

ITEM 7. DEVELOPMENT APPLICATION: 2 DOWLING STREET
WOOLLOOMOOLOO

FILE NO: D/2007/1934

SUMMARY

Date of Submission: 12 October 2007

Amended plans received 1 July 2008

Deemed refusal appeal lodged 15 August 2008 with the Land and Environment Court

Voluntary Planning Agreement (VPA) submitted 7 November 2008

Applicant: Eeles Trelease Pty Ltd

Proposal Summary: Construct a 5 storey commercial / retail building with basement car parking for 14 cars on the corner of Cowper Wharf Roadway and Dowling Street Woolloomooloo.

Sixty (60) submissions were received, most of which were concerned about the impact resulting from the height of the proposal. The applicant has attempted to address this concern by lowering the floor to ceiling heights to ensure the building stays generally within the envelope of a previously approved 5 storey residential building and relocating all roof top plant to the basement.

A comparison of allowable core planning controls to those previously approved and proposed are:

	Allowed	Approved	Proposed
FSR	1.75:1	3.2:1	4.3:1
Height	12m	15.74m	15.74m
Parking	17 spaces	16 spaces	14 spaces

Summary Recommendation: The proposal was originally considered by Council on 2 June 2008. Council resolved to defer consideration of the DA to seek the submission of amended plans which would address the perceived additional height and address overshadowing impacts on surrounding residential premises.

Amended plans were submitted 1 July 2008, relocating the plant to the basement area, increase part of the southern boundary setbacks and adjusting the height of the roof and roofline.

**Summary Recommendation
(continued):**

A development application (D/2008/1906) was recently approved on 11 November 2008 to reconfigure four Department of Housing units at 4-16 Dowling Street Woolloomooloo which would be affected by the subject proposal.

A Voluntary Planning Agreement (VPA) to the negotiated value of \$270,000 was submitted by the applicant 7 November 2008. The statutory 28 day period notification will be completed 9 December 2008.

As a result of the submission of amended plans and the above mentioned submissions, the proposal is considered satisfactory - subject to conditions and is recommended for approval.

Development Controls:

- (i) South Sydney Local Environmental Plan 1998 (Gazetted 28 April 1998, as amended)
- (ii) South Sydney Development Control Plan 1997 – Urban Design (in force on 2 July 1997, as amended)
- (iii) City of Sydney Notification of Planning and Development Applications Development Control Plan 2005 (date of commencement – 18 May 2005)
- (iv) Development Control Plan No. 11 – Transport Guidelines for Development 1996 (Adopted 8 May 1996)
- (v) City of Sydney Contaminated Land Development Control Plan 2004 (in force on 28 June 2004)
- (vi) City of Sydney Access Development Control Plan 2004 (in force on 28 June 2004)

Developer Contributions:

- (vii) South Sydney: Section 94 Contributions Plan 2006

Attachments:

- A - Draft Conditions of Consent
- B - Plans, elevations and shadow diagrams
- C - Report to the Planning and Development Committee on 26 May 2008
- D - Voluntary Planning Agreement (VPA) dated 7 October 2008

RECOMMENDATION

It is resolved that:

- (A) authority be delegated to the Chief Executive Officer to determine the application having regard to the contents of the subject report and the draft conditions of consent, shown at Attachment A to the subject report; and
- (B) determination of the application, in accordance with clause (A) above, is to only occur following the resolution of any public submissions to the draft Voluntary Planning Agreement related to the development site, which is currently on public exhibition.

BACKGROUND

The Site and Surrounding Development

1. The proposed construction of a 5 storey retail/commercial building at 2 Dowling Street Woolloomooloo was considered by Council on 2 June 2008 where it was resolved that Council:
 - (A) *defer consideration of the subject development application; and*
 - (B) *seek the submission of amended plans. Such plans are to include relocating the roof top plant and equipment to within the previously approved envelope, and increase setbacks to the southern boundary to improve solar access to the adjoining residential building. The amended drawings are to clearly demonstrate that all adjoining and surrounding residential premises receive solar and daylight access strictly in accordance with the controls contained under South Sydney Development Control Plan 1997: Urban Design (DCP) Part E 5.1, namely, that "Solar access reaching principal living area windows and to a minimum of 50% of the private open space is maintained for at least two hours, between 9.00am and 3.00pm at the winter solstice (21 June)".*
2. Further plans were submitted relocating the plant equipment to reduce the perceived height of the building envelope and to reduce overshadowing. A copy of the plans and elevations is at **Attachment B**.
3. A copy of the planning officer's report to the Planning Development and Transport Committee on 26 May 2008 (excluding attachments which are superseded by amended plans) is at **Attachment C**.

ISSUES

4. The issues identified in the planner's report to the Planning Development and Transport Committee on 26 May 2008 are discussed in detail below:

Sunlight Access

5. Overshadowing of the adjacent residential buildings at 4 Dowling Street and 67 Cowper Wharf Road were identified as issues within the previous planning report. The proposal would have resulted in the adjacent buildings not meeting the requirements to sunlight stipulated in the South Sydney DCP Urban Design 1997. Specifically Part E 5.1 states:

Solar access reaching principle living area windows and to a minimum of 50% of the private open space is maintained for at least two hours, between 9am and 3pm at the winter solstice (21 June)
6. The proposal has been amended to partly address this issue with the submission of amended plans to:
 - (a) reduce part of the roof by 500mm creating an 'apron' between 2500mm - 4000mm wide on all frontages and moving the roofline further away from the eastern frontage. Together these modifications allow the minimum two hours of daylight to reach all affected units on the western side at the winter solstice;

- (b) relocate the roof top plant to the basement to reduce the overall perceived height of the building; and
 - (c) provide further setbacks to the southern boundary with relocation of the solid balustrade away from the south-eastern corner and south-western boundary.
7. The applicant has also submitted a development application to reconfigure 4 apartments within the adjacent Department of Housing building. The application was approved on 11 November 2008. Each apartment will now meeting the minimum requirements for sunlight to principal living areas. Excluding the balconies on the northern boundary, each apartment will meet the minimum requirement of sunlight to 50% of private open space, with juliette balconies on the east and west boundaries. This is consistent with the existing open space for each of the remaining apartments with the Department of Housing building.
8. Despite the above, it is recommended that the applicant provide to Council a formal written agreement signed by the Department of Housing that authorises the applicant to undertake the works to the adjacent residential building in accordance with the consent and that those works be completed prior to the issue of any Occupation Certificate for the subject site at 2 Dowling Street. The timing of the works is considered appropriate given the structural stability issues associated with the residential building that will need to be resolved prior to the reconfiguring works commencing.

Bonus Floor Space Scheme

9. The South Sydney DCP Urban Design 1997 sets the FSR for the site at 1.75:1; the proposal is for a 5 storey building with an FSR of 4.3:1. The DCP, however, permits a higher FSR under a bonus floor space scheme. To participate in the scheme, the increase in FSR must be acceptable in terms of environmental impacts and the additional FSR is to be offset with public domain improvements to provide significant public benefits.
10. The applicant has opted to participate in this scheme and has submitted a voluntary planning agreement (VPA) to the value of \$270,000 (**Attachment D**). The applicant wishes to make a monetary contribution rather than carry out specific works.
11. The proposal has a similar envelope as an approved and active development consent U02/1192. The difference on FSR is accounted to the majority of balconies and voids being filled in with the difference in use from residential to commercial.
12. Given that the issues concerning overshadowing have been resolved and the applicant has submitted a VPA to provide significant public benefits, the additional floor space is considered acceptable.
13. It should be noted that the VPA is on exhibition until 9 December 2008.

Notification

14. Approximately 12 submissions were received in response to the notification of the amended proposal. The residents were primarily concerned about the impact resulting from the height of the proposal and the commercial use. The application is currently being renotified as part of the Voluntary Planning Agreement process.

15. In regards to height and overshadowing, the applicant has addressed this concern by lowering the floor to ceiling heights to ensure the building stays generally within the envelope of a previously approved 5 storey residential building, including relocation of the plant to the basement level.
16. In regard to the commercial use, the proposal is permissible in the Mixed Uses 10 zone and would be in keeping with the majority of other non-residential buildings that front Cowper Wharf Road.

Land & Environment Court - Deemed Refusal Appeal

17. The applicant had lodged a deemed refusal appeal with the Land and Environment Court and was set for hearing on 15 and 16 December 2008. However, on 12 November 2008, the applicant lodged a Notice of Motion to vacate the hearing dates and the Registrar of the Land and Environment Court has ordered the proceedings be stood over for a further directions hearing on 20 January 2009.

SECTION 79C EVALUATION

18. Besides the above matters, the original assessment, found in the report at **Attachment B**, is still relevant and is applicable to the revised proposal subject of this report.

CONCLUSION

19. The proposal generally satisfies the relevant planning instruments. The changes made by the applicant will reduce the overall height of the building, which will ensure compliance with solar access requirements for the adjacent residential dwellings.
20. The submission of the VPA is consistent with the provisions of the South Sydney DCP Urban Design 1997 in that the amended scheme is now acceptable in terms of environmental amenity impacts and will benefit the surrounding area through funding public domain works.
21. It is recommended that the application be delegated to the CEO for determination, subject to finalisation of the Voluntary Planning Agreement dated 7 November 2008.
22. It is recommended that the period after which the development consent will lapse be two (2) years.

GIOVANNI CIRILLO

Director City Planning and Regulatory Services

(Jai Reid, Acting Specialist Planner)