

CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT STANDARD  
18 Ophert Avenue, Vaucluse

## 10.0 CONCLUSION

For the reasons outlined in this Clause 4.6 Request, I consider that variation of the Height of Buildings Standard should be supported in order to facilitate approval of the proposed development.

A handwritten signature in dark ink, reading "Tony Moody". The signature is written in a cursive style with a horizontal line underneath the name.

**TONY MOODY**  
BTP(UNSW), LL.B (UTS)(Hons.), MPIA  
Dated: 4 November, 2020.

Completion Date: 19/10/2020

## REFERRAL RESPONSE – DEVELOPMENT ENGINEERING

**FILE NO:** Development Applications/ 510/2019/1  
**ADDRESS:** 16 Olphert Avenue VAUCLUSE 2030  
**PROPOSAL:** Alterations and additions to existing dwelling including new swimming pool and cabana  
**FROM:** Mehrnaz Jamali - Development Engineer  
**TO:** Ms T Ward

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### 1. ISSUES

- None. Refer to comments and conditions.

### 2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced 19056TM, prepared by Tony Moody Planning and Development, undated.
- Architectural Plans, un referenced, Revision D, prepared by De Moyer Architecture, dated 31/07/2020.
- Survey, referenced 58288001B, prepared by Hill & Blume, dated 10/05/2016.
- Stormwater Management Plan, Job No. 2018H0239, Revision P3, prepared by Partridge, dated 03/08/2020.
- Easement refusal letters – NO. 73 Hopetoun Avenue Vaucluse, dated 28/10/2019, No. 14 Olphert Avenue, dated 17/04/2020, No. 77 Hopetoun Avenue, dated 13 December 2019, No. 77A Hopetoun Avenue, dated 23/04/2020 and 18 Olphert Avenue, dated 20 April 2020.
- Geotechnical Investigation Report, referenced 32254SCriptrev4, prepared by JK Geotechnics, dated 7 May 2020.
- Geotechnical Advice - Stabilisation or Replacement of Damaged Retaining Wall, referenced 2810-GR-1-I, prepared by Alliance Geotechnical, dated 2 March 2017.
- Geotechnical Advice, referenced 32254SClet, prepared by JK Geotechnics, dated 4 August 2020.
- Surveyor Letter - Covenant Transfers, referenced 58288 DM, prepared by Hill & Blume, dated 10 May 2016.
- TS Drainage referral response, dated 16/10/2020.
- TS Development Engineering referral response, dated 06/07/2020.

### 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**

*Easement refusal considered satisfactory. Title and Dealing documents do not provide any statements that the drainage easement at the rear of the property benefits the subject sit. As such alternate drainage discharge options for the subject site can be considered.*

- *The advice provided within the Geotechnical Investigation Report, referenced 32254SCrptrev4, prepared by JK Geotechnics, dated 7 May 2020, stating that the site is suitable for an absorption system is considered unsatisfactory for the following reasons:*
  - *The report has stated a relatively high absorption rate for the location of the absorption system. However, the absorption rate provided does not comply to Council's DCP requirements.*
  - *The report has stated that due to rock, the water will discharge directly into the neighbouring property due to the presence of sandstone bedrock at shallow depths. Together with the findings provided within the Geotechnical Advice - Stabilisation or Replacement of Damaged Retaining Wall, referenced 2810-GR-1-1, prepared by Alliance Geotechnical, dated 2 March 2017, it is therefore unclear why the report has deemed the site suitable for an absorption system.*

*In conclusion: based on the findings within the Geotechnical Investigation Report, referenced 32254SCrptrev4, prepared by JK Geotechnics, dated 7 May 2020, the Geotechnical Advice - Stabilisation or Replacement of Damaged Retaining Wall, referenced 2810-GR-1-1, prepared by Alliance Geotechnical, dated 2 March 2017 and the advice from Council's Drainage Engineer in the email dated 27/05/2020; the downstream property (No.77 Hopetoun Avenue) is presently affected by substantial water flow from No.16 Olphert Avenue, which has also contributed to the damaged retaining wall at the common boundary of the two properties. Therefore, the decision has been made that the site will not be suitable for an absorption system.*

*In this regard, there are no objections to the Stormwater Management Plan, Job No. 2018H0239, Revision P3, prepared by Partridge, dated 03/08/2020 subject to the following conditions:*

- *The additional impervious area shall not exceed 40m<sup>2</sup>. Note: Swimming pool overflow shall automatically discharge to the sewer. Manufacturer's details shall be provided prior to Construction Certificate approval.*
- *All surface run-off at the rear of the site shall be collected and diverted to the pump-out system.*
- *The rainwater tank volume shall be increased from 32m<sup>3</sup> to 34m<sup>3</sup>.*
- *The pump-out system shall be designed in accordance with AS3500.3*
- *The stormwater discharge from the site shall connect to Council's underground drainage system. As such, Council's existing drainage system on Olphert Avenue shall be extended to the site in order to allow for the below ground connection. Council's underground stormwater system shall be extended from the existing pit situated approximately adjacent to No. 12 Olphert Avenue and No. 73 Hopetoun Avenue. A standard double grated kerb inlet pit (KIP) with a 1.8m precast lintel (in accordance with Council's standard drawing DR1) shall be constructed within the frontage of the*

*site and at least 0.5m away from any vehicular crossings. The extension of the Council's underground system shall be made by using a maximum 300mm diameter pipe and in accordance with Council's Specifications unless otherwise amended at the Section 138 Application of the Roads Act 1993. Where the pipe crosses the vehicular crossings of No.14 Olphert Avenue and No.73 Hopetoun Avenue or any other crossing, the crossings shall be reconstructed with the owner of the properties notified. Owner consent is not required. (Refer to email train from Yasas De Silva Team Leader - Infrastructure Asset Management, dated 29/07/2020).*

*The plans shall clearly demonstrate the surface and invert levels of all proposed and existing pits and the gradient of all proposed pipes on longitudinal sections with all stormwater pipes having a minimum 1% gradient. Longitudinal sections (scale 1:100) showing the extension of Council's underground system shall be provided for assessment. All design details and location of all existing services shall be included in the longitudinal section.*

*The concept plan is subject to the submission and approval of Stormwater Management Plan for the site prior to release of the Construction Certificate. Details are to be in accordance with Council's Chapter E2 "Stormwater and Flood Risk Management" DCP and Local Approvals Policy. This is to ensure that site stormwater is disposed in a controlled and sustainable manner.*

*Council's Technical Services Division is satisfied that adequate provision has been made for the disposal of stormwater from the land it is proposed to develop and complies with the provisions Council's Chapter E2 "Stormwater and Flood Risk Management" DCP.*

**b. Flooding & Overland Flow comments**

*Council's Drainage Engineer has provided the following comments;*

*"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. The Garage floor is to be at or above the level of 61.4m AHD.*
- b. 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."*

**c. Impacts on Council Infrastructure comments**

*Construction of kerb and gutter over fronting the boatshed and removal of the crossing over the boatshed.*

- *The stormwater discharge from the site shall connect to Council's underground drainage system. As such, Council's existing drainage system on Olphert Avenue shall be extended to the site in order to allow for the below ground connection. Council's underground stormwater system shall be extended from the existing pit situated approximately adjacent to No. 12 Olphert Avenue and No. 73 Hopetoun Avenue. A standard double grated kerb inlet pit (KIP) with a 1.8m precast lintel (in accordance with Council's standard drawing DR1) shall be constructed within the frontage of the site and at least 0.5m away from any vehicular crossings. The extension of the Council's underground system shall be made by using a maximum 300mm diameter pipe and in accordance with Council's Specifications unless otherwise amended at the Section 138 Application of the Roads Act 1993. Where the pipe crosses the vehicular crossings of No.14 Olphert Avenue and No.73 Hopetoun Avenue or any other crossing, the crossings shall be reconstructed/reinstated with the owner of the properties notified. Owner consent is not required. (Refer to email train from Yasas De Silva Team Leader – Infrastructure Asset Management, dated 29/07/2020).*

*The plans shall clearly demonstrate the surface and invert levels of all proposed and existing pits and the gradient of all proposed pipes on longitudinal sections with all stormwater pipes having a minimum 1% gradient. Longitudinal sections (scale 1:100) showing the extension of Council's underground system shall be provided for assessment. All design details and location of all existing services shall be included in the longitudinal section.*

*Note: the vehicular crossing shall have a minimum 1m clearance from the existing Telstra Pit. As such written approval from Telstra shall be provided to either have the pit remain in its current location or for the pit to be relocated.*

- *Due to the modification of the garages, the existing vehicular crossings cannot be retained. As such the construction of a standard vehicular crossing having a width of 4.7m at property boundary and perpendicular to the road carriageway is required. Council's road reserve fronting the boat and bicycle storage area within the site shall not be utilised for any type of access to this storage area. There shall be no direct access gate to this area fronting Council's road reserve. As such the proposed permeable paving/grassed crossing fronting the boat and bicycle storage shall be removed, turfed and reinstated with kerb and gutter.*

*The remainder of Council's assets are in serviceable condition - conditions applied.*

#### **d. Traffic comments**

*The expected traffic generation from the proposed development is typical for the zoning of the site.*

#### **e. Vehicle Access & Accommodation comments**

*The access and parking layout is generally satisfactory subject to the following conditions:*

- *To comply with the "flood protection condition", the garage floor level shall be at or above the level of 61.4m AHD.*
- *The access and parking layout to address the vehicular crossing requirements stated under "section c. - Impacts on Council Infrastructure comments" above.*

**f. Geotechnical, Hydrogeological and/or Structural comments**

*A Geotechnical Investigation Report, referenced 32254SCrptrev4, prepared by JK Geotechnics, dated 7 May 2020, Geotechnical Advice - Stabilisation or Replacement of Damaged Retaining Wall, referenced 2810-GR-1-1, prepared by Alliance Geotechnical, dated 2 March 2017 and Geotechnical Advice, referenced 32254SClet, prepared by JK Geotechnics, dated 4 August 2020 has been submitted in support of the application. The proposal involves excavation for alterations and additions including swimming pool up to a depth of about 3m.*

*The report identified the subsurface conditions as:*

- a) Fill to depths of 0.8m to 1.8m*
- b) Aeolian sand – various densities – to depths of 0.5m to 1.8m*
- c) Sandstone bedrock at 1.9m to 2.3m but not confirmed.*
- d) Groundwater appeared not to be an issue.*
- e) The reports states that, although unlikely, if retaining walls do exceed 3m in height, underpinning and/or rock anchors may be utilised. As such conditions have been applied.*

*The report made comments and recommendations on the following:*

- *Inferred Subsurface Profile*
- *Dilapidation Survey and Vibration Monitoring*
- *Excavation Within Middle and Ground Floor Levels*
- *Existing Swimming Pool & Proposed Rainwater Tank*
- *Proposed Swimming Pool*
- *Batters and Retaining Walls*
- *Footings*
- *Infiltration Tank & Northern Retaining Wall*
- *Further Work*

*Conditions covering these matters as well as others identified by Council have been added to the Referral.*

*Council's Technical Services has no objection 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 RDCP.*

*Note: Use of any Ground Anchors or underpinning extending beyond site boundaries require the approval of neighbouring properties in writing.*

**g. Other matters**

*There shall be no structures encroaching over the existing 1.83m drainage easement at the rear of the property. Conditions applied.*

**4. RECOMMENDATION**

Council's Development Engineer has determined that the proposal is satisfactory, subject to the following conditions:

#### Conditions of Consent

*Please note that the standard conditions of consent are generally modified by the Technical Services Division 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.5 Approved Plans & Supporting documents

Reference	Description	Author/Drawn	Date(s)
Job No. 2018110239, Revision P3	Stormwater Management Plan	Partridge	03/08/2020
32254SCrprev4	Geotechnical Investigation Report	JK Geotechnics	7 May 2020
2819-GIR-1-1	Geotechnical Advice - Stabilisation or Replacement of Damaged Retaining Wall	Alliance Geotechnical	2 March 2017
32254SClet	Geotechnical Advice	JK Geotechnics	4 August 2020

##### A.8 Ancillary Aspect of the Development (Repair Damaged Infrastructure)

##### A.30 No Underpinning works (Special Condition)

This development consent does NOT give approval to any works outside the boundaries of the subject site including any underpinning works to any structures on adjoining properties.

#### B. Conditions which must be satisfied PRIOR TO THE DEMOLITION of any building or construction

##### B.7 Public Road Assets Survey prior to any work/demolition

#### C. Conditions which must be satisfied PRIOR TO THE ISSUE OF ANY CONSTRUCTION CERTIFICATE

##### C.4 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) Construction of a full width vehicular crossing having a width of 4.7m at property boundary and perpendicular to the road carriageway in accordance with Council's standard driveway drawing RF2-D.



Note: Council's road reserve fronting the boat and bicycle storage area within the site shall not be utilised for any type of access to this storage area. As such, there shall be no direct access gate to this area fronting Council's road reserve.

**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 (Amend CC4)

### C.5 Payment of Security, Levies and Fees

Property Damage Security Deposit - making good any damage caused to any property of the Council	\$83,525	No	T115
Infrastructure Works Bond -completing any public work required in connection with the consent.	\$52,000	No	T113
Public Road/Footpath Infrastructure Inspection Fee	\$480	No	145

### C.13 Road and Public Domain Works

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

- The stormwater discharge from the site shall connect to Council's underground drainage system. As such, Council's existing drainage system on Olphert Avenue shall be extended to the site in order to allow for the below ground connection. Council's underground stormwater system shall be extended from the existing pit situated approximately adjacent to No. 12 Olphert Avenue and No. 73 Hopetoun Avenue. A standard double grated kerb inler pit (KIP) with a 1.8m precast lintel (in accordance with Council's standard drawing DR1) shall be constructed within the frontage of the site and at least 0.5m away from any vehicular crossings. The extension of the Council's underground system shall be made by using a maximum 300mm diameter pipe and in accordance with Council's Specifications unless otherwise amended at the Section 138 Application of the Roads Act 1993. Where the pipe crosses the vehicular crossings of No.14 Olphert Avenue and No.73 Hopetoun Avenue or any other crossing, the crossings shall be reconstructed/reinstated with the owner of the properties notified. Owner consent is not required.  
The plans shall clearly demonstrate the surface and invert levels of all proposed and existing pits and the gradient of all proposed pipes on longitudinal sections with all stormwater pipes having a minimum 1% gradient. Longitudinal sections (scale 1:100) showing the extension of Council's underground system shall be provided for assessment. All design details and location of all existing services shall be included in the longitudinal section.

Note: the vehicular crossing shall have a minimum 1m clearance from the existing Telstra Pit. As such written approval from Telstra shall be provided to either have the pit remain in its current location or for the pit to be relocated.

- b) Reconstruction of a full width vehicular crossing having a width of 4.7m at property boundary and perpendicular to the road carriageway in accordance with Council's standard driveway drawing RF2-D.

Note: Council's road reserve fronting the boat and bicycle storage area within the site shall not be utilised for any type of access to this storage area. As such the proposed permeable paving/grassed crossing fronting the boat and bicycle storage shall be removed, turfed and reinstated with kerb and gutter.

- c) A design longitudinal surface profile for the proposed driveway must be submitted for assessment.
- d) Removal and replacement of the existing concrete footpath for the full width of the property in accordance with Council's standard drawing RF3.
- e) Removal and replacement of all cracked or damaged kerb and gutter for the full width of all property in accordance with Council's standard drawing RF3.
- f) Removal of any driveway crossings and kerb laybacks which will be no longer required. Note: the proposed permeable paving/grassed crossing fronting the boat and bicycle storage shall also be removed, turfed and reinstated with kerb and gutter.
- g) Reinstatement of footpath, kerb and gutter to match existing.
- h) Where a grass verge exists, the balance of the area between the footpath and the kerb over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of Couch turf.

Note: To ensure that this work is completed to Council's satisfaction, this consent by separate condition, may impose one or more Infrastructure Works Bonds.

Note: *Road* has the same meaning as in the *Roads Act 1993*.

Note: The intent of this condition is that the design of the road, footpaths, driveway crossings and public stormwater drainage works must be detailed and approved prior to the issue of any *Construction Certificate*. Changes in levels may arise from the detailed design of buildings, road, footpath, driveway crossing grades and stormwater. Changes required under *Roads Act 1993* approvals may necessitate design and levels changes under this consent. This may in turn require the applicant to seek to amend this consent.

Note: See condition K24 in Section K. *Advisings* of this Consent titled *Roads Act Application*.  
Standard Condition: C13

#### **C.25 Soil and Water Management Plan – Submissions & Approval**

#### **C.36 Professional Engineering Details**

#### **C.37 Engineer Certification (Special Condition)**

This development consent does **NOT** give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties.

Any structural design is not to incorporate any underpinning works which encroaches outside the boundaries of the subject property.

#### **C.40 Geotechnical and Hydrogeological Design, Certification & Monitoring**

#### C.41 Ground Anchors

This development consent does **NOT** give approval to any ground anchors encroaching onto adjoining private properties. Use of any Ground Anchors extending beyond site boundaries requires the approval of neighbouring private properties in writing.

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 (Amended: CC41)

#### C.45 Parking Facilities

The *Construction Certificate* plans and specifications required by clause 139 of the Regulation, must include detailed plans and specifications for all bicycle, 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 and including the following:

- a) Construction of a full width vehicular crossing having a width of 4.7m at property boundary and perpendicular to the road carriageway in accordance with Council's standard driveway drawing RF2-D.  
Note: Council's road reserve fronting the boat and bicycle storage area within the site shall not be utilised for any type of access to this storage area. As such, there shall be no direct access gate to this area fronting Council's road reserve.
- b) The Garage floor shall be at or above the level of 61.4m AHD.

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 (Amended C45)

#### **C.51 Stormwater Management Plan (site greater than 500m<sup>2</sup>)**

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 the Stormwater Management Plan, Job No. 2018H0239, Revision P3, prepared by Partridge, dated 03/08/2020, other than amended by this and other conditions;
  - a. The additional impervious area shall not exceed 40m<sup>2</sup>. Note: Swimming pool overflow shall automatically discharge to the sewer. Manufacturer's details shall be provided prior to Construction Certificate approval.
  - b. All surface run-off at the rear of the site shall be collected and diverted to the pump-out system.
  - c. The rainwater tank volume shall be increased from 32m<sup>3</sup> to minimum 34m<sup>3</sup>.
- b) The discharge of stormwater, by direct connection, to back of a new Council kerb inlet pit on Olphert Avenue in accordance with the following;
  - a. The stormwater discharge from the site shall connect to Council's underground drainage system. As such, Council's existing drainage system on Olphert Avenue shall be extended to the site in order to allow for the below ground connection. Council's underground stormwater system shall be extended from the existing pit situated approximately adjacent to No. 12 Olphert Avenue and No. 73 Hopetoun Avenue. A standard double grated kerb inlet pit (KIP) with a 1.8m precast lintel (in accordance with Council's standard drawing DR1) shall be constructed within the frontage of the site and at least 0.5m away from any vehicular crossings. The extension of Council's underground system shall be made by using a maximum 300mm diameter pipe and in accordance with Council's Specifications unless otherwise amended at the Section 138 Application of the Roads Act 1993.  
The plans shall clearly demonstrate the surface and invert levels of all proposed and existing pits and the gradient of all proposed pipes on longitudinal sections with all stormwater pipes having a minimum 1% gradient. Longitudinal sections (scale 1:100) showing the extension of Council's underground system shall be provided for assessment. All design details and location of all existing services shall be included in the longitudinal section.
- c) Compliance the objectives and performance requirements of the BCA,

- d) Any rainwater tank (see Note below) required by BASIX commitments including their overflow connection to the Stormwater Drainage System,
- e) General compliance with Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management, and
- f) Provision of a rainwater tank having a minimum volume of 34m<sup>3</sup> and a pump-out system with a minimum storage volume of 16.4m<sup>3</sup>. The pump-out system shall be designed in accordance with AS3500.3

Note: the volumes shall be calculated to the top of water level only.

**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.

The layout plan must include:

- a) All pipe layouts, dimensions, grades, lengths and material specification,
- b) Location of the rainwater tank and pump-out system,
- 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 Council's drainage infrastructure, and
- f) Overland flow paths over impervious areas.

**Stormwater Management Systems**

The rainwater tank and pump-out system utilised within the site shall address:

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

**Subsoil drainage**

The subsoil drainage is to address:

- a) Subsoil drainage details,
- b) Clean out points, and
- c) Discharge point.

Where any new *Stormwater Drainage System* crosses the footpath area within any road, separate approval under section 138 of the *Roads Act 1993* must be obtained from Council for those works prior to the issue of any *Construction Certificate*.



All *Stormwater Drainage System* work within any road or public place must comply with Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* dated February 2012.

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

**Note:** The collection, storage and use of rainwater is to be in accordance with *Standards Australia HB230 2508 "Rainwater Tank Design and Installation Handbook"*.  
Standard Condition C.51 (Amended C.51)

#### **C.52 Non-gravity drainage systems**

##### **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 on the 1 in 100 year AEP flood level and the 1 in 20 AEP flood level, detailing:

- a) The Garage floor shall be at or above the level of 61.4m AHD,
- b) All flood protection measures shall be inspected and certified as fit for purpose after 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 (amended C.54)

#### **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 the Structural Engineer.

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

- a) No. 14 Olphert Avenue
- b) No. 18 Olphert Avenue
- c) No. 77 Illopetoun Avenue

The dilapidation reports must be completed and submitted to the *Certifying Authority* for approval. An approved copy of the reports shall be submitted to Council with the *Notice of Commencement* prior to the commencement of any *development work*.

Where excavation of the site will extend below the level of any immediately adjoining building the *principal contractor* or *owner builder* must give the adjoining building owner(s) a copy of the dilapidation report for their building(s) and a copy of the *notice of commencement* required by Section 6.6(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.

**Note:** Also refer to the Dilapidation Report Advising for more information regarding this condition  
Standard Condition: D1 (Amended D1-D)

**D.5 Dilapidation Reports for Public Infrastructure**

**D.6 Adjoining buildings founded on loose foundation materials**

**D.10 Works (Construction) Zone – Approval & Implementation**

**D.14 Erosion & Sediment Control – Installation**

**E. Conditions which must be SATISFIED DURING ANY DEVELOPMENT WORK**

**E.7 Public Footpaths – safety, access and maintenance**

**E.11 Maintenance of Environmental Controls**

**E.12 Compliance with Geotechnical / Hydrogeological Monitoring Program**

**E.13 Support of adjoining land and buildings**

**E.14 Vibration Monitoring**

**E.15 Erosion & Sediment Controls – Maintenance**

**E.17 Disposal of Site water during construction**

**E.20 Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum**

**E.24 Compliance with Council's Specification for Roadworks, Drainage and Miscellaneous Works Road works and work within the Road and Footway**

**E.34 Existing Drainage Easement (Special Condition)**

No building or other structure must be placed over the existing inter-allotment drainage easement or stormwater system or within the zone of influence taken from the invert of any pipe.

The Principal Contractor or Owner-builder must locate all stormwater drainage systems without causing any damage to the system and ensure its protection. The Owner, Principal Contractor or Owner-builder must not obstruct or otherwise remove, disconnect or render inoperable the stormwater drainage system.

Works such as fences must not obstruct the natural floodway or alter the natural floodway in such a way as to direct or concentrate stormwater on to neighbouring properties.

**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 & Certification of Systems & Works**

**F.9 Commissioning and Certification of Public Infrastructure Works**

**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))**

**H.13 Road Works (including footpaths)**

**H.14 Dilapidation Report for public infrastructure works**

**H.20 Positive Covenant & 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 PCA detailing:

- a) Compliance with conditions of development consent relating to stormwater;
- b) The structural adequacy of the Rainwater Tank and Pump-out system;
- c) That the works have been constructed in accordance with the approved design and will provide the retention storage volume and attenuation in accordance with the submitted calculations;
- d) Pipe invert levels and surface levels to Australian Height Datum;
- 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.

- f) 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 rainwater tank and pump-out system incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered at the Land and Property Information NSW.

**Note:** The required wording of the Instrument can be downloaded from Council's web site [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au). The PCA 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: 100 (Amended 01/03)

## **I. Conditions which must be satisfied during the ONGOING USE OF THE DEVELOPMENT**

### **1.29 On-going Maintenance of the Rainwater Tank and Pump-out 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 retention 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 the Council;
- e) Carry out the matters referred to in paragraphs (b) and (d) at the Owners 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 the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant;
- 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 the Council or its agents at all times and on reasonable notice at the Owner's cost to enter the land with equipment, machinery or otherwise to carry out the works required by those obligations;
- 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: L28

#### **K. Advisings**

##### **K.23 Dilapidation Report Condition**

##### **K.24 Roads Act Application**



## Memorandum - Drainage



**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 20/11/2020  
File No. Development Applications: DA2019/510/1  
To Mehraz Jamali  
CC  
From Michael Castleyn  
Address 16 Olphert Avenue

I refer to the following documents received for this report:

20/69573 Email - Council's Drainage Engineer comments re, Overland Flow issues - Email  
- 16 Olphert Avenue - Overland Flood study  
20/111365 Referral - TS Drainage - DA2019/510/1 - 16 Olphert Avenue VAUCLUSE  
20/105357 Plan - Architectural Rev D - DA2019/510/1 - 16 Olphert Avenue VAUCLUSE

### 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. The Garage floor is to be at or above the level of 61.4m AHD

- b. 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.

From: [andrew.simpson@woollahra.nsw.gov.au](mailto:andrew.simpson@woollahra.nsw.gov.au)  
To: [tagan@woollahra.nsw.gov.au](mailto:tagan@woollahra.nsw.gov.au)  
Subject: LG Object EAS1350166  
Date: Wednesday, 15 January 2021 8:56:51 AM  
Attachments: [EAS1350166](#)

Hi Tegan,

Condition of consent for replacement tree for the above DA...

**E. as Replacement/Supplementary trees which must be planted**

Any replacement or supplementary tree shall be grown in accordance with Tree stock for landscape use (AS 2508:2015). 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)
<i>Styphionia tetrandra</i> (Common-centred Myrtle)	Rear yard	100 litre	8 x 4



**Andrew Simpson**  
Tree Management Team Leader

Woollahra Municipal Council  
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**Our Values:** Respect for People | Integrity and Excellent Performance | Professional Quality Service | Open Accessible Communication

## SECTION 8.2 REVIEW OF DETERMINATION REPORT

<b>ITEM No.</b>	D4
<b>FILE No.</b>	DA 258/2019/1
<b>ADDRESS</b>	157-159 Hargrave Street, Paddington
<b>WARD</b>	PADDINGTON
<b>SITE AREA</b>	336m <sup>2</sup>
<b>ZONING</b>	R2 Low Density Residential
<b>PROPOSAL</b>	New smoking area to the “ <i>Bellevue Hotel</i> ”, alterations to the Taylor Street bin room, and new fire exit from Taylor Street
<b>TYPE OF CONSENT</b>	Local development
<b>COST OF WORKS</b>	\$87,863.00
<b>DATE DA LODGED</b>	19/07/2019 (Original Proposal) <b>28/01/2020 (Amended Proposal)</b>
<b>DATE DA DETERMINED</b>	04/05/2020
<b>DA DETERMINATION</b>	Conditional Approval
<b>SUBJECT OF REVIEW</b>	Review of Conditions A.5 and C.6 (Request to delete conditions)
<b>DATE S8.2 LODGED</b>	10/09/2020
<b>APPLICANT</b>	Design Collaborative
<b>OWNER</b>	Bellhot Pty Ltd
<b>REVIEW OFFICER</b>	Ms P Frecklington
<b>TEAM LEADER</b>	Mr G Fotis
<b>SUBMISSIONS</b>	Sixteen (16) total to original and review application
<b>RECOMMENDATION</b>	Approval, subject to conditions.

### PREAMBLE

- i) On 17 November 2020, Council’s Application Assessment Panel referred the Section 8.2 review of determination of DA 258 2019/1 to the Woollahra Local Planning Panel in accordance with the Direction from the Minister for Planning because ten (10) of more unique submissions by way of objections were received after the meeting agenda was finalised.
- ii) The additional submissions are addressed in **Section 15.1** of this Report.
- iii) Late correspondence to the AAP Meeting was received seeking clarification on the responsible Authority for determining compliance with the *Smoke-free Environment Act 2000* and the *Smoke-free Environment Regulation 2016*.

- iv) The Applicant's cover letter submitted with the review application draws upon case law to demonstrate that the only Authority with the power to determine compliance with the *Smoke Free Environment Act 2000* is the NSW Department of Health. This is attached as **Annexure 6**.
- v) Following the AAP meeting, independent advice was obtained from an Environmental Health Officer (Tobacco Compliance) from the South-Eastern Sydney Public Health Unit regarding the consent authority and '*enclosed area*' calculation methodology. This is attached as **Annexure 7**.
- vi) The Applicant's smoking area calculations can be found on the submitted architectural plans (**DA1-1100 - Revision 04**) attached as **Annexure 5**.
- vii) Council's position is that while the smoking calculation methodology (unchanged for the original DA) is not concurred with, NSW Health (not Council) is the consent authority for enforcing compliance with the Smoke-free legislation. As such, Council's Compliance Officer has determined that the application can be approved, subject to **Conditions C.7 & F.1**. Council's Compliance Officer's Referral Response is attached as **Annexure 2** of the printed agenda.
- viii) The Recommendation remains unchanged from that submitted to Council's AAP.

## REPORT

### 1. EXECUTIVE SUMMARY

- a) On 4 May 2020, Council approved DA 258/2019/1 under delegated authority for a new smoking area to the Bellevue Hotel, alterations to the Taylor Street bin room, and new fire exit from Taylor Street, subject to conditions.
- b) The subject 8.2 review application was lodged with Council on 10/09/2020, seeking to delete **Condition A.5** (consent not granted to the proposed rear roof addition to facilitate smoking within the gaming room) and **Condition C.6** (deletion of the proposed rear roof addition including the raised rear wall, metal roof and associated roof opening).
- c) The review application was notified to surrounding residents and previous objectors in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. A total of fifteen (15) submissions were received to the original and review application.
- d) The key issues raised include health impacts to nearby residents from smoking, non-compliance with the Smoke-free legislation, loss of privacy (aural), and inconsistency with streetscape character.
- e) No changes are proposed to the original DA (as amended). The proposal would not result in any intensification of the existing use. No additional floor area is proposed. No changes are proposed to the approved trading hours.



- f) The original approval granted consent to the proposed reconfiguration of the Hotel's waste bin storage area to create a new fire escape from the gaming room to Taylor Street and new staff access door (to replace existing sliding door), and new planter bed at ground floor in the gaming room (to replace existing). Consideration of the proposal is not limited to the scope of works under Conditions A.5 & C.6 including the raised rear wall, and new metal roof and associated roof opening to facilitate smoking in the rear gaming room. This report considers the proposal in its entirety as it is a review application.
- g) The key planning issues associated with the proposal includes potential impacts upon the significance of the Paddington Heritage Conservation Area (HCA), amenity (acoustic, health) impacts to neighbouring residential properties, and ability to achieve compliance with the *Smoke Free Environment Act 2000* and *Smoke-free Environment Regulation 2016*.
- h) The 8.2 review application was referred to Council's Fire Safety, Heritage, and Compliance Officers. As no changes are proposed under the review application, the application was not re-referred to Technical Services or Environmental Health. The original technical services standard conditions of consent are upheld. No fire-related conditions are recommended beyond compliance with the *Building Code of Australia* (**Condition D.1**). The acoustic impacts associated with the development are satisfactory, subject to the original conditions of consent. These are to be upheld.
- i) Council's Heritage Officer is satisfied that the proposal would have a neutral impact upon the heritage significance of the Paddington HCA, and would be satisfactory regarding Chapter C1 of the Woollahra DCP 2014.
- j) While the smoking calculation methodology (unchanged) is not concurred with by Council's Compliance Officer, NSW Health (not Council) is the consent authority for enforcing compliance with the smoke free legislation. As such, Council's Compliance Officer has determined that the application can be approved, subject to a condition requiring certification from an *Authorized NSW Health Inspector* that (a) the approved development is capable of achieving compliance with the *Smoke Free Environment Act 2000* and *Smoke-free Environment Regulation 2016*, prior to the issue of any Construction Certificate; and (b) certification of compliance with the smoke free legislation for the as-constructed premise (**Conditions C.7 & F.1**).
- k) The 8.2 review application is recommended for approval, subject to conditions.

## SUMMARY

### 2. DELEGATIONS SUMMARY

Pursuant to Clause 8.3(4) of the Environmental Planning and Assessment Act, 1979 ("the Act"),

- (4) *"The review of a determination or decision made by a delegate of council is to be conducted –*
  - a) by the council (unless the determination or decision may be made only by a local planning panel or delegate of the council), or*
  - b) by another delegate of the council who is not subordinate to the delegate who made the determination or decision."*

The matter was first determined under delegated authority on 04/05/2020 in accordance with Council's delegations adopted on 15 December 2015. As such, the application is required to be determined at a higher delegation.

### **3. REASON FOR DETERMINATION BY THE WOOLLAHRA LOCAL PLANNING PANEL**

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.

### **4. DETERMINATION OF ORIGINAL DEVELOPMENT APPLICATION**

DA 258/2019/1 was approved on 04/05/2020, subject to conditions.

### **5. SUBJECT OF REVIEW**

The applicant seeks a review of **Conditions A.5 & C.6** of the original consent, as follows:

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

*This approval does not give consent to the proposed rear roof addition to facilitate smoking within the gaming room.*

#### ***C.6 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 proposed roof addition to the rear roof of the hotel shall be deleted, including the raised rear wall, metal roof and associated roof opening.*

The applicant seeks to delete **Conditions A.5 & C.6**.

### **6. DESCRIPTION OF SECTION 8.2 REVIEW PROPOSAL**

The scope of works to which this section 8.2 review application relates encompasses the proposed roof addition to the rear of the building (the "Bellevue Hotel") to facilitate smoking in the rear gaming room, including the raised rear wall, new metal roof and associated roof opening.

Note: No changes are proposed to the original proposal.

### **7. COUNCIL'S STATUTORY RESPONSIBILITIES UNDER SECTION 8.2**

Clause 8.3 of the Environmental Planning and Assessment Act 1979 (the Act) states:

- (2) *A determination or decision cannot be review under this Division –*
- a) after the period within which any appeal may be made to the Court has expired if no appeal was made, or*
  - b) after the Court has disposed of an appeal against the determination or decision.*

Pursuant to Clause 8.10 of the Act, an appeal under this Division may only be made 12 months after the date the decision is registered on the NSW planning portal. As such, the rights of appeal and determination of the 8.2 review application cease on 4 May 2021.

## **8. SUBSTANTIALLY THE SAME DEVELOPMENT**

The proposal involves no changes to the building design as part of the Section 8.2 review. As such, the consent authority may be satisfied that the proposal is substantially the same development for which consent was originally sought.

## **CONSIDERATION OF REVIEW**

## **9. 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:

- The proposal is consistent with the existing use provisions under Sections 4.65-6.67 of the *Environmental Planning and Assessment Act 1979*, and Sections 41-42 of the *Environmental Planning and Assessment Regulation 2000*.
- Whilst not strictly applicable to the proposal, the proposal would be satisfactory regarding the relevant State Environmental Planning Policies, and Woollahra LEP 2014.
- The proposal is satisfactory regarding Chapter C1 of the WDCP 2014 and would have a neutral impact on the significance of the Paddington Heritage Conservation Area.
- **Conditions C.7 & F.1** would ensure that compliance with the Smoke-free legislation is achieved.
- 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, subject to conditions, is in the public interest.

## 10. LOCALITY PLAN



**Figure 1.** Locality Plan (Woollahra Council Maps).

## 11. PROPOSAL

The proposal involves the following works:

- Reconfiguration of the Hotel's waste bin storage area and the wash up room to its rear to create a new fire escape from the gaming room to Taylor Street, and new staff access door (to replace existing sliding door).
- Alterations and additions to the rear gaming room to facilitate smoking, including:
  - raised wall height along Windsor Lane by 1400mm for the width of the building;
  - enclosure of the sides of the new wall along the Taylor Street (south-eastern) and north-western sides to match the existing masonry walls below.
  - new metal roof to the rear addition (same pitch as existing), noting the north facing space between the existing and proposed roof would be open;
  - new planter bed at ground floor along the rear wall (to replace existing);
  - replacement of an existing glazed section of the roof with metal sheeting to match the existing; and
  - removal of the redundant plant and ducting.

Note: No changes are proposed to the original proposal.

## 12. ISSUES

### 12.1 Exceptions to Development Standards in Woollahra Local Environmental Plan 2014

None.

## 12.2 Primary Issues

Issue	Conclusion	Section(s)
Compliance with Smoke-Free legislation	<b>Conditions C.7 &amp; F.1</b> ensure that a CC and OC cannot be obtained unless certification from an Authorised NSW Health Inspector is obtained certifying compliance with the <i>Smoke-free Environment Act 2000</i> and <i>Smoke-free Environment Regulation 2016</i> .	<b>20 &amp; 23.2</b>
Acoustic impacts from open roof	Suitable conditions are recommended to minimise acoustic privacy impacts to neighbouring lands, including (but not limited to) compliance with the recommendations of the Acoustic Report ( <b>Conditions C.6 &amp; I.13</b> ), and restriction on the use of the Taylor Street staff door and fire exit ( <b>Condition I.5</b> ). The proposal is satisfactory regarding Section C1.4.10 of the Woollahra DCP 2015.	<b>17 &amp; 22.1.9</b>
Amenity impacts to surrounding residential properties	The proposal would not give rise to any unacceptable amenity impacts, subject to conditions.	<b>17 &amp; 22</b>
Heritage impacts	The proposal is supported by Council's Heritage Officer. Whilst Part 5.10 of the WLEP 2014 does not strictly apply, the proposal would have a neutral impact on the Paddington Heritage Conservation Area, and is satisfactory regarding Chapter C1 of the WDCP 2015.	<b>21.4 &amp; 22</b>

## PROPERTY DETAILS AND REFERRALS

### 13. SITE AND LOCALITY

<b>Physical features</b>
The site is located on the south-western side of Bellevue Street and on the corner of Taylor Street. The site extends to Windsor Lane at the rear. The site is rectangular in shape with 10.44m frontage to Hargrave Street to the north-east, rear south-western boundary of 10.395m, south-eastern side boundary of 32.26m, and north-western side boundary of 32.2445m.
<b>Topography</b>
The site is generally flat.
<b>Existing buildings and structures</b>
The site is developed with a part one and part two (2) storey building, the "Bellevue Hotel".
<b>Surrounding Environment</b>
Predominant residential development comprise mainly of two (2) storey terrace style housing along Hargrave Street to the north, east, and west of the site. A shop-top housing development is located to the north-west on the corner of Hargrave and Taylor Streets. To the rear of the site are enclosed garage structures belonging to houses fronting Windsor Street. The site and surrounding area is zoned R2 low density residential.





**Figure 2.** Aerial locality plan (Source: Woollahra Council Maps).



**Figure 3.** Bellevue Hotel and Hargrave typical two-storey terrace style housing along Hargrave Street.



**Figure 4.** Rear of the existing building. The existing mechanical ventilation is to be removed.



**Figure 5.** Taylor Street elevation showing the existing sliding doors to be demolished and replaced with new staff access door and new fire escape.





Area of the  
gaming room to  
be demolished  
and re-built

**Figure 6.** Existing games room showing the rear section to be demolished.



**Figure 7.** Garage structures along Windsor Lane to the immediate rear of the site.



**Figure 8.** *Windsor Lane to the south-west of the site.*



**Figure 9.** *Windsor Lane to the south-west of the site.*

## 14. RELEVANT PROPERTY HISTORY

<b>Current use</b>
Pub
<b>Relevant Application History</b>
<b>DA303/2014/1</b> (Approved by DCC, 29/09/2014) <ul style="list-style-type: none"> <li>Approved change to trading hours (Mon-Sat: 7am to 12 midnight; Sunday: 7am to 10pm).</li> </ul> <b>DA84/2015/1</b> (Approved under DEL – 24/04/2015) <ul style="list-style-type: none"> <li>Hotel façade refurbishment.</li> </ul>
<b>Relevant Compliance History</b>
None.
<b>Pre-DA</b>
None.
<b>Requests for Additional Information and Replacement Applications</b>
None.
<b>Land and Environment Court Appeal(s)</b>
Nil.

## 14. REFERRALS

Referral	Summary of Referral Response	Annexure
Technical Services	Original standard conditions to be upheld. Re-referral not required as no changes proposed to original DA.	n/a
Heritage	No objections or conditions.	1
Compliance	Satisfactory, subject to conditions including <b>Conditions C.7 &amp; F.1</b> (compliance with Smoke-free legislation) and <b>Condition C.8</b> (revised Plan of Management). Acoustic related conditions as per the original referral response are to be upheld.	2
Fire Safety	Satisfactory. No conditions.	3
Environmental Health	No objections. Acoustic related conditions as per the original referral response are to be upheld.	4

## ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

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

1. The provisions of any environmental planning instrument
2. The provisions of any proposed instrument that is/has been the subject of public consultation
3. The provisions of any development control plan
4. Any planning agreement that has been entered into
5. Any draft planning agreement that a developer has offered to enter into
6. The regulations
7. Any coastal zone management plan
8. The likely impacts of that development:
  - i) Environmental impacts on the natural and built environments
  - ii) Social and economic impacts
9. The suitability of the site
10. Any submissions
11. The public interest



## 15. ADVERTISING AND NOTIFICATION

### 15.1 Submissions

Submissions to the original DA were received from:

1. Annie Pryor, 128 Windsor Street, Paddington
2. Bronwyn Chan 163 Hargrave Street, Paddington
3. Helen Stamatopoulos, 144 Windsor Street, Paddington
4. Jarrod Frykberg, 164 Hargrave Street, Paddington **(Support)**
5. Nicholas Rivett & Suzanna Penaflor, 161 Hargrave Street, Paddington **(2 Submissions)**
6. Sharon Walsh, 144 Paddington Street, Paddington **(Support)**
7. Suzanne Lyndon, 4 Forbes Street, Paddington
8. Sylvia Tang, 136 Windsor Street, Paddington
9. Tim Murphy, 126 Windsor Street, Paddington **(Support)**
10. Tim Thompson, 140 Windsor Street, Paddington
11. Tim Welfare, 138 Windsor Street, Paddington
12. Todd Lyndon, 113 Hargrave Street, Paddington
13. Trish Sherbon, 146 Windsor Street, Paddington **(Withdrawn)**

The review application was advertised and notified from 23/09/2020 to 07/10/2020 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. Submissions were received from:

1. Chris Inzitari, 148 Windsor Street, Paddington
2. Lawrence Coy, 142 Windsor Street, Paddington
3. Michael Conley c/o Conley Lawyers on behalf of Anne Pryor, 128 Windsor Street, Paddington
4. Shannon and Matt Calabro, 134 Windsor Street, Paddington
5. Tim Thomson, 140 Windsor Street, Paddington
6. Todd Lyndon, 113 Hargrave Street, Paddington
7. Travis Rudowski, 141 Windsor Street, Paddington
8. Trish Sherbon, 146 Windsor Street, Paddington

Additional submissions received after finalisation of the AAP meeting agenda were received from:

9. Helen and George Stamatopoulos, 144 Windsor Street, Paddington
10. Councillor Harriet Price, Paddington

The total combined submissions for the original and review application is sixteen (16), as follows:

1. Annie Pryor, 128 Windsor Street, Paddington
2. Bronwyn Chan 163 Hargrave Street, Paddington
3. Chris Inzitari, 148 Windsor Street, Paddington
4. Helen Stamatopoulos, 144 Windsor Street, Paddington
5. Lawrence Coy, 142 Windsor Street, Paddington
6. Michael Conley c/o Conley Lawyers on behalf of Anne Pryor, 128 Windsor Street, Paddington
7. Nicholas Rivett & Suzanna Penaflor, 161 Hargrave Street, Paddington **(2 Submissions)**
8. Shannon and Matt Calabro, 134 Windsor Street, Paddington
9. Suzanne Lyndon, 4 Forbes Street, Paddington
10. Sylvia Tang, 136 Windsor Street, Paddington
11. Tim Thomson, 140 Windsor Street, Paddington
12. Tim Welfare, 138 Windsor Street, Paddington
13. Todd Lyndon, 113 Hargrave Street, Paddington

14. Travis Rudowski, 141 Windsor Street, Paddington
15. Trish Sherbon, 146 Windsor Street, Paddington
16. Councillor Harriet Price, Paddington

The submissions to the review application raised the following issues:

Issue	Concerns Raised in Submission	Assessing Officer's Response to Concerns Raised
Health impacts of smoking	<ul style="list-style-type: none"> <li>Impact of smoking on families and small children living in close proximity to the hotel.</li> <li>Permitting smoking may encourage patrons soiling out onto the laneways.</li> </ul>	<ul style="list-style-type: none"> <li>Health impacts are addressed under the Smoke-free legislation.</li> <li>Council is not the consent authority regarding compliance with the Smoke-free legislation.</li> <li><b>Condition C.7</b> ensures that a CC and OC cannot be obtained unless certification from an Authorised NSW Health Inspector is obtained certifying compliance with the <i>Smoke-free Environment Act 2000</i> and <i>Smoke-free Environment Regulation 2016</i>.</li> </ul>
Compliance with Smoke-free legislation	<ul style="list-style-type: none"> <li>The proposal does not satisfy the requirements under section 8 of the Smoke-free Environment Regulation 2016, specifically the guidelines for determining if the place is enclosed. A minimum 25% of the room needs to be open to fresh air. The plans submitted show that the area open to fresh area is well below the minimum 25% threshold.</li> <li>It is questionable whether the new roof is classified as a ceiling, not a roof due to the proposed pitch.</li> </ul>	As above.
Acoustic impacts	<ul style="list-style-type: none"> <li>Increased noise to residential properties due to open section of roof.</li> <li>Validity of acoustic report questionable.</li> <li>Permitting smoking may encourage patrons soiling out onto the laneways.</li> </ul>	<ul style="list-style-type: none"> <li>Council's Environmental Health Officer has reviewed the submitted Acoustic Report.</li> <li>No objections are raised regarding the acoustic impacts of the proposal, subject to conditions.</li> </ul>
Notification	<ul style="list-style-type: none"> <li>Location of site notice on Taylor Street elevation and not on front façade.</li> <li>Some neighbours did not receive formal notice.</li> </ul>	<ul style="list-style-type: none"> <li>The application was notified in accordance with Council's Community Participation Plan 2019.</li> <li>A statutory declaration for the site notice has been completed.</li> </ul>
Star City of the East	<ul style="list-style-type: none"> <li>The proposed works would convert the existing, quiet local establishment into the "Star City of the East".</li> </ul>	<ul style="list-style-type: none"> <li>The proposal is in keeping with the existing use.</li> <li><b>Condition I.5</b> is included to restrict use of the Taylor Street doors as a staff refuse store entry and fire exit only.</li> </ul>
Oversized smoke stack	<ul style="list-style-type: none"> <li>The visual impact of the oversized smoke stack will be unsightly and unhealthy.</li> <li>Compliance with Smoke-free regulation is questionable.</li> </ul>	<ul style="list-style-type: none"> <li>The proposal would remove an existing unsightly mechanical exhaust.</li> <li>The additional wall height along the rear elevation would integrate with the architectural style of the building.</li> <li>Council's Heritage Officer has determined that the proposal would have a neutral impact on the significance of the Paddington Heritage Conservation Area.</li> </ul>
New fire door	<ul style="list-style-type: none"> <li>The new fire door will serve as a rear entrance to the "casino".</li> </ul>	<ul style="list-style-type: none"> <li><b>Condition I.5</b> restricts use of the Taylor street doors to the specified purpose, that is, to facilitate staff access for waste collection, and a fire exit for the gaming room.</li> </ul>

Quiet enjoyment of Windsor Lane	<ul style="list-style-type: none"> <li>Windsor lane is a quiet suburban laneway used by local children to play and pedestrians alike.</li> <li>A 'smoke' zone is not conducive to these types of healthy pursuits.</li> </ul>	<ul style="list-style-type: none"> <li>The proposal has been skilfully design to mitigate noise/amenity impacts to nearby residents and use of Windsor Lane, in accordance with Smoke-free and acoustic legislative requirements.</li> <li>Compliance with relevant legislation is conditioned.</li> </ul>
Public interest	<ul style="list-style-type: none"> <li>The proposal is not in the public interest.</li> </ul>	<ul style="list-style-type: none"> <li>Suitable conditions are recommended to ensure that the wider and localised public interest is respected.</li> </ul>
Heritage conservation area	<ul style="list-style-type: none"> <li>The proposed additions will add unnecessary bulk and is inconsistent with the prevailing streetscape.</li> </ul>	<ul style="list-style-type: none"> <li>Council's Heritage Officer has determined that the proposal is satisfactory and would have a neutral impact on the significance of the Paddington HCA.</li> </ul>
Side entrance	<ul style="list-style-type: none"> <li>Impact of new side entrance to quiet enjoyment of surrounding residential properties.</li> </ul>	<ul style="list-style-type: none"> <li>Restriction on the use of the Taylor street elevation doors is conditioned (<b>Conditions I.5</b>) to minimise privacy (aural) impacts on neighbouring land.</li> </ul>

## 15.2 Statutory Declaration

The applicant has completed the statutory declaration dated 20/10/2020 declaring that the site notice for DA 258/2019/1 was erected and maintained during the notification period in accordance with Chapter A2.3.5 of the Woollahra DCP 2015.

## EXISTING USE RIGHTS

### 16. SECTIONS 4.65-4.67 OF THE *ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979* AND CLAUSES 41-42 OF THE *ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION, 2000*

The proposal involves alterations and additions to an existing *pub* (the "Belleuve Hotel") on land zoned R2 Low density residential under WLEP 2014. Use of the subject land for the purposes of a pub is prohibited in the R2 Zone. As such, the application relies on existing use rights.

Existing use rights are regulated under Sections 4.66 and 4.67 (Division 4.11) of the *Environmental Planning and Assessment Act, 1979* and Clauses 40-46 of the *Environmental Planning and Assessment Regulation 2000*.

#### 16.1 Clause 4.65 Definition of "Existing Use"

The proposal satisfies the definition of *existing use rights* in that:

- The use was lawfully commenced - The development application history indicates that applications relating to a Hotel on the site (1981, 1982, 1985, 1986, and 2014) were approved by Council.
- The current application relies on the existing use rights founded in the approval of DA 258/2019/1.
- The use was made prohibited by a subsequent LEP – the abovementioned approvals preceded the prohibition of hotels on the site upon the commencement of the WLEP on 23/05/2015.
- The use has been continuous in accordance with the consent.

## **16.2 Clause 4.66: Continuance of and Limitations on Existing Use**

There is no evidence to suggest that the use of the site as a *pub* has ceased for any continuous period of three (3) years. The current application relies on the existing use rights founded in the approval of DA 258/2019/1.

As such, the existing use rights are deemed not to have been abandoned.

Therefore, continuation of the existing use is permitted by virtue of Clause 4.66(1) of the Act.

## **16.3 Clause 4.67: Regulations Respecting Existing Use**

Clause 4.67(1) states that the regulations may make provision to carry out alterations or extensions, change the use, and enlargement of expansion or intensification of an existing use.

Section 4.67(3) of the Act states that the provisions of any environmental planning instrument that derogate (detract) from the existing use rights provisions have no force or effect whilst existing rights remain. Established case law has held that the provisions of environmental planning instruments do not apply to the assessment of applications on sites with existing use rights.

Therefore planning objectives and controls that limit the size of a proposal such as height, setbacks, building footprint, number of storeys, minimum allotment size, minimum site frontage and floor space ratio cannot be applied to the proposal. The Land and Environment Court judgment in the *Stromness P/L v Woollahra Municipal Council* handed down in October 2006 underscores this.

A recent judgement in *Saffioti v Kiama Municipal Council [2017] NSWLEC 65* handed down by the Land and Environment Court in 2017, has established that DCP provisions remain relevant to an assessment of an application relying upon existing use rights.

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

As such, the following environmental assessment of the proposal under the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act* does not refer to statutory and policy building envelope controls and objectives, apart from those contained within a DCP, which do not derogate from the existing use rights provisions.

Nonetheless, assessment against these controls is provided for comparative purposes only in this report.

## **16.4 Clause 41: Certain Development Allowed (EP&A Regulation 2000)**

Clause 41(1) of the *Environmental Planning and Assessment Regulations 2000* (the Regulation) states that an existing use may be “(a) *enlarged, expanded or justified; or (b) altered or extended....*”

As such, the proposed alterations and additions to the hotel are permitted by virtue of Clause 41(1) of the Regulation.

### **16.5 Clause 42: Development Consent Required for Enlargement, Expansion and Intensification of Existing Uses (*EP&A Regulation 2000*)**

Development consent for the proposed alterations and additions to an existing use, in accordance with Clause 42 of the *EP&A Regulation 2000*.

### **17. EXISTING USE RIGHTS PLANNING PRINCIPLE**

The following planning principles (in relation to the environmental assessment of proposals on land with existing use rights) was established in the *Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71* Land and Environment Court case. These principles are applied to the subject development in light of the Land and Environment Court judgment by Pain J in *Stromness Pty Ltd v Woollahra Municipal Council [2006] NSWLEC 587*. Consideration of the impact of a proposed development benefiting from existing use rights upon the amenity of the public domain and adjoining properties was central to the judgment.

The four (4) principles are outlined below:

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

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

The principle advises that although the planning controls are not applicable to sites with existing use rights, the controls should be considered as these controls apply to surrounding sites and indicate the kind of development that is expected. Planning assessment needs to consider existing and future context.

The site is subject to a statutory height control of 9m. The existing hotel has a height of 10.3m. A maximum height of 5.23m is proposed for the proposed works, which complies with the statutory height control.

The subject site and its surrounding sites are not subject to any floor space ratio or setback controls.

Notwithstanding this, surrounding sites are subject to the various controls contained in *Section C1.4.5 – Building Height, Bulk and Scale* and *Section C1.4.6 – Site Coverage, Setbacks and Levels* in Chapter C1 *Paddington Heritage Conservation Area* of the WDCP 2015.

It is acknowledged that the proposal would comply with the objectives underlying the above controls in the following manner:

- The proposed works are located at the rear and would not have a significant impact on the existing streetscapes of Taylor Street and Windsor Lane.
- The height of the building at the street frontage is unchanged.
- No changes are proposed to the existing building footprint.
- The proposal would not create any additional overshadowing to any private open space or habitable room windows of an adjacent residential dwelling.



- The proposal would not affect any significant views currently afforded to surrounding development and from any public roads and public open spaces.

This is further discussed in **Section 17.1**.

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

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

The principle advises that where an existing building is proposed for demolition, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

The proposal does not involve a change of use or demolition of the existing building. The proposal seeks to undertake internal and external modifications at ground floor level at the rear. No works are proposed to the principal façade or the upper level. The works are wholly contained within the existing footprint.

**Principle 3: What are the impacts on adjoining land?**

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

The planning principle advises that the impact on adjoining land should be assessed as it is assessed for all development.

Potential residential amenity impacts as a result of the proposed works are assessed under the following sub-sections.

**Overshadowing**

As the works are generally within the existing building envelope and adjoin Windsor Lane there would be no adverse overshadowing impacts on surrounding private open space or north-facing habitable room windows created by the proposal (C4 & C5, C1.4.5). The proposal is therefore acceptable regarding solar access.

**Visual impact**

The only proposed works that are visible from the public domain are the alterations to the side (Taylor Street) elevation including the raised rear wall, new fire exit and staff refuse store entry, and raised wall and roof over to Windsor Lane.

Council's Heritage Officer has raised no objections to the visual impact of the reconfigured openings and raised rear wall on the Taylor Street elevation, and raised wall height and roof over to Windsor Lane at the rear. Detailed comments are provided in **Section 22**.

### **Acoustic and visual privacy**

The proposed development would not result in any visual privacy impacts on surrounding residential properties as the proposed works are confined to the ground floor.

Several objections have been raised in relation to the loss of acoustic privacy resulting from the open roof to the rear gaming room and new openings to Taylor Street. The provision of two new openings to an existing door opening to Taylor Street would provide a staff refuse store entry and fire escape. **Condition I.5** restricts use of the doors to the intended purpose.

An acoustic report has been prepared, demonstrating that compliance with the relevant legislation is achieved at the nearest affected residence (155 Hargrave Street) and is therefore considered to demonstrate compliance at all other residences. Standard conditions are recommended to ensure compliance with relevant acoustic legislation. Separate to this, it is noted that *Liquor and Gaming NSW*, through the *Liquor Act, 2007*, is the regulatory authority dealing with noise pollution issues pertaining to licensed venues and enforcing compliance with the standard noise criteria set by *Liquor and Gaming NSW*.

As such, the proposal is acceptable regarding privacy (aural and visual) impacts to surrounding residential properties.

### **Mechanical Exhaust System**

The proposed development involves demolition of an existing mechanical exhaust system located to the rear of the building. These changes would have a positive impact to the character and appearance of Windsor Lane and more broadly the Paddington Heritage Conservation Area.

### **Views and Vistas**

There are no significant public or private views that would be affected by the proposal.

### **Parking**

There is no existing on-site parking. The proposal does not involve any increased floor area, intensification of the existing use, or change to the approved hours of operation or patron capacity. As such, there is considered to be no increase in parking demand generated by the proposal.

### **Principle 4: What is the internal amenity?**

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

The proposed development involves reconfiguration of the internal layout of the ground floor pub to facilitate a staff refuse entry and fire exit, and smoking within the rear gaming room. These changes would improve the internal amenity of this part of the building.

## **OTHER MATTERS (RELEVANT SEPP'S AND WLEP 2014)**

The following environmental planning instruments, addressed in **Sections 17-21** of this Report, are not applicable under the principle of existing use rights but are nonetheless addressed below for comparative purposes only.

### **18. 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, would not have any significant adverse environmental impacts upon the harbour coastal locality, and would be acceptable regarding the relevant provisions of the SEPP.

### **19. SYDNEY REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT) 2005**

The land is within the Sydney Harbour catchment but is outside the Foreshores and Waterways Area. As there are no specific matters for consideration.

### **20. SMOKE-FREE ENVIRONMENT ACT 2000 AND SMOKE-FREE ENVIRONMENT REGULATION 2016**

Under the *Smoke-free Environment Act 2000* a smoking area in a hotel must not exceed 25% of the total area of the combined drinking, gaming and recreation area in the venue.

Smoking is banned in all enclosed (including substantially enclosed) areas of hotels open to the general public, including within 4 metres of a pedestrian entrance to a public building.

A public place is substantially enclosed if the total area of the ceiling and wall surfaces of the public place is more than 75% of its total notional ceiling and wall area.

It has proposed to construct a new roof addition with open roof section to facilitate smoking in the rear gaming room. Smoking area calculations have been submitted with the application, and remain unchanged from the original proposal.

While the smoking calculation methodology is not concurred with by Council's Compliance Officer, NSW Health (not Council) is the consent authority for enforcing compliance with the smoke free legislation. As such, Council's Compliance Officer has determined that the application can be approved, subject to a condition requiring certification from an *Authorized NSW Health Inspector* that (a) the approved development is capable of achieving compliance with the *Smoke Free Environment Act 2000* and *Smoke-free Environment Regulation 2016*, prior to the issue of any Construction Certificate; and (b) certification of compliance with the smoke free legislation for the as-constructed premise (**Conditions C.7& F.1**).

Therefore, the proposal is acceptable regarding the *Smoke Free Environment Act 2000* and *Smoke-free Environment Regulation 2016*, subject to **Conditions C.7& F.1**.

## **21. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014**

### **21.1 Part 1.2: Aims of Plan**

While the aims in Part 1.2(2) of the Woollahra LEP 2014 have no force with regard to the proposal, the proposal would be satisfactory if they were applicable.

### **21.2 Part 2.3: Zone Objectives and Land Use Table**

The proposal is defined as a *pub*, which is type of *food and drink* premises. A *food and drink* premises is a prohibited land-use within the R2 Low Density Residential zone. Notwithstanding this, the proposed use is permissible, by virtue of the existing use rights provisions of the *Environmental Planning and Assessment Act 1979* (as detailed above in **Section 15** of this report).

#### Zone Objectives

Notwithstanding the above, an assessment of the proposal against the R2 zone objectives is included below. The proposal would be consistent with the objectives of the zone, as follows:

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

Comment: The proposed alterations and additions to an existing pub would continue to meet the needs of the surrounding 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, subject to conditions would respect the character of the conservation area, and would not adversely impact upon the amenity of surrounding residential properties.

### **21.3 Part 4 Principal Development Standards**

#### **21.3.1 Part 4.3: Height of Buildings**

Part 4.3 limits development to a maximum height of 9.5m.

While this development standard has no force with regard to the proposal, the proposed development would comply with the building height control and standard objectives under Part 4.3.

### **21.4 Part 5.10: Heritage Conservation**

The subject site is not a heritage item, but is located within the Paddington Heritage Conservation Area.

While this development standard has no force with regard to the proposal, the proposal would be acceptable regarding Part 5.10 of the WLEP 2014.

## OTHER MATTERS (DCP)

A recent judgement *Saffioti v Kiama Municipal Council [2017] NSWLEC 65* handed down by the Land and Environment Court in 2017, established that DCP provisions remain relevant to an assessment of an application relying upon existing use rights. As such, these are considered below.

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

The following DCP provisions are not considered to mirror any environmental planning instruments or derogate from the existing use right provisions and are therefore considered below in **Section 22** of this Report.

## 22. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

### 22.1 Chapter C1: Paddington Heritage Conservation Area

#### 22.1.1 Section C1.3.3: Corner Buildings

The proposed works would retain the distinct building form of the corner commercial building and its important elements, including original windows, joinery and architectural details. The proposal would retain the corner hotel and continue to provide a service to the local area as well as make a positive contribution to the pedestrian environment of Paddington, in accordance with Objectives O1 and O2 and Controls C1 and C3.

As such, the proposal is satisfactory regarding to Section C1.3.3.

#### 22.1.2 Section C1.3.9: Pubs

The proposal is consistent with Objectives O1 and O4, and complies with Controls C1, C3, C4, C6, C10, and C11, in the following manner:

- The proposal retains significant elevations, internal fabric and layout, and external fabric of the principal building.
- Council's Heritage Officer considers that the proposed rear roof and wall extension would not adversely impact on the prominence and legibility of the original parapeted roof form of the main original portion of the pub building. It is noted that the rear of the subject property was originally undeveloped, and that this part of the subject property has been subject to ongoing development, modification and enclosure over time.
- The existing skillion roof line of the rear addition is not an original roofscape element of the pub. The roofline of the rear addition is not considered to contribute to the traditional roofscape and character of the pub. As such, the proposed rear roof addition is supported in this instance from a heritage perspective.

The proposal is therefore acceptable regarding Section C1.3.9.



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

The proposal is consistent with Objectives O1, O3, O4, O8, and O12, and complies with Controls C1, C7, and C8, in the following manner:

- The proposal would retain the principal building form of the pub.
- The proposal would not adversely impact upon any significant internal or external fabric of the principal building form.
- The provision for two new openings to provide a staff refuse store entry and fire escape to an existing door opening to the side (Taylor Street) elevation involves reconstruction of the surrounding wall to match the existing and would maintain the character of this part of the principal building form.

As such, the proposal is satisfactory regarding Section C1.4.1.

### **22.1.4 Section C1.4.2: Side Elevations to Streets and Lanes**

The proposal is consistent with Objective O1 and complies with Controls C1 and C2, as follows:

- The proposed works to the Taylor Street side elevation would maintain the character of the side elevation, and are supported from a heritage perspective.

Therefore, the proposal is satisfactory regarding Section C1.4.2.

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

The proposal is consistent with Objectives O1, O2, and O4, and complies with Controls C2, C4, C6, and C11, in the following manner:

- The proposed rear roof and wall extension would maintain the rear character of the pub, which at present does not maintain a traditional rear elevation/presentation.
- The existing skillion roof of the rear addition is not an original roofscape element of the pub, having been subject to ongoing modification and enclosure over time. Moreover, in the context of the existing intrusive exhaust and mechanical equipment element, the rear addition/roofscape is not considered to contribute to the character of the pub.
- The proposed additional bulk to the rear of the subject property would be offset by the removal of the existing exhaust and mechanical equipment. The proposed rear roof and wall extension is supported by Council's Heritage Officer.

Therefore, the proposal is satisfactory regarding Section C1.4.3.

### **22.1.6 Section C1.4.4: Roofs and Roof Forms**

The proposal is consistent with Objectives O1 and O3, and complies with Controls C1 and C6, in the following manner:

- The proposed rear roof extension would not adversely impact upon the roofscape character of the pub building and wider original roofscape of the Paddington HCA.
- The proposed roof extension and increased height of the rear roof plane, would continue the pitch of the existing roof that diminishes in scale to the rear of the property, and is supported by Council's Heritage Officer.

As such, the proposal is satisfactory regarding Section C1.4.4.

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

The proposal is consistent with Objectives O1, O3, and O4 and complies with Controls C3, as follows:

- While the proposed rear roof and wall extension would introduce additional bulk to the rear of the subject property, this would be offset by the removal of the existing intrusive exhaust and mechanical equipment element, which at present detracts from the character of the historic pub.
- The bulk of the proposed rear addition would not be inconsistent in the broader non-traditional streetscape context of this part of Windsor Lane, which is predominantly characterised by enclosed contemporary garages built to the boundary and also features several loft above garages structures.
- The proposed rear roof and wall extension is therefore supported under this clause by Council's Heritage Officer.

The proposal is therefore satisfactory regarding Section C1.4.4.

#### **22.1.8 Section C1.4.6: Site Coverage, Setbacks and Levels**

The proposed alterations and additions would not result in any changes to the site coverage, setbacks or levels.

The proposal is therefore satisfactory regarding Section C1.4.6.

#### **22.1.9 Section C1.4.10: Acoustic and Visual Privacy**

The proposal, subject to conditions, would minimise the impact of new development on the acoustic privacy on neighbouring land, thus achieving consistency with Objective O2.

The application was accompanied by an Acoustic Report. **Condition C.6** stipulates compliance with the sound attenuation recommendations in the report regarding the open section of roof at the rear.

No changes in the approved trading hours are proposed. Restriction on use of the new staff refuse store entry and fire exit for the intended purposes is conditioned (**Condition I.5**) to minimise acoustic impacts to neighbouring residential land.

The proposal is therefore acceptable regarding Section C1.4.10.

#### **22.1.10 Section C1.5.3: Windows, Doors, Shutters and Security**

The proposed provision of two new doors to an existing door opening on the Taylor Street elevation is supported by Council's Heritage Officer and complies with C4.

The proposal is therefore satisfactory regarding Section C1.5.3.

#### **22.1.11 Section C1.5.8: Materials, Finishes and Details**

The proposal is consistent with Objectives O1, O2, and O3, and complies with Controls C1, C4, and C5, in the following manner:

- The new works along the side boundary would match the existing materials and finishes.
- The proposed wall and roof extension on Windsor Lane would match the existing adjacent material and is supported by Council's Heritage Officer.

As such, the proposal is satisfactory regarding Section C1.5.8.

## **22.2 Chapter E1: Parking and Access**

No changes are proposed to the existing absence of on-site parking or to the existing loading/unloading arrangements.

The proposal would not result in any intensification of the existing use. No additional floor area is proposed.

There are no further matters for consideration regarding parking and access.

As such, the proposal is satisfactory regarding Chapter E1.

## **22.3 Part E5.3: On-Site Waste and Recycling Controls for all Development**

The proposed reconfiguration of the existing garbage storage area would meet the requirements under Part E5.3, in terms of waste store requirements.

No changes are proposed to existing waste management arrangements.

The submission of a Site Waste Minimisation and Management Plan (SWMMP) is conditioned (**Condition C.9**).

The proposal is acceptable regarding Part E5.3, subject to **Conditions C.9, I.11 & I.12**.

## **22.4 Chapter E7: Signage**

As no signage is proposed, Chapter E7 is not applicable to this assessment.

## **22.5 Chapter F3: Licensed Premises**

The proposal is consistent with Objectives O1 and O2, in that:

- The proposal, subject to conditions, would not give rise to any unacceptable amenity impacts to surrounding residential land uses in terms of acoustic impacts and health-related impacts from smoking.
- The approved trading hours are unchanged. These are conditioned (**Condition I.1**).

C1 sets out the matters of consideration before determining an application involving licensed premises, as follows:

- a) The location of the premises and the proximity of residential and other sensitive uses*

The subject premises is located within a R2 Low Density Residential zone. The nearest sensitive residential receivers is located to the north-west at 155 Hargrave Street. The submitted Acoustic Report confirms that compliance with baseline acoustic requirements is achieved at the nearest most sensitive receiver. Compliance with the recommendations in the acoustic report is conditioned (**Condition C.6**). Compliance with the Smoke-free legislation is conditioned (**Conditions C.7 & F.1**).

The location of the proposed licensed premises and its potential amenity impacts upon adjoining residential uses have been assessed in this report and are determined to be acceptable, subject to conditions.

b) *The type of licensed premises*

The subject premises currently comprises a *pub* known as the *Bellevue Hotel*. Currently the ground and first floor of the building is used as a pub and restaurant with gaming room located to the rear at ground floor level. No changes are proposed to the existing use. The proposed reconfiguration of the existing bin store, new fire exit, and new roof section to the rear gaming room to facilitate smoking would not result in any intensification of the existing use. No changes to the approved trading hours are proposed.

There is currently no valid consent that restricts patron numbers of the pub. **Condition I.2** restricts the patron numbers to 200, based on the amount of WC facilities that are provided and BCA requirements.

c) *Trading hours*

The proposed development has not proposed to change the approved trading hours. The approved trading hours are as follows, as per DA303/2014:

Monday to Friday:	<b>11am to Midnight</b>
Saturday:	<b>12 noon to 12 midnight</b>
Sunday and public holidays:	<b>12 noon to 10pm.</b>

**Condition I.1** reiterates the approved trading hours.

d) *Existing and likely cumulative impacts, including social impacts, of licensed premises on the amenity of surrounding areas*

A *Plan of Management* was approved as part of a previous development application (DA303/2014). **Condition C.8** is recommended to require the PoM to be updated to accord with the relevant updated conditions relevant to this application (**Conditions I.3**– limitation on use of the Taylor Street doors), and include the approved trading hours (DA303/2014/1), maximum patron capacity, glass sorting and collection in accordance with Condition I.9 of DA303/2014/1, and details of security patrols.

e) *Existing and proposed management practices relating to the operation of the premises and of the areas in the vicinity of the premises*

As above. In addition, **Condition I.8** includes additional requirements for licenced premises to ensure residential amenity of neighbouring lands.

f) *The density of licensed premises in the vicinity of the proposed development*

The *Bellevue Hotel* is located within Paddington, which is traditionally a locality that has a high number of pubs. The proposed development does not seek to increase the trading hours or to intensify the use of the pub.

g) *Availability of car parking and proximity and access to public transport*

The proposed development will not result in any additional parking demand or traffic generation. Notwithstanding this, the subject site is located within close proximity to good public transport links, including a bus stop directly in front of the pub.

h) *Any recommendations/comments provided by NSW Police*

Referral to NSW Police was not required as the application does not involve intensification of the existing use or increase to the approved trading hours.

The proposal is therefore acceptable regarding C1.

C2 sets out the risk rating for the trading hours for licensed premises. The existing hours to be retained fall within the high-risk category, as demonstrated below:

Risk rating	Internal (fully enclosed)		External (not fully enclosed)	
	Base	Extended	Base	Extended
High	8am - 10pm	8am - midnight	8am - 8pm	8am - 10pm
Low	8am - midnight	8am - 2am	8am - 10pm	8am - midnight

**Note:** The base and extended trading hours referred to in the above table are not an 'as of right'. Where licensed premises are located in close proximity to low density residential zones, Council may impose more restrictive trading hours than those shown in the table.

C3 states that trading hours are to be reduced so that they do not exceed the base trading hours as shown in the trading hours risk table (C2).

Entry to the hotel is limited to the Hargrave Street doors between 10pm and midnight.

### **Assessment**

In accordance with C1, assessment of the licensed premises must consider the following:

### **Conclusion**

Subject to recommended conditions, the proposal is acceptable with regard to the objectives and controls in Chapter F3 of the Woollahra DCP 2015.



## **23. SECTION 7.11 CONTRIBUTIONS TOWARDS PROVISION OR IMPROVEMENT OF AMENITIES OR SERVICES**

As the proposal would not result in any intensification of the existing use and is unlikely to require the provision of or increase the demand for public amenities and public services within the area, payment of a monetary contribution is not applicable under section 7.11(1) of *the Act*.

## **24. APPLICABLE ACTS/REGULATIONS**

### **24.1 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. The proposal is considered to be acceptable, subject to **Condition E.2**.

### **24.2 Smoke-free Regulation 2016**

Certification from an authorised NSW Health inspector demonstrating compliance with the *Smoke-free Regulation 2016*, both prior to the issue of the Construction Certificate, and for the as-constructed premise prior to the issue of the Final Occupation Certificate, is conditioned (**Conditions C.7& F.1**).

## **25. 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.

## **26. THE SUITABILITY OF THE SITE**

The site is suitable for the proposed development for the following reasons:

1. The proposal satisfies the existing use requirements under the Act, 1979.
2. The proposal would have a neutral impact on the Paddington Heritage Conservation Area.
3. The alterations/additions to the side (Taylor Street) elevation would maintain the character of the side elevation.
4. The additional bulk created by the raised wall and new roof at the rear would be offset by removal of the existing intrusive plant element.
5. The proposal, subject to conditions, would maintain privacy (acoustic and visual) amenity to the neighbouring, predominantly residential, lands.

## **27. THE PUBLIC INTEREST**

The proposal is considered to be in the public interest.

The sectionalised public interest is preserved through the recommended conditions of consent. The wider public interest is maintained as the proposal would continue to serve the needs of the local community in accordance with the zone objectives, and would not result in any intensification of the existing use.

## 28. CONCLUSION

The proposal is acceptable against the relevant considerations contained in Section 4.15, and Sections 4.65-4.67 of the *Environmental Planning and Assessment Act 1979* and Sections 41-42 of the *Environmental Planning and Assessment Regulation 2000* with regard to existing uses.

## 29. 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.

## 30. 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, having considered the application for review of its determination, resolve to maintain its approval of Development Application No. 258/2019/1 for a new smoking area to the Bellevue Hotel, alterations to Taylor Street bin room and new entry from Taylor Street on land at 157-159 Hargrave Street Paddington, 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)
AC01 / Job No. 268234	Acoustic Report	ARUP P/L	Issue 2, dated 11/02/2020
	<b>Architectural Plans</b>		
DA1-0050	Site Plan & Roof Plan – Existing and Demolition	AH&E Architects	Rev 04/ 14/01/2020
DA1-0060	Site Plan & Roof Plan – Proposed	AH&E Architects	Rev 04/ 14/01/2020
DA1-1000	Ground Floor Plans – Existing and Proposed	AH&E Architects	Rev 03 / 14/01/2020
DA1-1100	Ground Floor Plans –Proposed	AH&E Architects	Rev 04 / 14/01/2020
DA1-3100	North-East & North-West Elevations	AH&E Architects	Rev 03 / 14/01/2020
DA1-3101	South-East & South-West Elevations	AH&E Architects	Rev 04 / 14/01/2020
DA1-4100	Sections	AH&E Architects	Rev 04 / 14/01/2020

**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)

**B. Conditions which must be satisfied prior to the demolition of any building or construction**

**B.1 Construction Certificate Required Prior to Any Demolition**

Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is "commencement of erection of building" pursuant to section 6.6 of the *Act*.

In such circumstance all conditions in Part C and Part D of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the issue of a Construction Certificate, appointment of a Principal Certifier, and Notice of Commencement under the *Act*.

**Note:** See *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.  
Standard Condition: B1 (Autotext BB1)

**B.2 Identification of Hazardous Material**

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

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

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

**Note:** This condition is imposed to protect the health and safety of all persons while works are being undertaken and to ensure all safety measures have been identified and are in place to protect all parties in the immediate vicinity of the site.  
Standard Condition: B6

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

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

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

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

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



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

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

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

### C.1 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</b> -making good any damage caused to any property of the Council	\$4,8333	No	T115
<b>Tree Damage Security Deposit</b> – making good any damage caused to any public tree	Nil	No	T114
<b>Infrastructure Works Bond</b> -completing any public work required in connection with the consent.	Nil	No	T113
<b>Infrastructure Works Bond</b> – remedying any defects in any public work that arise within 6 months after the work is completed	Nil	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)	Nil	Yes, quarterly	T96
<b>INSPECTION FEES</b> under section 608 of the <i>Local Government Act 1993</i>			
Public Tree Management Inspection Fee	Nil	No	T45
Public Road/Footpath Infrastructure Inspection Fee	Nil	No	
Security Administration Fee	\$194	No	T16
<b>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</b>	\$5,0777 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.2 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.3 Structural Adequacy of Existing Supporting Structures

A certificate from a professional engineer (structural engineer), certifying the adequacy of the existing supporting structure to support the additional loads proposed to be imposed by the development, must be submitted with the Construction Certificate application.

**Note:** This condition is imposed to ensure that the existing structure is able to support the additional loads proposed.

Standard Condition: C35 (Autotext CC35)

## C.4 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.5 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.6 Sound Attenuation of the New Smoking Area

The *Construction Certificate* plans and specification required to be submitted pursuant to clause 139 of the *Regulation* must detail the sound attenuation works required to the ***New Smoking Area*** to ensure that the noise level complies with the recommendations made within the **ARUP P/L Acoustic Report (Job No 268234), Issue 2, dated 11/02/2020**.

## C.7 Compliance with Smoke-free Legislation

Prior to the issue of any *Construction Certificate*, the Applicant shall provide certification from an authorised NSW Health inspector to the effect that the approved development would comply with the *Smoke-free Environment Act 2000* and the *Smoke-free Environment Regulation 2016*.

## C.8 Modification of Plan of Management

The Plan of Management (PoM), dated July 2014 (Ref: 140376.5P) prepared by Design Collaborative Pty Ltd is to be modified to include the following:

- a) the approved hours of operation and maximum patron capacity (in accordance with **conditions I.1 & I.2**)
- b) glass sorting and collection (in accordance with Condition I.9 of DA 303/2014/1)
- c) details of security patrols such as frequency and defined area of security patrols
- d) all patrons are to use the Hargrave Street doors of the hotel for entry and exit after 10pm, Monday to Sunday.

The revised PoM must be approved by Council's Manager, Development Control, and the premises operated in accordance with the approved Plan of Management. A copy of the revised PoM must be filed with the Licensing section of the Eastern Suburbs Police Area Command, prior to the commencement of the Gaming Room operations.

### C.9 Submission of a Site Waste Minimisation and Management Plan

A Site Waste Minimisation and Management Plan, prepared in accordance with Woollahra Development Control Plan 2015 Chapter E5 – Waste Management, is to be submitted to Council for approval prior to a Construction Certificate being issued.

Standard Condition: C68 (Autotext: CC68)

### D. Conditions which must be satisfied prior to the commencement of any development work

#### D.1 Compliance with Building Code of Australia

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.

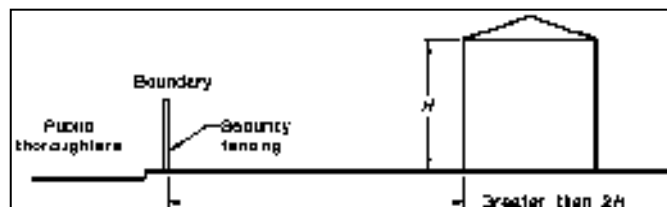
In this condition, a reference to the BCA is a reference to that code as in force on the date the application for the relevant Construction Certificate is made.

**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 Security Fencing, Hoarding and Overhead Protection

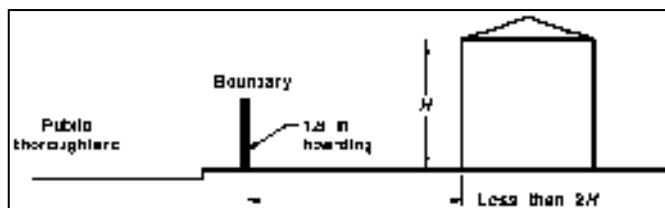
Security fencing must be provided around the perimeter of the development site, including any additional precautionary measures taken to prevent unauthorised entry to the site at all times during the demolition, excavation and construction period. Security fencing must be the equivalent 1.8m high chain 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.





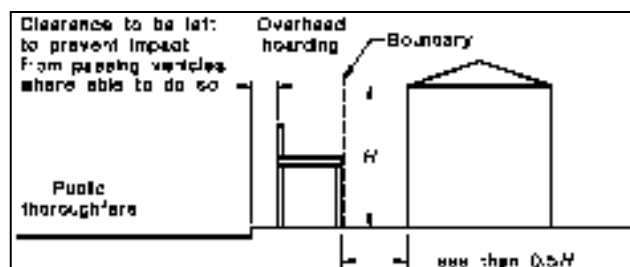
### Type B Hoarding

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:

- the vertical height above footpath level of the structure being demolished is less than 4.0m; or
- 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:

- extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary,
- have a clear height above the footpath of not less than 2.1m,
- 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
- 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.3 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.4 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.5 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.6 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)

## **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 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.4 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.5 Hours of Work –Amenity of the Neighbourhood

- a) No *work* must take place on any Sunday or public holiday.
- b) No *work* must take place before 7am or after 5pm any weekday.
- c) No *work* must take place before 7am or after 1pm any Saturday.
- 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.6 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 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.7 Maintenance of Environmental Controls

The Principal Contractor or Owner-builder must ensure that the following monitoring, measures and controls are maintained:

- a) erosion and sediment controls,
- b) dust controls,
- c) dewatering discharges,
- d) noise controls,
- e) vibration monitoring and controls,
- f) ablutions.

Standard Condition: E11

## E.8 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.9 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.10 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.11 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.12 Prohibition of Burning

There must be no burning of any waste or other materials. The burning of copper chrome arsenate (CCA) or pentachlorophenol (PCP) treated timber is prohibited in all parts of NSW.

All burning is prohibited in the Woollahra local government area.

**Note:** Pursuant to the *Protection of the Environment Operations (Clean Air) Regulation 2010* all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.  
Standard Condition: E22 (Autotext EE22)

### E.13 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



#### **E.14 Site Waste Minimisation and Management – Demolition**

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

- a) the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,
- b) an area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements),
- c) provide separate collection bins and/or areas for the storage of residual waste,
- d) clearly ‘signpost’ the purpose and content of the bins and/or storage areas,
- e) implement measures to prevent damage by the elements, odour, health risks and windborne litter, and
- f) minimise site disturbance, limiting unnecessary excavation.

When implementing the SWMMP the Applicant must ensure:

- a) footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval,
- b) any material moved offsite is transported in accordance with the requirements of the *Protection of the Environment Operations Act 1997*,
- c) waste is only transported to a place that can lawfully be used as a waste facility,
- d) generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the NSW Environment Protection Authority, and relevant occupational health and safety legislation administered by SafeWork NSW, and
- e) evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained.

**Note:** Materials that have an existing reuse or recycling market should not be disposed of in a land fill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.  
Standard Condition: E31 (Autotext EE31)

#### **E.15 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.16 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.17 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, Part 1: 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.18 Disposal of Asbestos and Hazardous Waste

Asbestos and hazardous waste, once classified in accordance with **Condition E.17** 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.19 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.20 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

## **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 Compliance with Smoke-free legislation**

Prior to the issue of any *Occupation Certificate*, the Applicant shall provide certification from an authorised NSW Health inspector to the effect that the as-constructed building complies with the *Smoke-free Environment Act 2000* and the *Smoke-free Environment Regulation 2016*.

### **F.2 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.3 Commissioning and Certification of Systems and Works**

The Principal Contractor or Owner-builder must submit to the satisfaction of the Principal Certifier works-as-executed (WAE) plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA confirming that the works, as executed and as detailed, comply with the requirement of this consent, the *Act*, the *Regulations*, any relevant construction certificate, the BCA and relevant Australian Standards.

Works-as-executed plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA must include but may not be limited to:

- a) Certification from the supervising professional engineer that the requirement of the Geotechnical/Hydrogeological conditions and report recommendations were implemented and satisfied during development work.
- b) All flood protection measures.
- c) All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1: *Off-Street car parking*.
- d) All stormwater drainage and storage systems.
- e) All mechanical ventilation systems.
- f) All hydraulic systems.
- g) All structural work.
- h) All acoustic attenuation work.

- i) All waterproofing.
- j) Such further matters as the Principal Certifier may require.

**Note:** This condition has been imposed to ensure that systems and works as completed meet development standards as defined by the *Act*, comply with the BCA, comply with this consent and so that a public record of works as execute is maintained.

**Note:** The PC may require any number of WAE plans, certificates, or other evidence of suitability as necessary to confirm compliance with the *Act*, *Regulation*, development standards, BCA, and relevant Australia Standards. As a minimum WAE plans and certification is required for stormwater drainage and detention, mechanical ventilation work, hydraulic services (including but not limited to fire services).

**Note:** The PC must submit to Council, with any Occupation Certificate, copies of WAE plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA upon which the PC has relied in issuing any Occupation Certificate.

Standard Condition: F7 (Autotext FF7)

## **G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate**

N/A

## **H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (section 6.4 (c))**

### **H.1 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)

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

### **I.1 Trading hours**

The trading hours are limited to:

<b>Monday to Friday:</b>	<b>11am to 12 midnight</b>
<b>Saturday:</b>	<b>12 noon to 12 midnight</b>
<b>Sunday and Public Holiday:</b>	<b>12 noon to 10pm</b>

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

**Note:** Deliveries to or dispatches from the site must not be made outside these hours. Trading hours may be more onerous than these general hours of use. This condition does not apply to activities such as cleaning which takes place wholly within the building and which are not audible within any adjoining residential dwelling. If internal activities are audible within any adjoining residential dwelling such that they cause a nuisance to the occupiers of such dwelling than such internal activities must not occur outside these hours of use. This condition does not restrict the operation of noise pollution laws.

Standard Condition: I1 (Autotext III1)

## **I.2 Maximum patron capacity**

The total number of patrons on the premises at any time shall not exceed **200** patrons –

Ground floor: maximum 100 patrons  
First floor: maximum 100 patrons

## **I.3 Operation in Accordance with Plan of Management (POM)**

- a) The operation and management of the premises shall be in accordance with the updated POM required by **Condition C.8** of this consent.
- b) The POM shall be filed with the Licensing Police of the Eastern Suburbs Police Area Command, prior to the commencement of operations **of the Gaming Room**.
- c) The POM cannot be altered without the written consent of Council.

## **I.4 Surveillance Cameras (CCTV)**

The Management must maintain a closed-circuit television (CCTV) system on the premises. The CCTV system must comply with the following requirements:

- a) It must operate continuously from opening time until one hour after closing;
- b) It must record in digital format at a minimum of six frames per second;
- c) Any recorded image must specify the time and date of the image;
- d) The system's cameras must be located within the property and cover:
  - i) all entry and exit points of the premises, **including the new additional entry in Taylor Street**,
  - ii) **all** footpaths immediately adjacent to the premises, and
  - iii) all publicly accessible areas (other than toilets) on the premises
  - iv) from floor level to a minimum height of two metres.
- e) CCTV recordings must be retained for at least 30 days.
- f) Management shall ensure the system is accessible by at least one member of staff at all times it is in operation.

## **I.5 Early Closure of the Taylor Street entry doors**

Patrons shall not enter or leave the hotel premises via the doors located on the Taylor Street frontage of the hotel after 10pm, Monday to Sunday. These doors shall be locked after 10pm Monday to Sunday. Patrons are required to use the Hargrave Street doors of the hotel for entry and exit. The proposed door openings to the Taylor Street elevation shall only be used by staff to allow for garbage collection and the other proposed door opening (closest to Windsor Lane) shall be used only for the purpose of a fire exit.

## **I.6 Signage to be Displayed – Licensed Premises**

Signage (in lettering not less than 15mm in height on a contrasting background) is to be erected in a prominent position near the principal entry to the premises in accordance with clause 98D of the *Regulation*.

The signage shall state the following and may change from time to time due to reviewable conditions in accordance with **Conditions I.1, & I.2**:



***“Approved hours of operation:***

***Monday to Friday: 11am to midnight***  
***Saturday: 12 noon to midnight***  
***Sunday & Public Holidays: 12noon to 10pm***

***Approved patron capacity:***  
***200 patrons***

***Upon leaving please respect local residents by minimising noise.”***

The signage required by this condition is to be erected prior to the commencement of operations. This condition has been imposed to clearly identify the hours and patron capacity of the licensed premises.

Standard Condition: I9 (Autotext: III1)

**I.7 Deliveries**

Deliveries to the hotel shall be between the following hours:

**Monday to Friday: 8am and 7pm.**

All deliveries shall be made via Hargrave Street.

**I.8 Neighbourhood Amenity – Licensed Premises**

The Management of the premises:

- a) Shall ensure persons entering and leaving the premises do not crowd or loiter in the vicinity of the premises in such manner that pedestrian movement is obstructed or hindered.
- b) Shall ensure that the manner in which the business of the premises is conducted and/or the behaviour of persons entering and leaving the premises does not cause undue disturbance to the amenity of the neighbourhood. In this regard, the Management shall be responsible for the control of noise and litter generated by persons and/or premises operations. If so directed by Council or by NSW Police, the Management is to employ private security staff to ensure that this condition is complied with.
- c) Shall record in a Register full details of any disturbance complaint/s made by a person to Management or staff in respect to the manner in which the business of the premises is conducted and/or the behaviour of persons entering or leaving the premises. Such recording will include time, date, nature of the complaint/s and any complainant details if provided.
- d) Shall respond to any disturbance complaint/s in a timely and effective manner. All actions undertaken by Management / staff to resolve such complaint/s shall be recorded in the Register.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

**Note:** The lead agency for the enforcement of this condition is NSW Police.

Standard Condition: I10 (Autotext: II10)

## I.9 Litter Patrols

Litter patrols are to be undertaken to collect and dispose of all litter and waste in the public areas adjacent to the licensed premises. Such patrols will take place intermittently during the hours of operation with the final patrol conducted at the cessation of trade.

A litter patrol Register must be maintained and kept on the premises at all times detailing date, time of patrol, staff member responsible, and Manager's signature.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.  
Standard Condition: II1 (Autotext: II11)

## I.10 Copies of Consents, Registers and Management Plans – Licensed Premises

A full copy of all current development consents (including approved plans) for the operation of the premises, any Registers required and any required Plan of Management must be kept on the premises and made available for inspection immediately upon request by Council, NSW Police and/or Liquor and Gaming NSW authorised officers.

Standard Condition: II2 (Autotext: II12)

## I.11 Garbage Collection

The garbage area must be maintained at all times to ensure that a breeding ground is not created for pests and must be capable of being easily and effectively cleaned.

All garbage containers must have tight fitting lids and be large enough or in sufficient numbers to contain all the waste produced by the business while awaiting the next removal from the premises.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.  
Standard Condition: II6 (Autotext: II16)

## I.12 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: I50

### I.13 Maintenance of Sound Attenuation

Sound attenuation must be maintained in accordance with the *Acoustic Report* (**Condition C.6**).

Standard Condition: I57

### I.14 Noise from licensed premises

The  $L_{A10}$  noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8k Hz inclusive) by more than 5dB(A) between 07:00 am and 12:00 midnight at the boundary of any affected residence.

The  $L_{A10}$  noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8k Hz inclusive) between 12:00 midnight and 07:00 am at the boundary of any affected residence.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 am.

This condition has been imposed to protect the amenity of the neighbourhood.

**Note:** dB(A) is a value used for ‘A-weighted’ sound pressure levels ‘A’ frequency weighting is an adjustment made to approximate the response of the human ear.

**Note:** *Licensed premises* means premises licensed under the *Liquor Act 2007*

**Note:** For the purposes of this condition, the  $L_{A10}$  is the A-weighted sound pressure level that is exceeded for 10% of the time over which a given sound is measured.

**Note:** 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  $L_{A90}$  level measured by a sound level meter over the applicable period.

**Note:** This condition is identical to the minimum standard condition imposed by the Casino Liquor and Gaming Control Authority (the Authority). The Authority may specify other standards in respect of the above condition under the *Liquor Act 2007*, and associated Regulations. Section 79 of the *Liquor Act 2007* provides an informal mechanism for complaints to be made (by residents, Police, local consent authorities and others) where the amenity of local neighbourhoods is unduly disturbed by the conduct of licensed premises including registered clubs (or their patrons). The Director of Liquor and Gaming is responsible for resolving such complaints and may impose temporary or permanent conditions on any licence. For further information go to the NSW Office of Liquor and Gaming and Racing’s website: ([www.olgr.nsw.gov.au](http://www.olgr.nsw.gov.au)).

**Note:** Interior noise levels of licensed premises which exceed safe hearing levels are not supported or condoned by Council.

Standard Condition: I52

### I.15 Outdoor Lighting – Commercial

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.

**Note:** This condition has been imposed to protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting in public places.

**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: I50

## **J. Miscellaneous Conditions**

Nil.

## **K. Advisings**

### **K.1 Criminal Offences – Breach of Development Consent and Environmental Laws**

Failure to comply with this development consent and any condition of this consent is a **criminal offence**. Failure to comply with other environmental laws is also a criminal offence.

»

Where there is any breach Council may without any further warning:

- a) Issue Penalty Infringement Notices (On-the-spot fines);
- b) Issue notices and orders;
- c) Prosecute any person breaching this consent; and/or
- d) Seek injunctions/orders before the courts to restrain and remedy any breach.

#### Warnings as to potential maximum penalties

Maximum penalties under NSW environmental laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

#### Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council's policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order.

This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

**Note:** The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of the *Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious.

Standard Advising: K1 (Autotext KK1)

### **K.2 Dial Before You Dig**



The Principal Contractor, Owner-builder or any person digging may be held financially responsible by the asset owner should they damage underground pipe or cable networks. Minimise your risk and dial 1100 Before You Dig or visit [www.1100.com.au](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 Commonwealth *Disability Discrimination Act 1992***

The *Disability Discrimination Act 1992* (DDA) makes it against the law for public places to be inaccessible to people with a disability. Compliance with this development consent, the Woollahra Development Control Plan 2015 Chapter E8 – Adaptable Housing and the BCA does not necessarily satisfy compliance with the DDA.

The DDA applies to existing places as well as places under construction. Existing places must be modified and be accessible (except where this would involve "unjustifiable hardship").

**Note:** Further advice can be obtained from the Australian Human Rights Commission website [www.humanrights.gov.au/our-work/disability-rights/about-disability-rights](http://www.humanrights.gov.au/our-work/disability-rights/about-disability-rights) or call 9284 9600 or 1300 656 419.

Standard Advising: K3 (Autotext KK3)

### **K.4 NSW Police Service and Road Closures**

Council and NSW Police approval is required prior to a partial or full temporary road closure. If you are seeking a partial or full temporary road closure you must comply with the relevant conditions of this consent and you must also gain the approval of the Eastern Suburbs Police Area Command.

**Warning:** If you partial or full close a road without compliance with Council and NSW Police requirements Council Rangers or the Police can issue Penalty Infringement Notices or Court Attendance Notices leading to prosecution.

**Note:** Traffic Supervisors at the Eastern Suburbs Police Area Command can be contacted on [eastsubtraffic@police.nsw.gov.au](mailto:eastsubtraffic@police.nsw.gov.au) or ph 9369 9899.

Standard Advising: K4 (Autotext KK4)

### **K.5 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.6 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.7 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.8 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.9 Appeal**

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Philippa Frecklington, Assessment Officer, on (02) 9391 7168.

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 Recycling of Demolition and Building Material**

It is estimated that building waste, including disposable materials, resulting from demolition, excavation, construction and renovation, accounts for almost 70% of landfill. Such waste is also a problem in the generation of dust and the pollution of stormwater. Council encourages the recycling of demolition and building materials.








Standard Condition: K17 (Autotext KK17)

## K.12 Owner-builders

Under the *Home Building Act 1989* any property owner who intends undertaking construction work to a dwelling house or dual occupancy to the value of \$12,000 or over must complete an approved education course and obtain an owner-builder permit from 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)

## Annexures

1. Heritage Referral Response [↓](#) 
2. Compliance Referral Response [↓](#) 
3. Fire Safety Referral Response [↓](#) 
4. Environmental Health Referral Response [↓](#) 
5. Architectural Drawings [↓](#) 
6. Cover Letter to 8.2 Review [↓](#) 
7. Comment from Sout-Eastern Sydney Public Health Unit [↓](#) 



Woollahra  
Municipal  
Council

19 October 2020

## REFERRAL RESPONSE - HERITAGE

**FILE NO:** Development Applications/ 258/2019/1

**ADDRESS:** 157-159 Hargrave Street PADDINGTON 2021

**PROPOSAL:** New smoking area to the Bellevue Hotel, alterations to Taylor Street bin room and new entry from Taylor Street

**FROM:** Charlotte Simons - Heritage Officer

**TO:** Ms P Frecklington

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### DOCUMENTATION

The following documentation provided by the applicant has been examined for this referral response:

- Drawing set by H&E Architects, dated 14 January 2020
- Cover Letter by Design Collaborative, dated 3 August 2020
- Statement of Environmental Effects by Design Collaborative, dated January 2020.

### SITE INSPECTION / RESEARCH

The following research was undertaken in the preparation of this assessment:

- The site was inspected on 14 October 2020, including the streetscape 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
- Review of building and development applications for the subject site
- 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:

- 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 subject property comprises the Victorian era Bellevue Hotel, which was constructed in 1878. The landmark corner building is designed in the Classic Revival style. The subject

Referral Response - Heritage (82 review) - DA20192581 - 157-159 Hargrave Street PADDINGTON.DOCX



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property is not located in the vicinity of any individually listed heritage items.

It is noted the subject property is proposed for local heritage listing. The planning proposal was supported by Council, has received a Gateway Determination from the Department of Planning, and is currently on Public Exhibition. The heritage significance assessment for the Bellevue Hotel provides the following Statement of Significance:

*The Bellevue Hotel is of cultural heritage significance to Paddington and the Woollahra LGA as an early and successful example of Paddington's suburban hotels, having been continuously operational since its construction in 1878. It is a surviving example of the type of local landmark, corner commercial development that was incorporated into the building of terrace rows during Paddington's boom era of suburban development.*

*It is of social significance as a reference point for community identity, having served the community of the suburb through demographic changes leading to its re-emergence as a popular, desirable and fashionable area. The Hotel's long association with Tooth and Co - until its relatively recent sale - is well documented archivally in local, state and national repositories, which also record the building's history of change in response to community changes.*

*The Bellevue Hotel is of aesthetic significance as an example of an evolved Late Victorian period hotel with its principal exteriors still reflecting their original design, in a distinctive Classic Revival style. The expansion through take-over of an adjoining house, a common theme with Paddington's hotels, is legible in its main façade together with the works made to integrate the two buildings. The Hotel's interiors have been serially and comprehensively modified and updated, evolving over time as tastes and commercial imperatives changed.*

*As one of the small and decreasing number of historically significant hotels still trading commercially in the distinctive and historic urban "village" of Paddington, the Bellevue Hotel is now uncommon, though still a vibrant element of the area's urban fabric and local streetscapes. It is arguably representative as well as rare, being one of the locally important, aesthetic/physical and social landmark corner hotel buildings which are a key element of the character of the Paddington Heritage Conservation Area, contributing to both its individuality and distinction as an important urban environment in Australia. As an element of the Paddington Conservation Area, and as one of the distinctive group of hotels in Paddington, it may also prove, on further investigation, to have significance as part of an unusual group of hotels, important in their suburban context.*

(August 2018, Robert A. Moore Pty Ltd, Heritage Inventory Sheet p.1)

The rear wing of the Bellevue Hotel has been subject to substantial change over time, with later extensions and additions having modified and obscured the built forms at the rear. The original footprint of the hotel occupied No. 159 Hargrave Street and featured rear and side yards. Historical aerial photograph dating to 1943 indicates that by this time the side yard had been infilled and the rear wing extended. The hotel was adjacent to a terrace house at No. 157 Hargrave Street, which was eventually incorporated with the hotel in 1955. The rear yards remained unenclosed until the late 20<sup>th</sup> century. During the 1980s, a new kitchen and server with mechanical ventilation and equipment were added to the rear. In 2006, the ground floor was built out boundary-to-boundary to the rear, by expanding the dining areas to the rear of the hotel.

Referral Response - Heritage (8.2 review) - DA20192581 - 157-159 Hargrave Street PADDINGTON.DOCX





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Figure 1: 1885-1895 Surveyor General's map indicating the subject property (outlined)  
(Source: Woollahra Council)

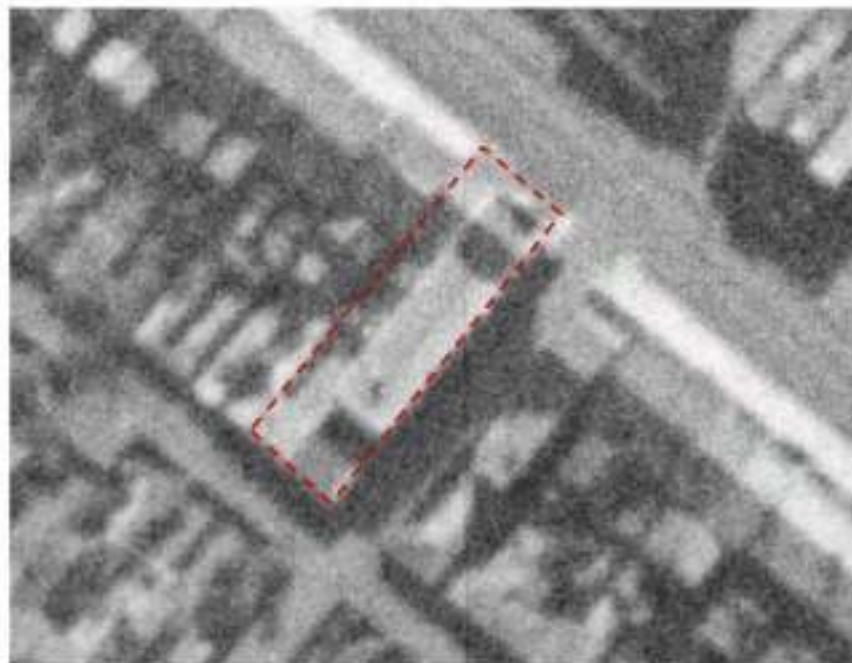


Figure 2: Historical 1943 aerial photograph showing subject property (outlined).  
(Source: Woollahra Council)

Referral Response - Heritage (8.2 review) - DA20192581 - 157-159 Hargrave Street PADDINGTON.DOCX



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Figure 3: Photograph taken c1980s of the Bellevue Hotel, showing incorporation of former terrace at No. 157 Hargrave Street.  
(Source: Woollahra Libraries Local History Digital Archive)

#### 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 within a heritage conservation area. Therefore, Clause 5.10 does apply.

#### *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

The subject property is within the Paddington Heritage Conservation Area (HCA), and is considered a contributory item and a significant item. The following consideration against the Paddington HCA DCP is provided.

#### **Woollahra DCP 2015 Paddington HCA**

##### **Clause 1.3.3 Corner shops and corner commercial buildings**

##### **Objectives O1, O2**

##### **Controls C1, C3**

- The proposed works would retain the distinct building form of the corner commercial building and its important elements, including original windows, joinery and architectural details.
- The proposal retains the corner hotel and it will continued to provide a service to the local area and make a positive contribution to the pedestrian environment of Paddington.



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**Clause 1.3.9 Pubs**

**Objectives O1, O4**

**Controls C1, C3, C4, C6, C10, C11**

- The proposal retains significant elevations, internal fabric and layout, and external fabric of the principal building.
- The proposed rear roof and wall extension is not considered to adversely impact on the prominence and legibility of the original parapeted roof form of the main original portion of the pub building. It is noted the rear of the subject property was originally undeveloped (Figures 1 to 2), and this part of the subject property has been subject to ongoing development, modification and enclosure over time. The existing skillion roof line of the rear addition is not an original roofscape element of the pub. In the context of existing intrusive exhaust and mechanical equipment, the roof line of the rear addition is not considered to contribute to the traditional roofscape and character of the pub. The proposed rear roof addition is therefore supported in this instance from a heritage perspective.

**Clause 1.4.1 Principal building form and street front zone of contributory buildings**

**Objectives O1, O3, O4, O8, O12**

**Controls C1, C7, C8**

- The proposal retains the principal building form of the pub.
- The proposal will not adversely impact on significant internal or external fabric of the principal building form. The proposed works are therefore supported under this clause.
- The proposal includes removal of an existing door to the side (Taylor Street) elevation of the principal building form and provision of two new openings to provide a staff refuse store entry and fire escape. The new configuration of openings would occupy an existing opening, would involve reconstruction of the surrounding wall to match existing and would maintain the character of this part of the principal building form, and is therefore supported under this clause from a heritage perspective.

**Clause 1.4.2 Side elevations to streets and lanes**

**Objectives O1**

**Controls C1, C2**

- The new configuration of openings to provide a staff refuse store entry and fire escape would occupy an existing opening, would involve reconstruction of the surrounding wall to match existing and would maintain the character of the side elevation, and is therefore supported.
- The proposed rear roof and wall extension is not considered to adversely impact the character of the side elevation of the pub building.

**Clause 1.4.3 Rear elevations, rear additions, significant outbuildings and yards**

**Objectives O1, O2, O4**

**Controls C2, C4, C6, C11**

- The proposed rear roof and wall extension is not considered to be inappropriate to rear character of the pub, which at present does not maintain a traditional rear elevation/presentation. The existing skillion roof of the rear addition is not an original roofscape element of the pub, with the rear portion of the site having originally been vacant and subject to ongoing modification and enclosure over time.

Referral Response - Heritage (82 review) - DA20192581 - 157-159 Hargrave Street PADDINGTON,DOCK



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In the context of existing intrusive exhaust and mechanical equipment, the rear addition/roofscape is not considered to contribute to the character of the pub. It is considered that the proposed additional bulk to the rear of the subject property would be offset by the removal of the existing exhaust and mechanical equipment. The proposed rear roof and wall extension is therefore supported under this clause from a heritage perspective.

**Clause 1.4.4 Roofs and roof forms**

**Objectives O1, O3**

**Controls C6, C8**

- The proposed rear roof extension is not considered to adversely impact on the roofscape character of the pub building and wider original roofscape of the Paddington HCA. The existing skillion roof line of the rear addition is not an original roofscape element of the pub. In the context of existing intrusive exhaust and mechanical equipment, the non-original rear roofscape is not considered to constitute a significant element the pub or wider original roofscape of Paddington. The proposed roof extension, which increases the height of the rear portion of the rear roof plane, would continue the pitch of the existing that diminishes in scale to the rear of the property. The proposed rear roof addition is therefore supported in this instance from a heritage perspective.

**Clause 1.4.5 Building height, bulk, form and scale**

**Objectives O1, O3, O4**

**Controls C3**

- The proposed rear roof and wall extension would introduce additional bulk to the rear of the subject property although it is considered this would be offset by the removal of the existing intrusive exhaust and mechanical equipment, which at present detracts from the character of the historic pub. It is also noted the bulk of the proposed rear addition would not be inconsistent in the broader non-traditional streetscape context of this part of Windsor Lane, which predominantly comprises modern garages and also features several loft above garages structures. The proposed rear roof and wall extension is therefore supported under this clause from a heritage perspective.

**Clause 1.5.8 Materials, finishes and details**

**Objectives O1, O2, O3**

**Controls C1, C4, C5**

- The proposed works to reconstruct the side wall to match existing in order to accommodate new openings along the south-east elevation would not result in an adverse heritage impact and are supported.
- The proposed wall and roof extension would be matched to existing adjacent material.

**CONCLUSION**

Woollahra LEP 2014

*Part 5.10*

Referral Response - Heritage (82 review) - DA20192581 - 157-159 Hargrave Street PADDINGTON,DUCK





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- Clause 1(a) The development does conserve the heritage of Woollahra.
- Clause 1(b) The impact upon the heritage significance of the conservation area will be neutral.
- Clause 4 This referral constitutes an assessment under this clause.

#### **RECOMMENDATION**

The proposal is generally acceptable, as it complies with the relevant statutory and policy documents and would have a satisfactory impact.

Consent. No heritage conditions are required.

Charlotte Simons - Heritage Officer



Completion Date: 21 October 2020

## REFERRAL RESPONSE – COMPLIANCE

**FILE NO:** DA 258/2019/1  
**ADDRESS:** 157-159 Hargrave Street PADDINGTON 2021  
**PROPOSAL:** New smoking area to the Bellevue Hotel; alterations to Taylor Street  
bin room and new entry from Taylor Street  
**FROM:** M Easton, Compliance Officer  
**TO:** Ms P Frecklington

---

### 1. ISSUES

- Compliance with Smoke Free Environment Act 2000 & Smoke-free Environment Regulation 2016.

### 2. DOCUMENTATION

I refer to the following documents received for this report:

- Architectural plans DA1-1100, Revision 04 dated 14/01/20, prepared by H & E Architects
- Statement of Environmental Effects dated 14 January 2020, prepared by Design Collaborative Pty Limited
- Cover letter dated 3 August 2020, prepared by Design Collaborative Pty Limited

### 3. SUMMARY

Review of the alterations to rear of Hotel at Windsor Lane to effectively permit smoking within the Gaming Room.

### 4. ASSESSMENT

The smoking area calculations are the same as the original application.

Under the *Smoke-free Environment Act 2000* a smoking area in a hotel must not exceed 25% of the total area of the combined drinking, gaming and recreation area in the venue.

Smoking is banned in all enclosed (including substantially enclosed) areas of hotels open to the general public, including within 4 metres of a pedestrian entrance to a public building.

A public place is substantially enclosed if the total area of the ceiling and wall surfaces of the public place is more than 75% of its total notional ceiling and wall

area. Based on my calculations, the gaming room is considered to be substantially enclosed and therefore smoking is not permitted in the area.

However, it is acknowledged that the only Authority with the power to determine compliance with the *Smoke Free Environment Act 2000* is the NSW Department of Health.

The applicant offered the following condition for consideration, which was imposed by another Council and modified by the LEC (per strike-through) following an appeal:

*Prior to the issue of any Construction Certificate the Applicant shall provide a certification ~~to the satisfaction of Council~~ from an appropriately qualified person to the effect that the premises as constructed and proposed to be constructed will comply with the Smoke Free Environment Act and Regulation;*

Given that Council is not the responsible Authority for determining compliance with the Smoke Free Environment Act and Regulations, the above condition is considered a reasonable compromise upon review of the application. The applicant is very likely to appeal the wording "to the satisfaction of Council" in any such condition, to avoid a situation like their other hotel premises, the Royal Oak Hotel in Double Bay, where they have not been able to provide live entertainment in the hotel or extend the hours of the footpath seating for over 18 months because the certification of an acoustic barrier is not to Council's satisfaction.

## 5. RECOMMENDATION

In the event that the review application is approved, condition C.2 is recommended in relation to compliance with Smoke-free legislation, in addition to the conditions that were recommended in my previous referral response dated 31/10/2019 :

### 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)

A.1 The Plan of Management prepared by Design Collaborative Pty Ltd is to be modified to include the following:

- a) the approved hours of operation (in accordance with **condition 1.2**)
- b) glass sorting and collection (in accordance with condition 1.9 of DA 303/2014)
- c) details of security patrols such as frequency and defined area of security patrols
- d) all patrons are to use the Hargrave Street doors of the hotel for entry and exit after 10pm, Monday to Sunday.

The revised Plan of Management must be approved by Council's Manager, Development Control, and the premises operated in accordance with the

approved Plan of Management and must be filed with Licensing at the Eastern Suburbs Police Area Command prior to the commencement of the Gaming Room operations.

**C.2 Compliance with Smoke-free legislation**

Prior to the issue of any Construction Certificate the Applicant shall provide a certification from an authorised NSW Health inspector to the effect that the premises as constructed and proposed to be constructed will comply with the *Smoke-free Environment Act 2000* and the *Smoke-free Environment Regulation 2016*.

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

**L.1 Trading Hours**

The trading hours are limited to:

- a) Monday to Friday: 11am to 12 midnight
- b) Saturday: 12 noon to 12 midnight
- c) Sunday and Public Holidays: 12 noon to 10pm

**L.2 Maximum patron capacity**

The total number of patrons on the premises at any time shall not exceed **200** patrons

Ground floor: maximum 100 patrons  
First floor: maximum 100 patrons

**L.3 Early Closure of the Taylor Street entry doors**

Patrons shall not enter or leave the hotel premises via the doors located on the Taylor Street frontage of the hotel after 10pm, Monday to Sunday. These doors shall be locked after 10pm Monday to Sunday. Patrons are required to use the Hargrave Street doors of the hotel for entry and exit.

**L.3 Operation in Accordance with Plan of Management (POM)**

- a) The operation and management of the premises shall be in accordance with the POM prepared by Design Collaborative Pty Limited.
- b) The POM shall be filed with the Licensing Police of the Eastern Suburbs Police Area Command prior to the commencement of operations **of the Gaming Room**.
- c) The POM cannot be altered without the written consent of Council.

**L.4 Surveillance Cameras (CCTV)**

The Management must maintain a closed-circuit television (CCTV) system on the premises. The CCTV system must comply with the following requirements:

- a) It must operate continuously from opening time until one hour after closing;
- b) It must record in digital format at a minimum of six frames per second;
- c) Any recorded image must specify the time and date of the image;
- d) The system's cameras must be located within the property and cover:
  - i) all entry and exit points of the premises, **including the new additional entry in Taylor Street,**
  - ii) **all** footpaths immediately adjacent to the premises, and
  - iii) all publicly accessible areas (other than toilets) on the premises
  - iv) from floor level to a minimum height of two metres
- e) CCTV recordings must be retained for at least 30 days.
- f) Management shall ensure the system is accessible by at least one member of staff at all times it is in operation.

M Easton  
Compliance Officer

31 October 2019

## REFERRAL RESPONSE

FILE NO: DA 258/2019/1

ADDRESS: 157-159 Hargrave Street PADDINGTON 2021

PROPOSAL: New smoking area to the Bellevue Hotel, alterations to Taylor Street bin room and new entry from Taylor Street

FROM: M Easton, Compliance Officer

TO: Mrs L Hulbert

---

### 1. ISSUES

- Trading hours
- Plan Of Management
- Smoke-free legislation
- Use of Taylor Street entry doors after 10pm

### 2. DOCUMENTATION

I refer to the following documents reviewed for this report:

- Architectural plans DA1-1000, DA1-1100, DA1-3101 and DA1/4100 dated 14/05/19, prepared by H & E Architects
- Statement of Environmental Effects dated July 2019, prepared by Design Collaborative Pty Limited
- Plan of Management for the Bellevue Hotel dated July 2014, prepared by Design Collaborative Pty Limited

### 3. SUMMARY OF PROPOSAL

Alterations to rear of Hotel at Windsor Lane to effectively permit smoking within the Gaming Room and alterations to the existing bin room off Taylor Street to provide an additional entry to the hotel with direct access to the Gaming Room.

No changes are sought to the manner in which the hotel currently operates.

### 4. ASSESSMENT

The hotel is located in a predominantly residential neighbourhood. Apart from two very recent complaints summarised below, there have been no complaints to Council

Referral Response - Compliance - DA201902781 - Original.DOCX



in the last five years about the operation of the hotel. The ownership of the hotel changed approximately 12 months ago.

- CRM 16124/2019 was received on 29/11/2019 concerning patrons coming and going from the Hotel making a lot of noise ie talking on phones, having loud conversations, smoking and music noise ... cannot leave windows open (due to) smell of smoke.
- HPE CM 19/195497 was received on 30/11/2019 concerning the significant increase in noise from the hotel in recent weeks, both from the venue and people leaving. This quiet residential area is now being disturbed by an unacceptable level of noise all evening and into the night.
- CRM 18134/2019 was received on 2/12/2019 concerning aggressive and intimidating customers, lack of security, broken glass, rubbish & bottles on private property and all over the road: Smoking and cigarette butts on private property. Broken glass "everywhere" on Sunday morning.

The incident involving broken glass, rubbish and bottles left on the street on Sunday morning was associated with a nearby house party on Saturday night 30/11/2019 which was ultimately shut down by Police. Council has responded to the residents' concerns by advising that the Licensing Police or Liquor & Gaming NSW are the appropriate authorities to deal with issues concerning loud music and patron noise from licensed premises.

The objections/submissions received in respect of the application state that since the new management there has been an increase in noise disturbances and anti-social behaviour in Taylor Street. Issues that have been reported directly to the duty manager of the hotel, include crowd spill onto narrow Taylor Street causing disruption to vehicular traffic and danger to patrons, and patrons bringing drinks outside, using the street to smoke and discard their butts, having loud conversations and shouting, urinating on the side wall of nearby houses, and generally causing disturbances, leaving empty bottles and broken glass. Residents have also reported excessive noise and ineffective management of sound emission during events at the hotel.

Some efforts have apparently been made in terms of increased security patrolling of the rear of the property. However, there is no requirement to provide security as a condition of consent or as part of the POM. A condition requiring security patrols around the perimeter the venue would assist in the management of patron activity (including smoking groups), to ensure that noise spill to surrounding residents is minimised and addressed in a timely manner.

#### **Existing development consent & POM**

In accordance with DA 698/2006 and DA 303/2014 (time limited consent for hours of operation), the current approved trading hours are:

- |                                |                        |
|--------------------------------|------------------------|
| a) Monday to Friday:           | 11am to 12 midnight    |
| b) Saturday:                   | 12 noon to 12 midnight |
| c) Sunday and Public Holidays: | 12 noon to 10pm        |

However, the Plan of Management dated July 2014 details the hours of operation that were approved pursuant to DA 303/2014. This was a time limited consent that required the hours of operation to revert to the above trading hours after 29/09/2015.

The opening hours currently listed on the hotel's website and building signage are also not consistent with the approved trading hours.

The Plan of Management provides no details of glass sorting and collection or details about the frequency and defined area of security patrols.

A review of previous development consents provided no details relating to the maximum capacity of the hotel in whole or parts of the premises. To limit any likely amenity impacts on the neighbourhood, a condition is recommended to limit the number of people on the premises to 100 people on the ground floor and 150 people on the first floor, based on the number of sanitary facilities within the hotel.

Condition L1 of DA 303/2014 requires management to maintain a closed-circuit television (CCTV) system on the premises. The system's cameras must be located within the property and cover all entry and exit points of the premises, including the new additional entry in Taylor Street.

#### **Smoke-free legislation**

Under the *Smoke-free Environment Act 2000* a smoking area in a hotel must not exceed 25% of the total area of the combined drinking, gaming and recreation area in the venue.

Smoking is banned in all enclosed (including substantially enclosed) areas of hotels open to the general public, including within 4 metres of a pedestrian entrance to a public building.

A public place is substantially enclosed if the total area of the ceiling and wall surfaces of the public place is more than 75% of its total notional ceiling and wall area.

It would appear that the proposed smoking area does not comply with the smoke-free legislation as the Gaming Room smoking area is considered to be substantially enclosed.

#### **Unauthorised advertising signs**

CRM 19146/2019 was received on 16/12/2019 concerning the recent installation of an illuminated sign over the Taylor Street entrance of the hotel, advertising "VIP Lounge". Another sign advertising a beer was previously installed above the awning on Hargrave Street. This matter is currently under investigation, but it does appear that development consent is required for the signs but has not been obtained.

### **5. RECOMMENDATION**

If consent is granted for the proposed alterations, the following conditions are recommended:

**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 Plan of Management prepared by Design Collaborative Pty Ltd is to be modified to include the following:

- a) the approved hours of operation (in accordance with **condition 1.2**)
- b) glass sorting and collection (in accordance with condition 1.9 of DA 303/2014)
- c) details of security patrols such as frequency and defined area of security patrols
- d) all patrons are to use the Hargrave Street doors of the hotel for entry and exit after 10pm, Monday to Sunday.

The revised Plan of Management must be approved by Council's Manager, Development Control, and the premises operated in accordance with the approved Plan of Management and must be filed with Licensing at the Eastern Suburbs Police Area Command prior to the commencement of the Gaming Room operations.

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

**L.1 Trading Hours**

The trading hours are limited to:

- a) Monday to Friday: 11am to 12 midnight
- b) Saturday: 12 noon to 12 midnight
- c) Sunday and Public Holidays: 12 noon to 10pm

**L.2 Maximum patron capacity**

The total number of patrons on the premises at any time shall not exceed **250** patrons.

**L.3 Early Closure of the Taylor Street entry doors**

Patrons shall not enter or leave the hotel premises via the doors located on the Taylor Street frontage of the hotel after 10pm, Monday to Sunday. These doors shall be locked after 10pm Monday to Sunday. Patrons are required to use the Hargrave Street doors of the hotel for entry and exit.

**L.3 Operation in Accordance with Plan of Management (POM)**

- a) The operation and management of the premises shall be in accordance with the POM prepared by Design Collaborative Pty Limited.

- b) The POM shall be filed with the Licensing Police of the Eastern Suburbs Police Area Command prior to the commencement of operations **of the Gaming Room.**
- c) The POM cannot be altered without the written consent of Council.

#### **L4 Surveillance Cameras (CCTV)**

The Management must maintain a closed-circuit television (CCTV) system on the premises. The CCTV system must comply with the following requirements:

- a) It must operate continuously from opening time until one hour after closing;
- b) It must record in digital format at a minimum of six frames per second;
- c) Any recorded image must specify the time and date of the image;
- d) The system's cameras must be located within the property and cover:
  - i) all entry and exit points of the premises, **including the new additional entry in Taylor Street,**
  - ii) **all** footpaths immediately adjacent to the premises, and
  - iii) all publicly accessible areas (other than toilets) on the premises
  - iv) from floor level to a minimum height of two metres
- e) CCTV recordings must be retained for at least 30 days.
- f) Management shall ensure the system is accessible by at least one member of staff at all times it is in operation.

M Easton  
Compliance Officer

Completion Date: 7 October 2020

## REFERRAL RESPONSE – FIRE SAFETY

**FILE NO:** DA 258/2019/1  
**ADDRESS:** 157-159 Hargrave Street PADDINGTON 2021  
**PROPOSAL:** New smoking area to the Bellevue Hotel, alterations to Taylor Street bin room and new entry from Taylor Street  
**FROM:** Richard Smith - Fire Safety Officer  
**TO:** Mrs L Hulbert

---

### 1. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced construction works to create smoking area, alterations to Taylor Street bin room and new entry from Taylor Street prepared by Design Collaborative Pty Ltd, dated January 2020.

### 2. RESEARCH

The following research was undertaken in the preparation of this assessment:

- A site inspection was carried out on the following date: *Could not be undertaken due to COVID-19.*

### 3. LEGISLATION

A Building Code of Australia (BCA) assessment of this development application is required to satisfy the following statutory provisions of the *Environmental Planning & Assessment Regulation 2000*.

### 4. RECOMMENDATION

The original referral remains.

---

Richard Smith  
Fire Safety Officer

Date: 7 October 2020

Completion Date: 12 August 2019

## REFERRAL RESPONSE – FIRE SAFETY

**FILE NO:** DA 258/2019/1  
**ADDRESS:** 157-159 Hargrave Street PADDINGTON 2021  
**PROPOSAL:** New smoking area to the Bellevue Hotel, alterations to Taylor Street bin room and new entry from Taylor Street  
**FROM:** Richard Smith - Fire Safety Officer  
**TO:** Mrs L Hulbert

---

### 1. ISSUES

- *That the fit-out area will have to comply with the BCA. The building is currently submitting annual fire safety statements to Council and is generally in compliance with the BCA conditioning this proposal is not necessary.*

### 2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced works to create a new smoking area and alteration to the bin room and new entry from Taylor Street prepared by Design Collaborative Pty Ltd, dated July 2019.
- Architectural Plans, referenced DA01-0050, DA01-0060, DA01-1000, DA01-1100, DA01-3101 & DA01-4100, prepared by H & F Architects, dated 14 May 2019.

### 3. RESEARCH

The following research was undertaken in the preparation of this assessment:

- A site inspection was carried out on the following date: 12 August 2019

### 4. BUILDING DESCRIPTION

Type of Construction: C  
Class: 6  
Number of Storeys: 3  
Rise in Storeys: 2  
Effective Height: <12 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.

---

Richard Smith  
Fire Safety Officer

Date: 12 August 2019

Completion Date: 12<sup>th</sup> August 2019

## REFERRAL RESPONSE - ENVIRONMENTAL HEALTH

**FILE NO:** Development Applications/ 258/2019/1  
**ADDRESS:** 157-159 Hargrave Street PADDINGTON 2021  
**PROPOSAL:** New smoking area to the Bellevue Hotel, alterations to Taylor Street  
bin room and new entry from Taylor Street  
**FROM:** Graeme Reilly Environmental Health Officer  
**TO:** Mrs L Holbert

---

### 1. ISSUES

- NIL

### 2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced 140376.13S prepared by Design Collaborative, dated July 2019 .
- Architectural Plans, referenced DA 1-0050 R2, 1-1000 R1, 1-1100 R2, 1-4100 R2 , prepared by H & F Architects , dated 14<sup>th</sup> May 2019. .
- Acoustic Report, referenced 268234 , prepared by Arup P/L, dated 19<sup>TH</sup> July 2019 .

### 3. RESEARCH

The following research was undertaken in the preparation of this assessment:

- A site inspection was carried out on the following date: 6th August 2019

### 4. SUMMARY OF PROPOSAL

New smoking area to the Bellevue Hotel, alterations to Taylor Street bin room and new entry from Taylor Street

The proposed works include the extension of the section of the roof of the Hotel adjacent to Windsor Lane, shown in Figure 2 and Figure 3. The vertical section of the roof extension facing north-east is proposed to be open to create an outdoor gaming area at the rear of the Hotel.

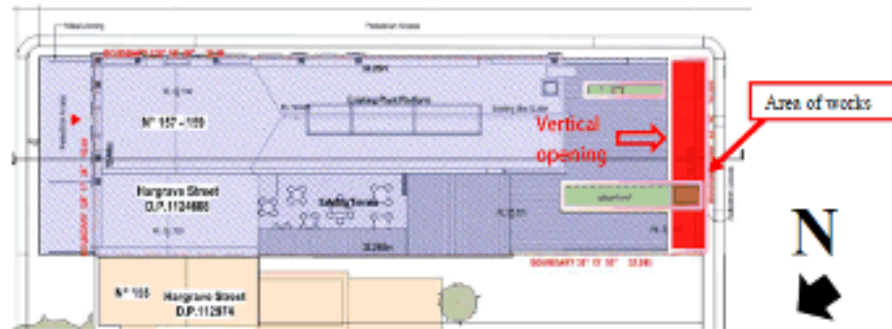


Figure 2: Plan showing upgrade works (shown in red)

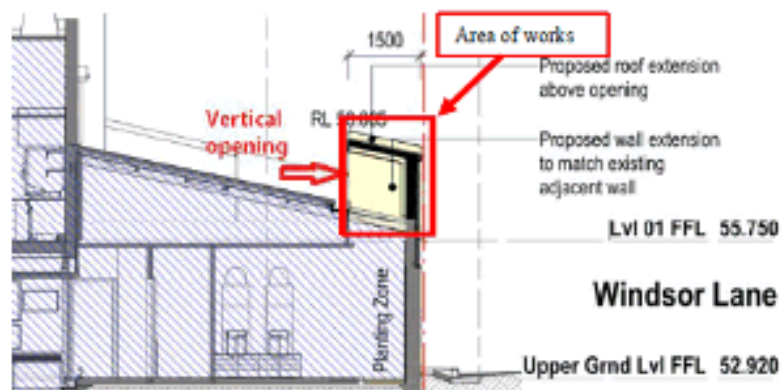


Figure 3: Section showing upgrade works

The Hotel operating hours including the gaming area do not extend past midnight.

It is noted that the existing kitchen on the ground floor is being decommissioned as part of the works, with the existing kitchen on Level 1 to be retained as the only kitchen in the venue. This will remove mechanical and kitchen operations noise from the premise.

## 1.0 INTRODUCTION

This Statement of Environmental Effects accompanies a development application (*the Application*) seeking consent for alterations to the Bellevue Hotel (*the Hotel*) at 159 Hargrave Street, Paddington. The alterations sought to the rear of the Hotel at Windsor Lane would have the effect of permitting smoking within the Hotel's Gaming Room, under the *Smoke-Free Environment Act, 2001*. The proposed drawings, prepared by Humphrey and Edwards Architects, are attached at **Annexure 1** of this Statement.

The design of the void to permit smoking is such that noise from the gaming room would be projected back toward the Hotel. The Hotel gaming room is permitted to operate between 10am and midnight, daily. Compliance with the relevant acoustic criteria for this time period is predicted in the attached Acoustic Report prepared by ARUP at **Annexure 2**.

In addition to the above change, alterations are proposed to the existing bin room located off Taylor Street, and the wash up room behind it, to provide for an additional entry to the Hotel from Taylor Street. While the bin room would be reduced in area, the proposed room would accommodate an additional bin while retaining wash-down space.

The intention of this change is to provide more direct access to the gaming room which is located at the rear of the Hotel. The existing entry to the Hotel's central dining area from Taylor Street would remain. Consequently, there is not anticipated to be a noticeable increase in foot traffic on Taylor Street.

A Statement of Access Compliance prepared by Lindsay Perry Access Consultants assesses the proposed access changes against the relevant access legislation and accompanies the Application at **Annexure 3**. The Application is also accompanied by a BCA Report prepared by 360 Certification at **Annexure 4**.

No changes are sought to the manner in which the Hotel currently operates under all existing development consents previously granted by Council. Consequently, absent assessing predicted compliance with the relevant acoustic criteria, the Application is for the physical work only.

This Statement describes the subject site and the surrounding area, details the nature of the proposed development and undertakes an assessment of the Application as required using the heads of consideration under s 4.15 of the *Environmental Planning and Assessment Act 1979 (the EP&A Act)*.

This Statement concludes that the Application is acceptable with respect to all relevant town planning matters and is submitted to Council for its approval.

## 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



To north: Looking in yard of 155 Hargrave Street to north of void to grassing



2. South West Elevation (Facing Windsor Lane) - Proposed





Predicted noise levels are shown in Table 5.

Table 5: Gaming Room Noise Levels at 155 Hargrave Street

Period	Noise Source	Octave band centre frequency - Hz (dBZ)								
		31.5	63	125	250	500	1k	2k	4k	8k
Sound pressure level, dBA										
All	Gaming Room Noise	40	40	45	43	35	32	28	23	19
Day	Criteria	48	48	48	44	39	36	32	26	21
	Comply?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Evening	Criteria	49	51	48	45	40	38	32	26	21
	Comply?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Night 10pm-12am	Criteria	48	51	48	44	39	37	31	25	20
	Comply?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Results show levels calculated are below the project goals and therefore satisfy criteria.

Compliance at the nearest affected residence is considered to demonstrate compliance at all other residences. In-principle advice is provided to keep noise emissions from the premise to a minimum.

## 4 Recommendations

The following recommendations provide in-principle advice for the mitigation and management of noise emission from the premises. This information is presented for Council approvals process and project planning and shall not be used for construction unless otherwise approved in writing by the acoustic consultant.

### 4.1.1 Sound systems

Where practicable, all amplified sound, including background music and TVs etc., should be provided via an in-house sound system so that the sound levels can be controlled by a sound limiter. An RMS compressor/limiter (eg. Rane HAL, BSS Blu, Symetrix Jupiter or MediaMatrix X-Frame 88) is recommended. Multi-band compression is recommended for greater control over the critical frequency bands.

Where temporary sound systems or instrument amplifiers are used for entertainment it is not practicable to have them controlled by an electronic limiter. For these cases, a sound monitor would be needed (eg CESVA RS-60, NTi Audio XL2), to identify when sound levels are above the prescribed levels.

Where different noise limits apply at various operating times, the device should include or support multiple time-based settings. Where different noise limits might be applicable between windows open and windows closed scenarios, it is recommended that reed switches or similar be included in the windows, such that, when windows are open, sound system levels are limited to a lower noise level.

The device should be set during acoustic compliance testing by an appropriately qualified acoustic consultant in conjunction with the system engineer/technician.

### 4.1.2 Gaming machines

Adjust sound levels on gaming machines to lowest practical level. Measured noise levels presented in this report can be used for guidance.

### 4.1.3 Building/Architectural design

- Acoustically absorptive finishes should be allowed for in the gaming area areas:
- Furniture and seating should promote smaller groups, sitting close to one another (e.g. limiting depth of tables).

## 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)
268234	Acid Sulphate Soil Management Plan		
	Acoustic Report	ARUP P/L	19 <sup>th</sup> July 2019
	Noise Management Plan		
	Plan of Management		
	Contaminated Land - Initial Site Investigation Report (Stage 1)		
	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 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 1.4 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 C99

## C.2 Sound Attenuation of the New Smoking Area

The *Construction Certificate* plans and specification required to be submitted pursuant to clause 139 of the Regulation must detail the sound attenuation works required to the *New Smoking Area* to ensure that the noise level complies with the recommendations made within the *ARUP P/L Acoustic Assessment Job No 268234 dated 19<sup>th</sup> July 2019*.

## 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 in 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/nslg.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)  
Screened Condition: 1b

## 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 bags before placing into waste or skip bins.
- e) All waste and skip bins being kept covered when not being filled or emptied.

- f) The surface of excavation work being kept wet to minimise dust.
- g) Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

**Note:** "Dust Control - Do it right on site" can be down loaded free of charge from Council's web site [www.woollahra.nsw.gov.au](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 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: 150

## 1.2 Maintenance of Sound Attenuation

Sound attenuation must be maintained in accordance with the *Acoustic Report*.

Standard Condition: 151

## 1.3 Noise from licensed premises

The  $L_{eq}$  noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8k Hz inclusive) by more than 5dB(A) between 07:00 am and 12:00 midnight at the boundary of any affected residence.

The  $L_{eq}$  noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8k Hz inclusive) between 12:00 midnight and 07:00 am at the boundary of any affected residence.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 am.

This condition has been imposed to protect the amenity of the neighbourhood.

**Note:** dB(A) is a value used for 'A-weighted' sound pressure levels 'A' frequency weighting is an adjustment made to approximate the response of the human ear.

**Note:** *Licensed premises* means premises licensed under the *Liquor Act 2007*.

**Note:** For the purposes of this condition, the  $L_{eq}$  is the A-weighted sound pressure level that is exceeded for 10% of the time over which a given sound is measured.

**Note:** 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  $L_{eq}$  level measured by a sound level meter over the applicable period.

**Note:** This condition is identical to the minimum standard condition imposed by the Casino Liquor and Gaming Control Authority (the Authority). The Authority may specify other standards in respect of the above condition under the *Liquor Act 2007*, and associated Regulations. Section 79 of the *Liquor Act 2007* provides an informal mechanism for complaints to be made (by residents, Police, local consent authorities and others) where the amenity of local neighbourhoods is unduly disturbed by the conduct of licensed premises including registered clubs (or their patrons). The Director of Liquor and Gaming is responsible for resolving such complaints and may impose temporary or permanent conditions on any licence. For further information go to the NSW Office of Liquor and Gaming and Racing's website: ([www.olgr.nsw.gov.au](http://www.olgr.nsw.gov.au)).

**Note:** Interior noise levels of licensed premises which exceed safe hearing levels are not supported or condoned by Council.

Standard Condition: 152

**J. Miscellaneous Conditions**

**J.1 Outdoor Smoking Gaming Area**

The applicant is to ensure that the proposed outdoor smoking gaming area complies with the requirements of the Smoke Free Environment Act 2000 and Smoke Free Environment Regulation 2016.

Nil.

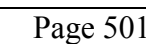
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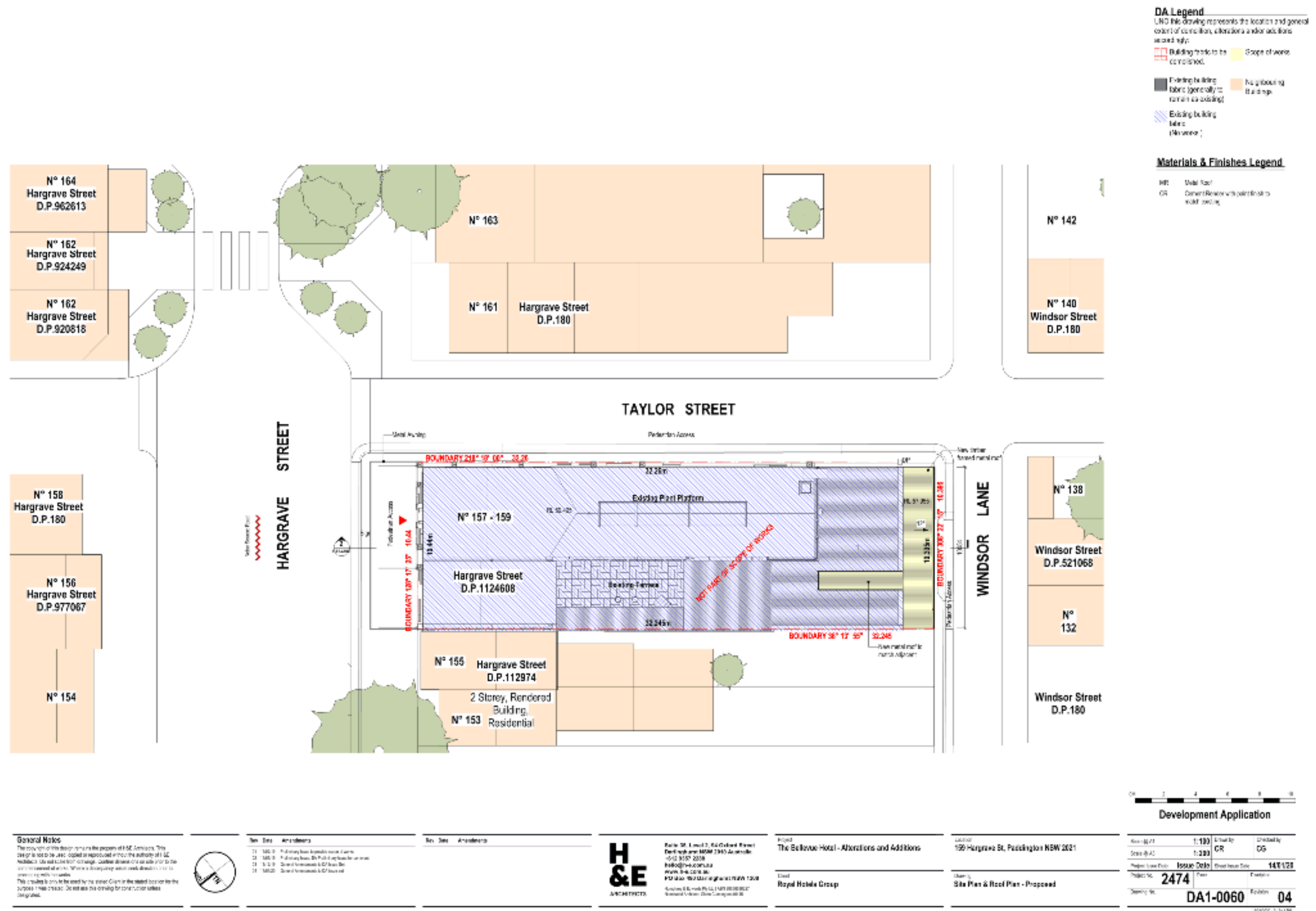
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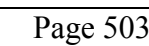
**Graeme Reilly**  
**Environmental Health Officer**

**Date: 12<sup>th</sup> August 2019**

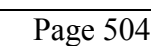




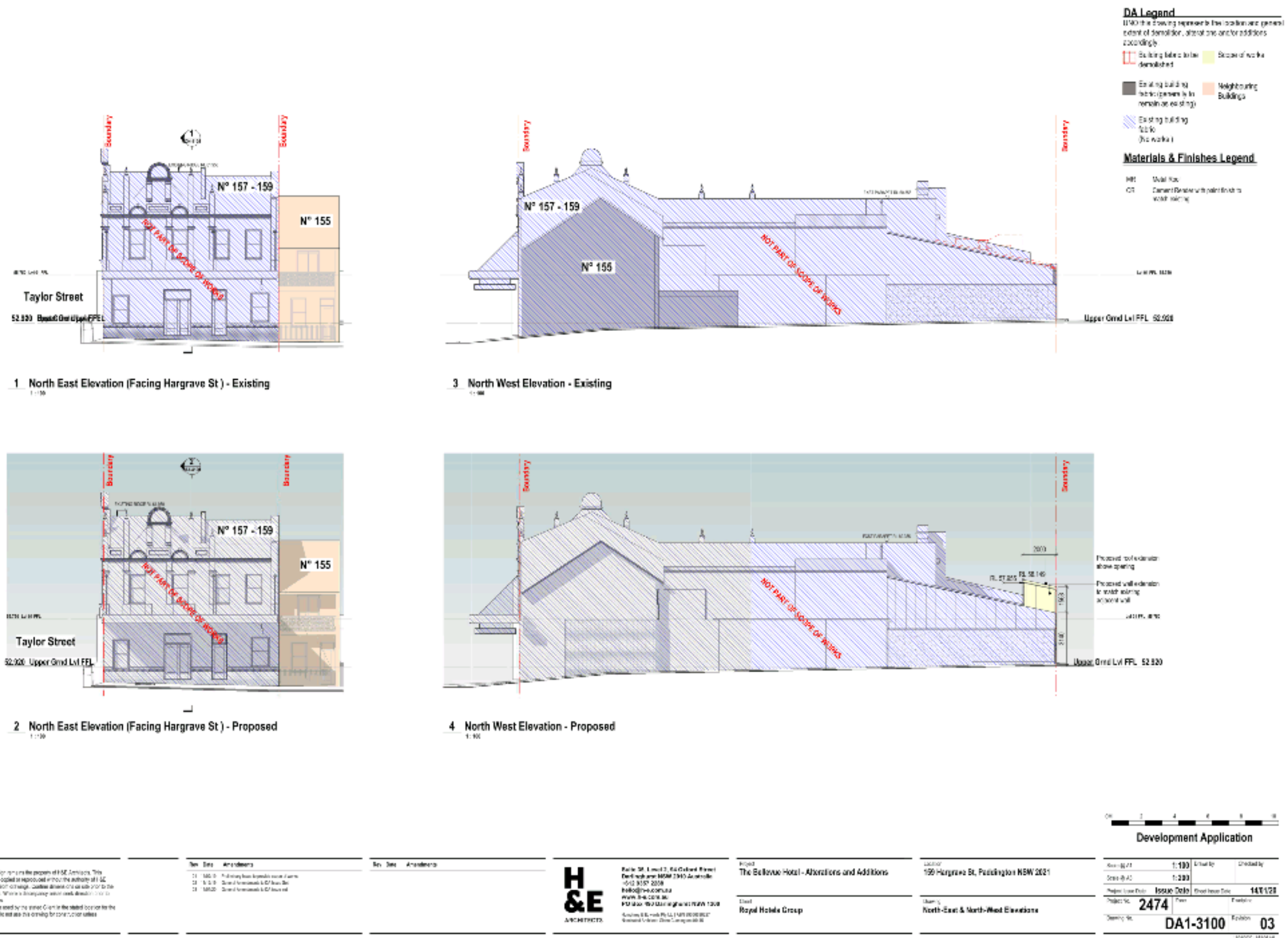




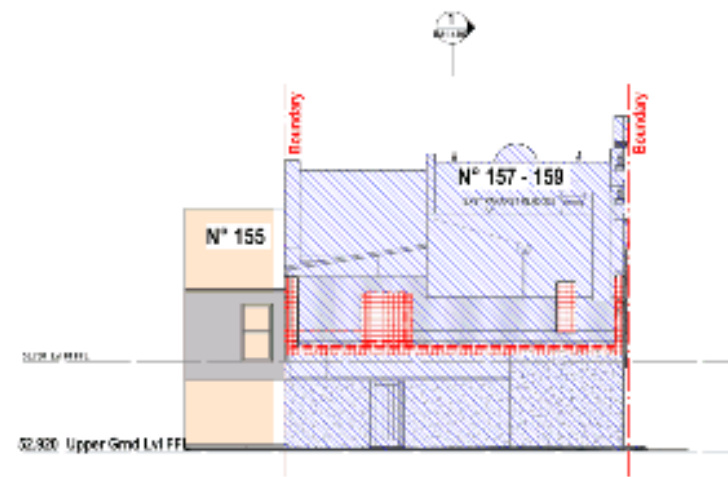




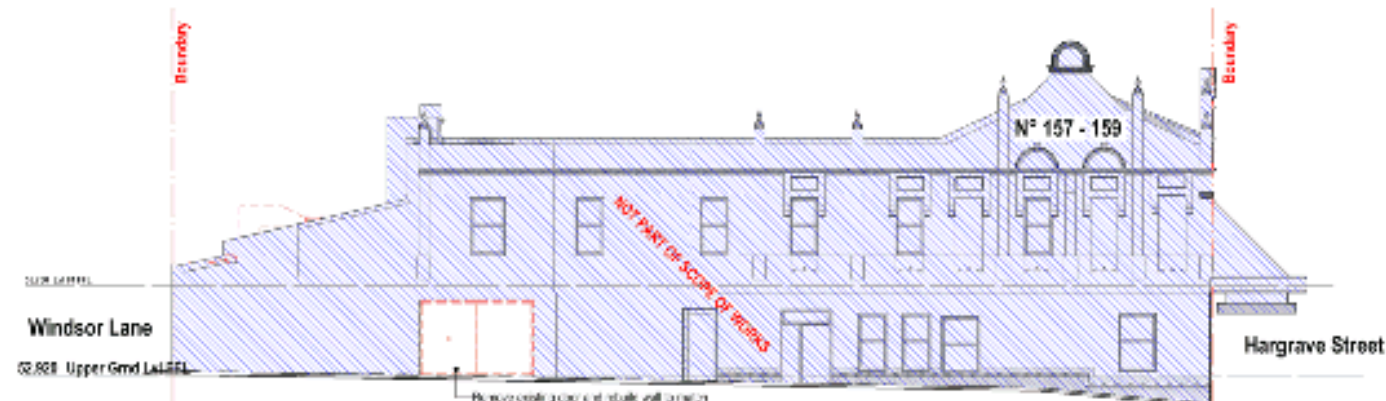




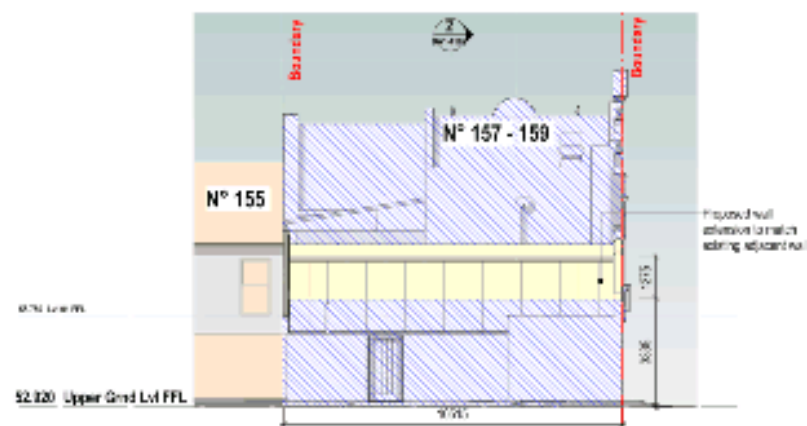
**DA Legend**  
UNO this drawing represents the location and general extent of demolition, alteration and/or addition to existing building.  
Building fabric to be demolished  
Scope of works  
Existing building fabric to remain as existing  
Neighbouring buildings  
Existing building fabric (for works)  
**Materials & Finishes Legend**  
HT Wall Face  
CS Cement Render with paint finish to match existing



1 South West Elevation (Facing Windsor Lane) - Demolition  
1:100



3 South East Elevation (Facing Taylor St) - Demolition  
1:100



2 South West Elevation (Facing Windsor Lane) - Proposed  
1:100



4 South East Elevation (Facing Taylor St) - Proposed  
1:100

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#### Rev. Date. Amendments

11 15/01/20 Preliminary design based on site plan  
12 15/01/20 Preliminary design based on site plan  
13 15/01/20 General formwork and site plan  
14 15/01/20 General formwork and site plan

#### Rev. Date. Amendments

11 15/01/20 Preliminary design based on site plan  
12 15/01/20 Preliminary design based on site plan  
13 15/01/20 General formwork and site plan  
14 15/01/20 General formwork and site plan

**H&E**  
ARCHITECTS

10/10 St. James St. St. James St. St. James St.  
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#### Project: The Bellevue Hotel - Alterations and Additions

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#### Location: 159 Hargrave St, Paddington NSW 2021

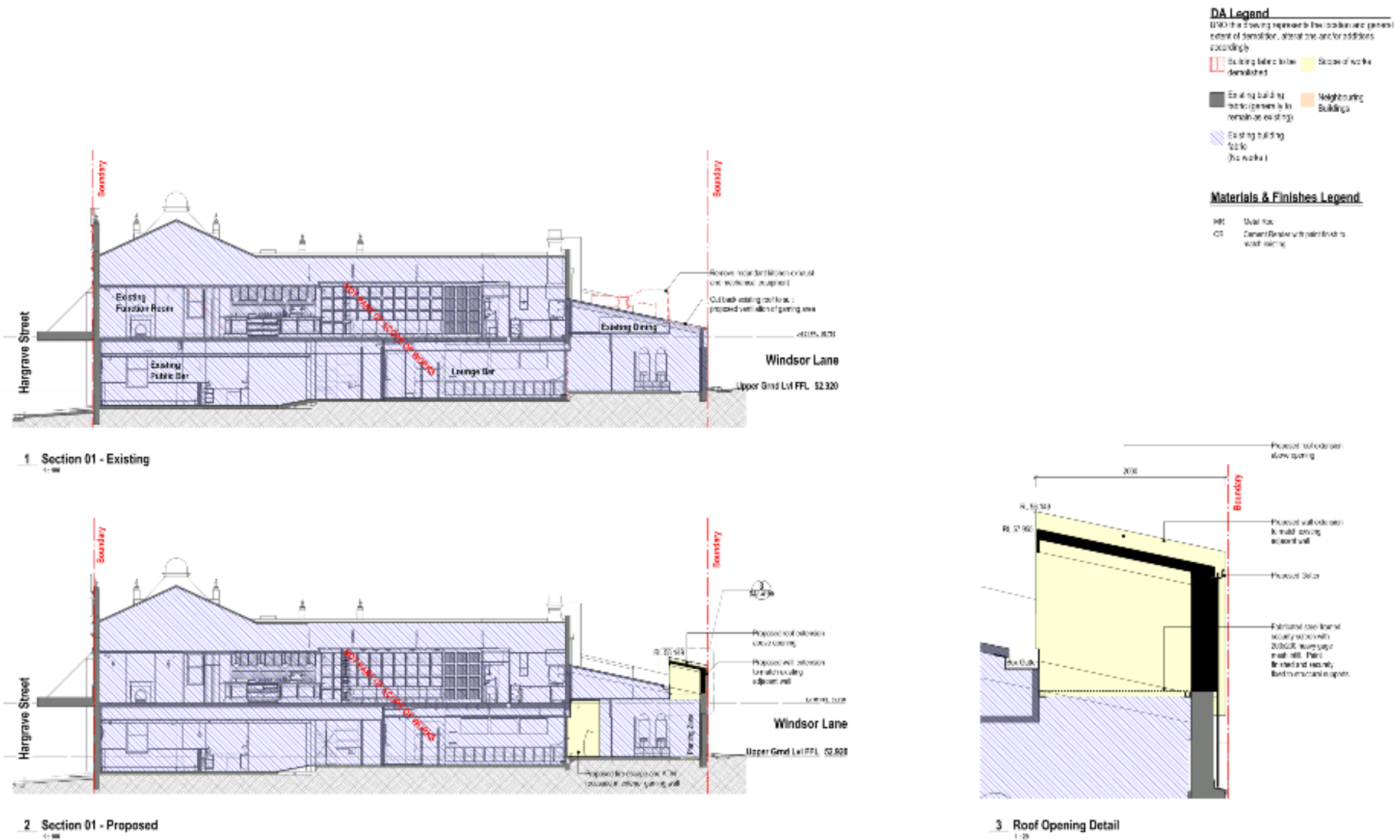
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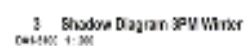
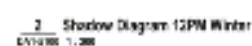
#### Development Application

Scale: 1:100  
Scale: 1:200  
Project No: 2474  
Issue Date: 14/1/20  
Drawing No: DA1-3101  
Revision: 04





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Sex	Age	Arteriodens
21	160/10	Primary brain lymphoid tissue <i>in situ</i>
22	15/10	Stage II Neuroblastoma L/C Brain Stn
23	160/20	Stage II Neuroblastoma L/C Brain and

Seq	Date	Assignment
-----	------	------------



Emilio M. Lora, Jr., 64 Colwood Street,  
 Deddingham, MA 01925 & Acacia, MA  
 01901  
 508.335.2008  
 bello@e-m.com.ua  
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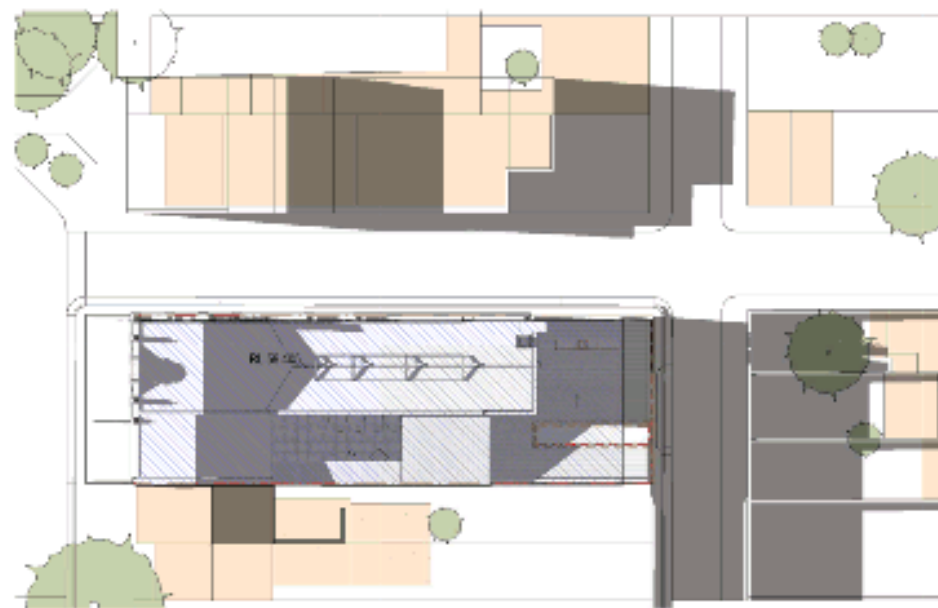
Project  
The Bellevue Hotel - Alterations and Additions

**Royal Hotels Group**

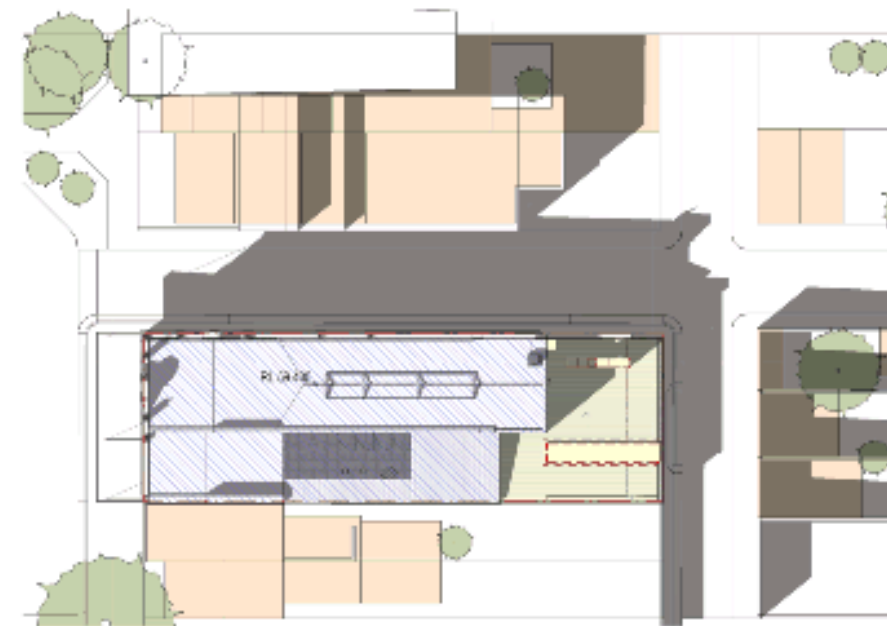
159 Harpraze St, Paddington NSW 2021

Shadow Diagrams Winter - Proposed

Accession #	1:230	Entered by	Checked by
Serial #	1:400		
Project Issue Date	Issue Date	Project Issue Date	147128
Project No.	2474	Page	Employee
Drawing No.	DA1-5100	Revision	03



1 Shadow Diagram 9AM Winter  
A3/01/1:100



2 Shadow Diagram 12PM Winter  
A3/01/1:100



3 Shadow Diagram 3PM Winter  
A3/01/1:100

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#### Rev. Date Amendments

- | Rev. | Date     | Amendments                                 |
|------|----------|--|
| 01   | 14/01/20 | Final design for development application   |
| 02   | 15/01/20 | Revised design for development application |
| 03   | 16/01/20 | Revised design for development application |

#### Rev. Date Amendments



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Level 10/100 Macquarie Street, Sydney NSW 2000

Project:  
The Bellevue Hotel - Alterations and Additions

Client:  
Royal Hotel Group

Location:  
100 Macquarie St, Parramatta NSW 2150

Client:  
Shadow Diagrams Winter - Existing

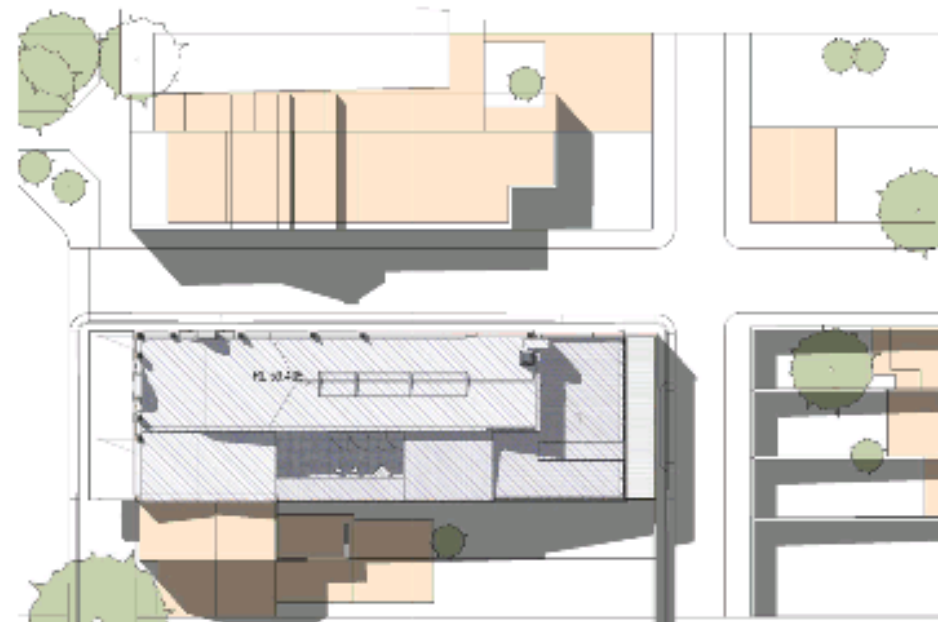


#### Development Application

Scale: 1:100	Issue Date	14/01/20
Scale: 1:100	Issue Date	14/01/20
Project No.	2474	Issue Date
Project No.	2474	Issue Date
Project No.	2474	Issue Date
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Project No.	2474	Issue Date
Project No.	2474	Issue Date
Project No.	2474	Issue Date
Project No.	2474	Issue Date
Project No.	2474	Issue Date

10/0001 - 10/0001





1 Shadow Diagram 9AM Summer  
DWG 1001 1:200



2 Shadow Diagram 12PM Summer  
DWG 1002 1:200



3 Shadow Diagram 3PM Summer  
DWG 1003 1:200

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#### Rev. Date Amendments

- 1. 1.0.0.0. Preliminary design and site plan
- 2. 1.0.0.0. Preliminary design and site plan
- 3. 1.0.0.0. Preliminary design and site plan

#### Rev. Date Amendments



H&E ARCHITECTS  
Ralph H. & Elizabeth H. Architects  
Level 10, 100 Macquarie Street, Sydney NSW 2000  
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100 Macquarie Street, Sydney NSW 2000  
Architects & Planners Pty Ltd (ABN 66 000 000 000)  
Sydney, Australia

Project:  
The Bellevue Hotel - Alterations and Additions

Client:  
Royal Hotels Group

Location:  
100 Macquarie St, Parramatta NSW 2150

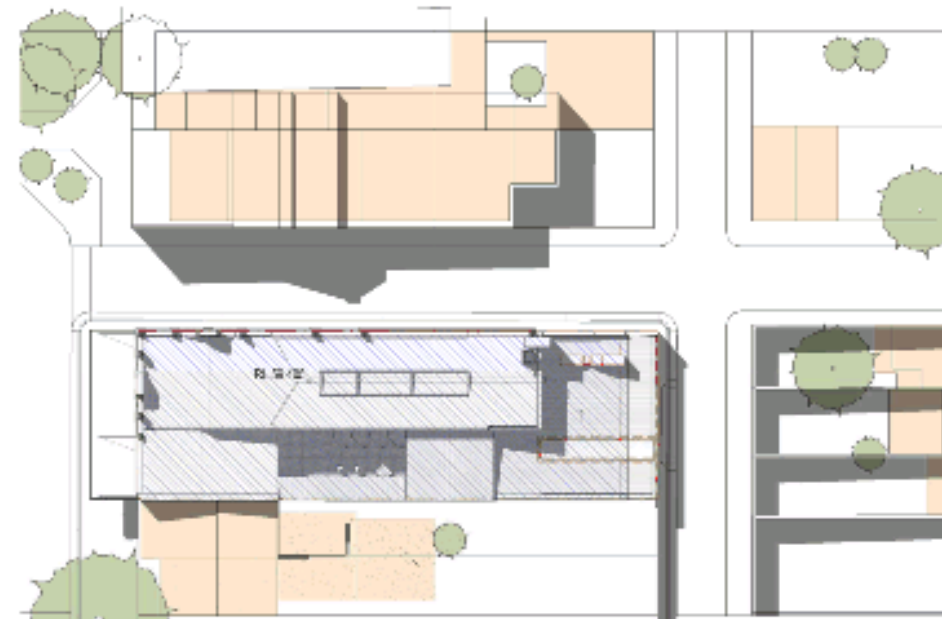
Client:  
Shadow Diagrams Summer - Proposed



#### Development Application

Scale: 1:200	Issue Date	14/1/20
Scale: 1:400	Issue Date	14/1/20
Project No. 2474	Issue Date	14/1/20
Project No. 2474	Issue Date	14/1/20
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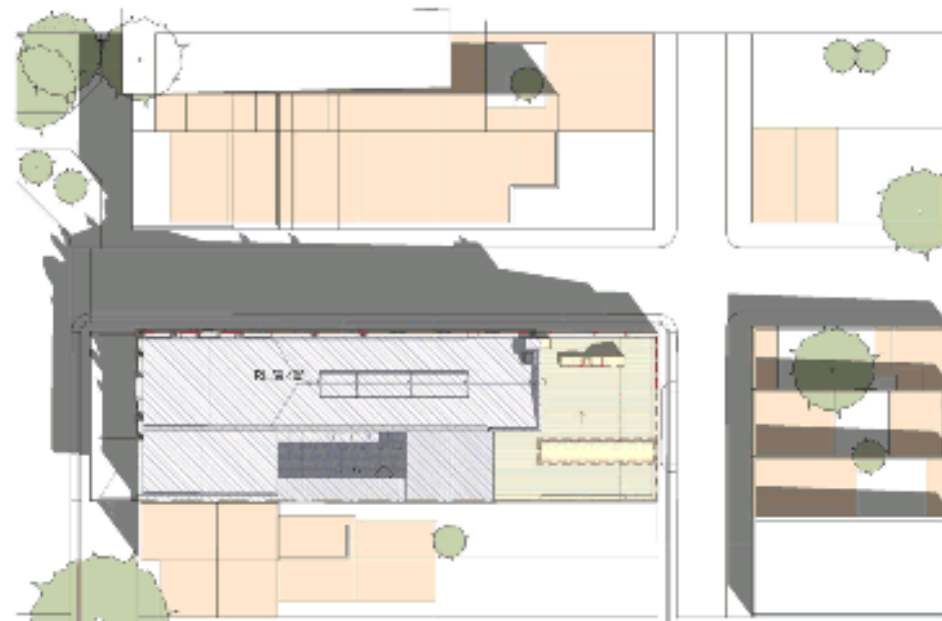
DA1-5102 03



1 Shadow Diagram 9AM Summer  
DATE: 11/1/20



2 Shadow Diagram 12PM Summer  
DATE: 11/1/20



3 Shadow Diagram 3PM Summer  
DATE: 11/1/20

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#### Rev. Date. Amendments

- 1. 11/1/20 - Preliminary design based on site plan
- 2. 11/1/20 - General formwork and site plan
- 3. 11/1/20 - General formwork and site plan

#### Rev. Date. Amendments



H&E ARCHITECTS  
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Website: www.h-e.com.au

Project:  
The Bellevue Hotel - Alterations and Additions

Client:  
Royal Hotel Group

Location:  
100 Macquarie St, Paddington NSW 2021

Client:  
Shadow Diagrams Summer - Existing



#### Development Application

Scale: 1:200	Issue Date:	14/1/20
Scale: 1:400	Issue Date:	14/1/20
Project No: 2474	Issue Date:	14/1/20
Project No: 2474	Issue Date:	14/1/20
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Project No: 2474	Issue Date:	14/1/20



**DESIGN COLLABORATIVE**  
Pty Limited

ABN 24 002 124 954  
ACN 002 124 954

Town Planning and Liquor Licensing  
Consultants

[www.designcollaborative.com.au](http://www.designcollaborative.com.au)

**Managing Director**

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BPP (UNSW)  
MPA

**Director**

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RPA

**Consultant**

Clive Smith  
BSurv (QUT)  
MCP (MIE)  
MPA (Life Fellow)  
MS Aust  
MRTPI  
FAIS

3 August 2020  
Ref: 140076.15L

The General Manager  
Woollahra Municipal Council  
536 New South Head Road  
Double Bay NSW 2028

Dear Sir/Madam,

[Review of Determination – Delete Conditions A.5 & C.6 on DA258/2019 for the Bellevue Hotel located at 157-159 Hargrave Street, Paddington NSW 2021.](#)

**Introduction**

This letter accompanies a Review of Determination application (the Application) for development consent DA258/2019 (the Consent) regarding the Bellevue Hotel (the Subject Site). The Application proposes to delete Condition A.5 which prohibits the previously proposed rear roof addition and Condition C.6 which imposes a requirement for the subject roof addition to be removed from all drawings.

It is considered that the bases for the imposition of Conditions A.5 and C.6 as provided in Council's Planning Report are not well founded in that:

- The design of the gaming room complies with the Smoke Free Environment Act 2000 to permit smoking;
- There is no impact to the heritage conservation area. The addition is to a rear lane, to the rear of a commercial building, and is consistent in height and appearance to other laneway developments; and
- The only Authority with the power to determine compliance with the Smoke Free Environment Act 2000 is the NSW Department of Health. The only relevant town planning matter of heritage impact is not well-founded.

The Application is accompanied by an updated Statement of Environment Effects, Acoustic Report, Plans, Sections, Elevations, Shadow diagrams and smoking calculations.

**The Application**

Conditions A.5 and C.6 are sought to be deleted from Development Consent DA258/2019. The conditions read as follows:

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

*This approval does not give consent to the proposed rear roof addition to facilitate smoking in the gaming room"*

Bellevue Hotel | 140376.5L

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**"C.6 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:

c) The proposed roof addition to the rear roof of the hotel shall be deleted, including the raised rear wall, metal roof and associated roof opening."

**Reasons why Council has imposed the Subject Conditions from the Report.**

Issue	Conclusion	Section
New side door	The proposed new door opening off Taylor Street is a fire exit only, refer to <b>Condition L.3</b> .	17.1
Smoking area	The proposed smoking area does not comply with the Smokefree legislation and therefore has not been supported, refer to <b>Conditions A.5 and C.6</b> .	15
Noise	Subject to <b>Conditions A.3, A.5, C.6, L.1, L.2, L.3, L.4, L.6, L.7, L.11, L.13, L.14, L.15</b> the proposal is considered acceptable in terms of noise impacts on surrounding residential properties.	17.1
Roof addition	The proposed roof addition will add unnecessary bulk to the rear of the building. These work are considered to be inappropriate to the 'pub' building type, and inconsistent with the historic roofscape of the Paddington conservation area. The proposed roof addition has therefore been deleted from the proposal, refer to <b>Conditions A.5 and C.6</b> .	17.1

**Figure 1** – CA 258/2019/1 Planning report primary issues.

Our response to the issue of "roof addition" (shown in **Figure 2** below) and "Smoking area" are addressed below.



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Bellevue Hotel | 140376.5L

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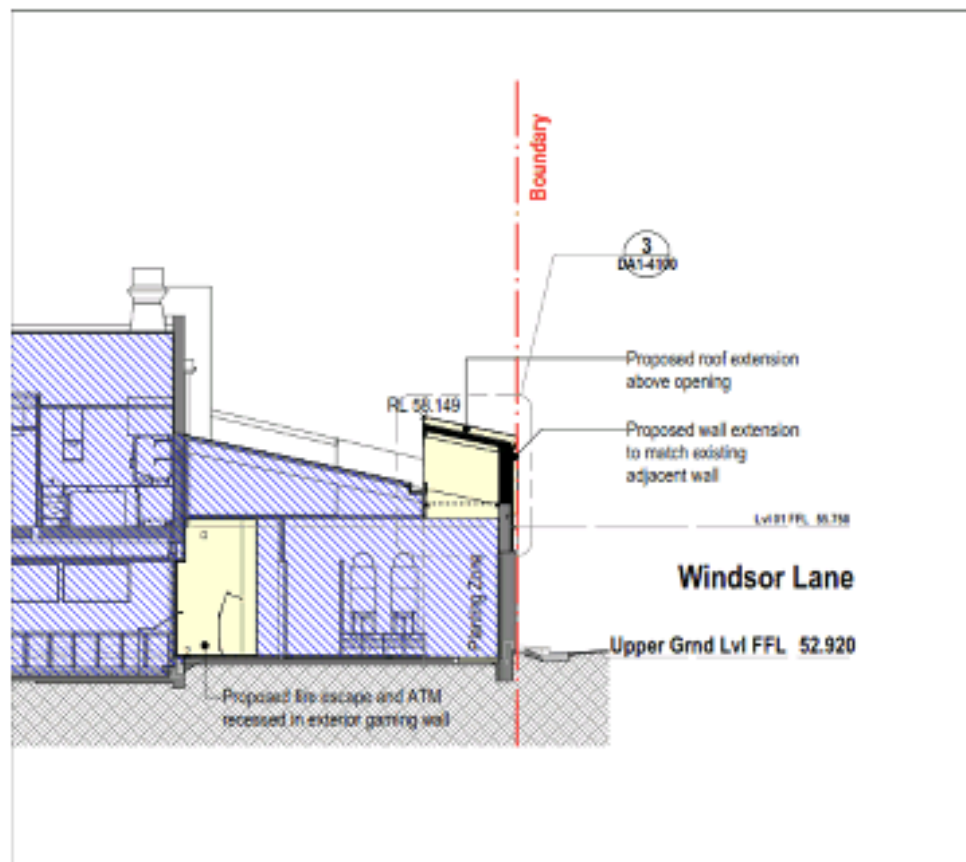


Figure 2 - Gaming room ventilation and roof addition

### Smoking Compliance

The Applicant has submitted calculations demonstrating the gaming room design complies with the requirements of the *Smoke Free Environment Act 2000*. The only Authority with the power to determine compliance with the *Smoke Free Environment Act 2000* is the NSW Department of Health.

It is ultra vires for Council to refuse consent on the basis of a matter outside the realm of relevant town planning considerations and for which it has no enforcement authority. This was addressed in *Padraif Pty Ltd v Council of the City of Sydney*, where the permissibility of imposing a condition requiring Council to verify compliance with the *Smoke Free Environment Act 2000* was challenged. This was the second such determination, building on the earlier decision of *Amazonia Hotels Pty Ltd v Council of the City of Sydney*; viz:



Bellevue Hotel | 140376.5L

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82. The remaining conditions in contention between the parties are as follows:

The applicant objects to (a) of the condition.

2. Proposed condition 28: Compliance with smoke free legislation, which states:

*(a) prior to the issue of any Construction Certificate the Applicant shall provide a certification to the satisfaction of Council from an appropriately qualified person to the effect that the premises as constructed and proposed to be constructed will comply with the Smoke Free Environment Act and Regulation;*

...

85. *In relation to the second condition in dispute, Mr McEwan submits that the applicant does not object to the submission of a certificate from a suitably qualified expert to Council demonstrating compliance, but seeks to have the need 'to satisfy council' removed from the condition. He argues that Council is not the regulator of the Smoke Free Environment Act or the appropriate body for any enforcement, which is the responsibility of NSW Health,*

86. *In Amazonia Hotels Pty Ltd v Council of the City of Sydney [2015] NSWLEC 1224, Dixon, C at [24] concluded that the NSW Ministry of Health are the appropriate regulators of the Smoke Free Environment Act. Further she held that it is appropriate for the Court to accept that any application for a new smoking area made under the legislation will be dealt with lawfully and this will ensure the public interest is appropriately safeguarded.*

87. *Following consideration of the submissions of the parties, I am satisfied that it is appropriate to amend the condition to remove the text stating: to the satisfaction of Council from both subsections of condition 28.*

## Heritage



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Bellevue Hotel | 140376.5L

5

The report for DA258/2019/1 states the reason for refusal as:

*"The proposed roof addition will add unnecessary bulk to the rear of the building. These works are considered to be inappropriate to the 'pub' building type, and inconsistent with the historic roofscape of the Paddington conservation area."*

The roof addition will not impact on the heritage conservation area. The addition is to the rear lane at the rear of the Hotel and will not come into contact with the existing roof (See **Figure 2**). From Windsor Lane, at the rear of the premises, many examples of existing development and roof forms can also be seen (**Figure 3**) which are contrary to Council's argument.



**Figure 3** – laneway garages and additions to Windsor Lane (Source: Google Maps Streetview)

**Figure 3** demonstrates that the proposed development is consistent with the surrounding development and therefore is of no heritage impact.

Should you have any questions, please do not hesitate to contact us to discuss.

Yours sincerely,  
DESIGN COLLABORATIVE PTY LTD

A handwritten signature in black ink, appearing to read 'D. Rippingill'.

Director  
David Rippingill



Design Collaborative | 304/105 Pitt Street, Sydney NSW 2000

**From:** [Alexander Kiss \(South Eastern Sydney LHD\)](#)  
**To:** [Philippa Frothington](#)  
**Cc:** [Toni Colins \(South Eastern Sydney LHD\)](#)  
**Subject:** RE: Bellevue Hotel - 17-150 Hargrave Street, Paddington  
**Date:** Friday, 20 November 2020 11:15:14 AM  
**Attachments:** [image001.png](#)  
[image002.jpg](#)  
[UGS61ster.pdf](#)  
[Smoke-free Guide: Determining an Endorsed Public Place.pdf](#)

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Hello Philippe

Confirming The Public Health Unit does not assess plans/proposals for smoking rooms. The attached letter notes the position of local government and its responsibilities under the *Smoke free Environment Act 2000*. It is quite old but there has been no subsequent change. Also attached are some guidelines to assist proponents in designing compliant smoking areas. These were on the NSW Health webpages but removed about 4 years ago and it was my understanding they were being reviewed and an updated version reposted. That has not yet occurred.

I hope this assists.

Regards Alex

Alex Kiss  
**Environmental Health Officer (Tobacco Compliance)**  
Public Health Unit

South Eastern Sydney Local Health District  
Hut U, Prince of Wales Hospital Campus, Easy St, Randwick NSW 2031  
Tel 02 9382 8252 | Fax 02 9382 8334  
[@SESPublicHealth](#)  
[alexander.kiss@health.nsw.gov.au](mailto:alexander.kiss@health.nsw.gov.au)  
[http://www.seslhd.health.nsw.gov.au/Public\\_Health/](http://www.seslhd.health.nsw.gov.au/Public_Health/)

SESLHDlogo



I work Tuesday to Friday

Alternate text



---

**From:** Philippa Frecklington [mailto:Philippa.Frecklington@woollahra.nsw.gov.au]  
**Sent:** Friday, 20 November 2020 10:49 AM  
**To:** Alexander Kiss (South Eastern Sydney LHD) <Alexander.Kiss@health.nsw.gov.au>  
**Subject:** Bellevue Hotel - 17-159 Hargrave Street, Paddington

Hi Alexander,

Thank you so much for your time just now. If you could send through relevant docs re: calculation methodology and the regulatory authority, I would be extremely grateful.

Many thanks,

Philippa

**Philippa Frecklington**  
Consultant Assessment Officer (Tues/Wed)  
**Woollahra Municipal Council**  
536 New South Head Road, Double Bay NSW 2028  
p 02 9391 7168  
w [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) e [philippa.frecklington@woollahra.nsw.gov.au](mailto:philippa.frecklington@woollahra.nsw.gov.au)

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Councillor Genia McCaffery  
President  
Local Government Association of NSW  
GPO Box 7003  
SYDNEY NSW 2001

Dear Councillor McCaffery

As you are aware the *Smoke-free Environment Act 2000* will ban smoking in enclosed areas of hotels, clubs, nightclubs and the casino from 2 July 2007.

The *Smoke-free Environment Amendment (Enclosed Places) Regulation 2006* was introduced for purposes of prescribing guidelines for determining what is an enclosed public place subsequent to this complete indoor ban.

The guidelines are similar to those that apply in other States and are designed to give practical guidance as to areas where smoking is permitted, such as genuine outdoor areas, while banning it in rooms, corridors and other internal spaces. The guidelines do not suggest there is a safe level of environmental tobacco smoke.

From 2 July 2007, proprietors are also required to prevent smoke drifting from unenclosed places such as balconies and beer gardens into non-smoking areas.

As you are also aware a significant number of proprietors of licensed venues are carrying out refurbishment of their premises within the context of the prescribed guidelines to create areas where smoking is allowed.

However it has come to my attention that a number of proprietors are seeking advice from local councils on whether or not proposed building works will comply with the guidelines.

I would like to clarify that there is nothing in the *Smoke-free Environment Act*, the *Local Government Act* or the *Environmental Planning and Assessment Act* that imposes on local Government any role or responsibility in assessing proposed developments for compliance with the *Smoke-free Environment Act*. Local Government authorities should therefore make it clear to applicants that a development approval cannot be relied upon as proof that a proposed facility complies with the guidelines in the *Smoke-free Environment Regulation*.

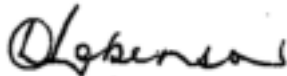
NSW Department of Health  
ABN 92 697 899 630  
73 Miller St North Sydney NSW 2060  
Locked Mail Bag 961 North Sydney NSW 2059  
Tel (02) 9391 9000 Fax (02) 9391 9101  
Website [www.health.nsw.gov.au](http://www.health.nsw.gov.au)



All proprietors intending to allow smoking in their facilities should be encouraged to obtain their own legal advice.

I have also provided this information to Councillor Col Sullivan, President, Shires Association of NSW. Should you or your staff require further information on this issue, please contact Dr John Sanders, Manager, Tobacco and Health Branch on (02) 9391 9059.

Yours sincerely



22/6/07

Dr Denise Robinson  
Chief Health Officer and  
Deputy Director-General, Population Health

## Smoke-free guide:

### Determining an enclosed public place

#### Introduction

This guide contains information regarding clause 6, of the Smoke-free Environment Regulation 2007 (incorporating amendments made by the Smoke-free Environment Amendment Regulation 2009).

The provisions of clause 6 prescribe guidelines in relation to determining what an 'enclosed public place' is, and when a covered outside area is considered to be substantially enclosed for the purposes of the Smoke-free Environment Act 2000 (the 'Act').

It is suggested that you read this guide in conjunction with the Act and Smoke-free Regulation 2007 (the 'Regulation'). The Act and Regulation can be found at:

<http://www.legislation.nsw.gov.au/>

#### What is an enclosed public place?

A "public place" means a place, or vehicle, that the public, or a section of the public, is entitled to use or that is open to, or is being used by, the public or a section of the public (whether on payment of money, by virtue of membership of a club or other body, or otherwise).

In relation to a public place, "enclosed" means having a ceiling or roof and, except for doors and passageways, is completely or substantially enclosed, whether permanently or temporarily.

For the purposes of the Regulation, a public place is considered to be enclosed if the total area of the **ceiling and wall surfaces** (the **total actual enclosed area**) of the public place is more than 75% of its **total notional ceiling and wall area** (the **total notional area**).

#### What is the 'total notional area'?

The total notional ceiling and wall area is the sum of:

- the wall surfaces, if all the walls were continuous and the same height, equal to the lowest ceiling point and;
- the floor area, within the walls, if the walls were continuous.

#### What is the 'total actual enclosed area'?

The total actual enclosed area is the sum of the actual wall surfaces and ceiling surfaces.

#### Walls and ceilings

Clause 6 (7) of the Regulation provides the following definitions:

- A wall includes any structure or device (whether fixed or moveable) that prevents or impedes lateral airflow.
- A ceiling includes a roof or any structure or device (whether fixed or moveable) that prevents or impedes upward airflow.
- A moveable structure includes a retractable awning, umbrella or any other moveable structure or device.

#### How can I determine what is a wall or ceiling?

Walls and ceilings do not need to be continuous to be considered a wall or ceiling. They may have gaps and openings and can be made out of any material, including (and not limited to) shade cloth, plastic and/or louvres.

For example, if louvres in a wall are fixed in a completely open, horizontal position with substantial distance between them, it is unlikely the louvres will prevent or impede lateral airflow. Therefore it is unlikely the louvres will be considered a 'wall'.

Similarly, if louvres in a ceiling are fixed in a completely open, vertical position the louvres are unlikely to prevent or impede lateral airflow. Therefore the louvres are unlikely to be considered a 'ceiling'.

Once the louvres are angled, they may be seen to prevent or impede airflow and therefore may be considered to be a 'ceiling' or a 'wall'.

#### Locked-open doors, windows, louvres, roofs with fixed or movable slats and retractable awnings

Clause 6 (7) of the Regulation provides the following definition:

A locked-open door or locked-open window means a door or window that opens directly to the outside and is locked fully open (that is, secured in its fully open position by means of a key operated lock) for the entire duration of the trading day.

Any locked-open doors or windows are treated as open space provided they open directly to the outside.

Louvres that are closed, or partially closed for any reason, for instance due to adverse weather at any point in a trading day, whether by manual or automatic means, **does not comply** with the definition of locked open door or window and **will NOT be counted as open space**.

A roof with fixed or moveable slats that is closed for any reason, for instance due to adverse weather at any point in a trading day, whether by manual or automatic means, **does not comply** with the definition of locked open door or window and **will NOT be counted as open space or an unroofed area**.

A roof or awning which is extended for any reason and so encloses, or partially encloses a smoking area, **does not comply** with the definition of locked open door or window and **will NOT be counted as open space or an unroofed area**.

#### How do I determine if a public place is enclosed?

In some cases it is possible to determine an enclosed public place by simply looking at the area.

In more difficult to determine areas measurements of the area will need to be undertaken to ensure that the total actual enclosed area does not exceed 75% of its total notional area.

## NSW HEALTH

Smoke-free guide: Determining an enclosed public place version 1.4 - 2<sup>nd</sup> November 2009

As the layout of each area and establishment is different, you may wish seek advice and assistance from an architect and/or engineer.

### Work out the percentage enclosed

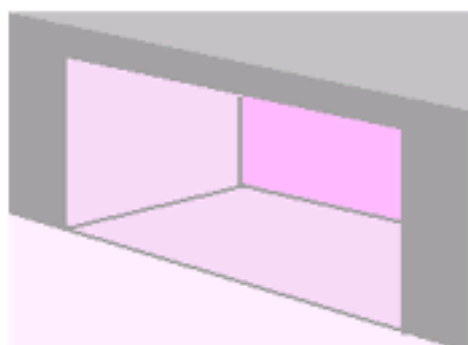
Once you have undertaken measurements and figured out your 'total actual enclosed area' and your 'total notional area' use this calculation:

$$\frac{\text{Total Actual Enclosed Area m}^2}{\text{Total Notional Area m}^2} \times 100 = \% \text{ Enclosed}$$

Following are some examples to assist you further in determining an enclosed public place.

#### Example 1: Area has a flat ceiling with one wall permanently open to the outside

(Diagrams not to scale)



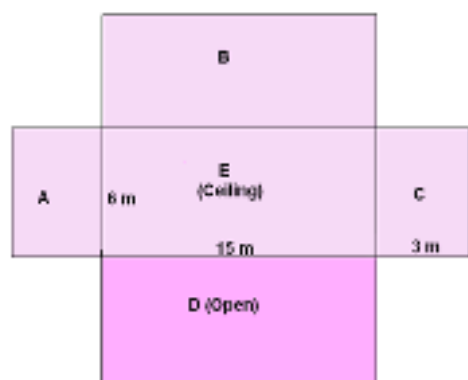
(Front view)

##### Notional Area:

The sum of the wall surfaces (if walls were continuous) + the ceiling

Ceiling height = 3m

Wall (A)	6 x 3	= 18m <sup>2</sup>
Wall (B)	15 x 3	= 45m <sup>2</sup>
Wall (C)	6 x 3	= 18m <sup>2</sup>
Wall (D)	15 x 3	= 45m <sup>2</sup>
Ceiling (E)	15 x 6	= 90m <sup>2</sup>
<b>Total Notional Area</b>		<b>= 216m<sup>2</sup></b>



(Overhead view)

##### Actual Area:

The sum of the actual surfaces, including the ceiling

Wall (A)	6 x 3	= 18m <sup>2</sup>
----------	-------	--------------------

Wall (B)	15 x 3	= 45m <sup>2</sup>
Wall (C)	6 x 3	= 18m <sup>2</sup>
Ceiling (E)	15 x 6	= 90m <sup>2</sup>
<b>Total Actual Area</b>		<b>= 171m<sup>2</sup></b>

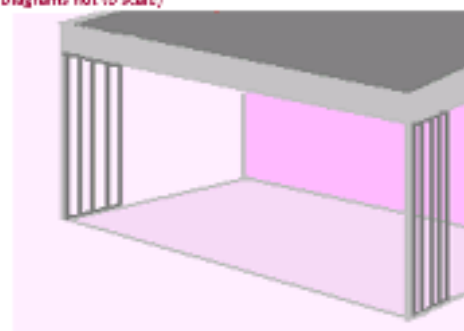
$$\text{Actual Area} \div \text{Notional Area} \times 100 =$$

$$171 \text{ m}^2 \div 216 \text{ m}^2 \times 100 = 79\%$$

The area is enclosed and smoking is not permitted.

#### Example 2: Area has a flat ceiling, one wall permanently open to the outside & two walls with locked-open doors

(Diagrams not to scale)



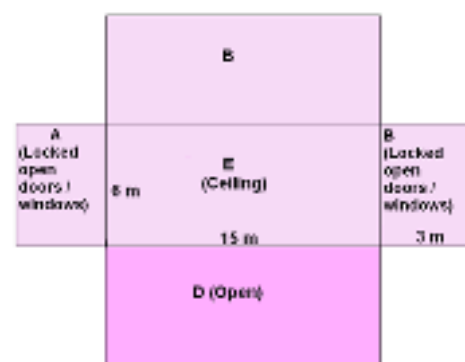
(Front view)

##### Notional Area:

The sum of the wall surfaces (if walls were continuous) + ceiling

Ceiling height = 3m

Wall (A)	6 x 3	= 18m <sup>2</sup>
Wall (B)	15 x 3	= 45m <sup>2</sup>
Wall (C)	6 x 3	= 18m <sup>2</sup>
Wall (D)	15 x 3	= 45m <sup>2</sup>
Ceiling	15 x 6	= 90m <sup>2</sup>
<b>Total Notional Area</b>		<b>= 216m<sup>2</sup></b>



(Overhead view)

##### Actual Area:

The sum of the actual surfaces, including the ceiling.

Note that locked-open doors/windows are treated as open space provided they open directly to the outside and are locked open for the entire duration of the trading day:

Wall (B)	15 x 3	= 45m <sup>2</sup>
Ceiling (E)	15 x 6	= 90m <sup>2</sup>

Total Actual Area = 135m<sup>2</sup>

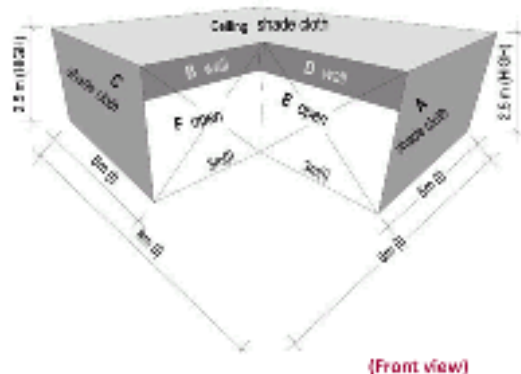
Actual Area ÷ Notional Area x 100 =  
135 m<sup>2</sup> ÷ 216 m<sup>2</sup> x 100 = 62.5%

The area is unenclosed when doors are locked open  
(for the entire duration of the trading day) and  
smoking is permitted.

#### Example 3:

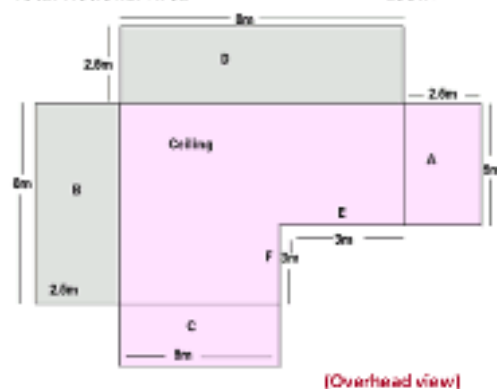
Outdoor area with shade cloth ceiling and walls  
and two permanently open walls

(Diagrams not to scale)



(Front view)

<b>Notional Area:</b>		
Ceiling height	2.5m	
Shade cloth wall (A)	12.5m <sup>2</sup>	
Wall of building (B)	20m <sup>2</sup>	
Shade cloth wall (C)	12.5m <sup>2</sup>	
Wall of building (D)	20m <sup>2</sup>	
Open to outside (E)	7.5m <sup>2</sup>	
Open to outside (F)	7.5m <sup>2</sup>	
Shade cloth ceiling	55m <sup>2</sup>	
<b>Total Notional Area</b>	<b>135m<sup>2</sup></b>	



(Overhead view)

<b>Actual area:</b>		
Ceiling height	2.5m	
Shade cloth wall (A)	12.5m <sup>2</sup>	
Wall of building (B)	20m <sup>2</sup>	
Shade cloth wall (C)	12.5m <sup>2</sup>	
Wall of building (D)	20m <sup>2</sup>	
Shade cloth ceiling	55m <sup>2</sup>	
<b>Total Actual Area</b>	<b>120m<sup>2</sup></b>	

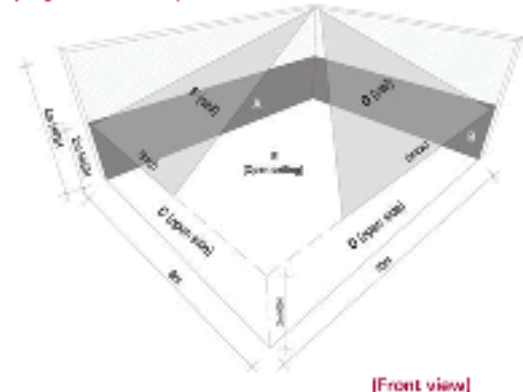
Actual Area ÷ Notional Area x 100 =  
120 m<sup>2</sup> ÷ 135 m<sup>2</sup> x 100 = 89%

The area is enclosed and smoking is not permitted

#### Example 4:

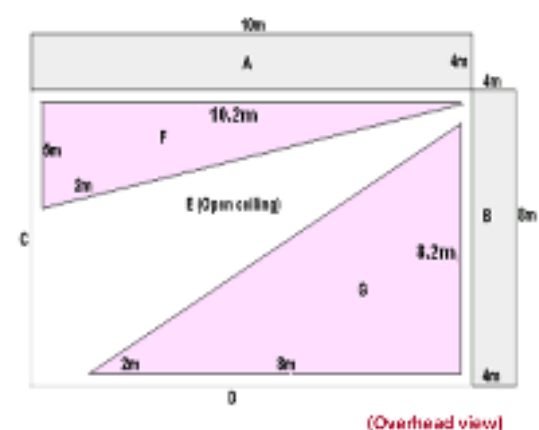
Outdoor area with sails as ceiling

(Diagrams not to scale)



(Front view)

<b>Notional Area:</b>		
Ceiling height	2m	
Wall of building (A)	20m <sup>2</sup>	
Wall of building (B)	16m <sup>2</sup>	
Open side (C)	16m <sup>2</sup>	
Open side (D)	20m <sup>2</sup>	
Ceiling	90m <sup>2</sup>	
<b>Total Notional Area</b>	<b>152m<sup>2</sup></b>	



(Overhead view)

<b>Actual Area:</b>		
Ceiling height	2m	
Wall of building (A)	20m <sup>2</sup>	
Wall of building (B)	16m <sup>2</sup>	
Soil <sup>4</sup> (F)	25.5m <sup>2</sup>	
Soil <sup>4</sup> (G)	32.8m <sup>2</sup>	
<b>Total Actual Area</b>	<b>94.3m<sup>2</sup></b>	

<sup>4</sup> Area of triangle = Length x width ÷ 2

Actual Area ÷ Notional Area x 100 =  
94.3 m<sup>2</sup> ÷ 152 m<sup>2</sup> x 100 = 62%

The area is unenclosed and smoking is  
permitted.

Disclaimer: This information is intended only as a guide and introduction to the relevant provisions of the Smoke-free Environment Regulations 2007. The Council of New South Wales does not accept any liability for any expenses, loss or damage suffered as a result of reliance upon the information contained in this document. Nothing in this document should be taken as the seeking of appropriate legal advice where considered appropriate.