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HERITAGE DEVELOPMENT APPLICATION
DETERMINATION PROCESS
HERITAGE DEVELOPMENT APPLICATION DETERMINATION PROCESS AT WOOLLAHRA MUNICIPAL COUNCIL: CASE STUDIES OF "HAWTHORNDEN" & "BROUGHAM"

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VOLUME I
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II ABBREVIATION LIST

WMC – Woollahra Municipal Council
B and D Committee – Building and Development Committee
UCAC – Urban Conservation Advisory Committee
LEP – Local Environmental Plan
WLEP – Woollahra Local Environmental Plan
DCP – Development Control Plan
RDCP – Residential Development Control Plan
CP – Conservation Plan
DA – Development Application
LEC – Land and Environment Court
RAPI – Royal Australian Planning Institute
PCO – Permanent Conservation Order
S.90 – Section 90
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And my husband, Osman for his support and patience during my study. Without his help the formatting of the paper would never have been completed.
This thesis examines the heritage development application (DA) determination process at Woollahra Municipal Council (WMC) when WMC had no formal heritage policies or formal procedural guidelines to determine a heritage DA.

Following an overview of heritage provisions in Woollahra, two case studies of heritage DAs are studied. Both buildings are significant heritage items in Woollahra, located at 6-12 Roslyndale Avenue, known as “Hawthornden”, and 118 Wallis Street, known as “Brougham”. The buildings are currently listed as Local Heritage Items under Woollahra Local Environmental Plan (WLEP) 1995.

The cases were determined in different procedural contexts. The Hawthornden DA was determined when WMC did not have a formal policy or formal procedural guidelines for dealing with heritage applications. Conversely, the Brougham DA was determined in the context of clear guidelines when WMC developed a Development Control Plan (DCP) for the site.

The stakeholder analysis demonstrates the interests and interactions of stakeholders during the determination of both DAs. Interviews with the stakeholders provide comments on the roles of different players and how they influenced the determination and decision making process.

The findings provide comments on one Council’s heritage determination process dealing with heritage applications. The case studies demonstrate that there was little improvement in the determination processes of the DAs which occurred in two different procedural contexts. The study aims to describe WMC’s interpretation and implementation of its heritage policy.
1 CHAPTER 1

1.1 INTRODUCTION:

The purpose of this thesis is to study the heritage development application (DA) determination process at Woollahra Municipal Council (WMC). The study aims to provide an insight into the implementation of WMC's heritage policy and procedures. WMC currently does not have a Heritage Local Environmental Plan (LEP) or a Heritage Development Control Plan (DCP). However, previous LEPs including the current Woollahra Local Environmental Plan (WLEP) 1995 have contained heritage provisions. Prior to August 1995, WMC had no formal procedural guidelines for dealing with building and development applications. Since then, some heritage policies and procedural guidelines dealing specifically with heritage DAs have been developed.

The case studies were determined under the Heritage Provisions of WLEP 1995. The "Hawthornden" proposals (two DAs) are studied as examples from a time at which there were no formal heritage policies or formal procedural guidelines. The "Brougham" proposal is used as a formal policy/clear guideline example since the site had a DCP in the determination of the DA. The cases demonstrate how WMC's heritage policy and procedures applied to the cases and affected the determination processes. The cases also demonstrate how procedures and actions have developed and changed during the determination process or at the end of the DAs.

Secondly, the study aims to demonstrate different stakeholders' interests and interactions during the process of the DAs and to provide a discussion of the ways in which this affected decision-making. The study attempts to demonstrate the political side of the Council. The role of elected members of the Council in the decision making is emphasised.

WMC's policy and procedures are considered as written/formal policies (policy in documents) and unwritten policies or actions (policy in action or policy in words). One of the arguments of the study is that unwritten policies and actions have been the common way of determining an application at WMC, since the Council does not
provide a formal heritage policy or formal procedural guidelines for the heritage determination process.

The case studies were chosen because of their similarities and differences. The buildings have similar heritage significance in WMC's area as identified heritage items under WLEP 1995. Hawthornden and Brougham buildings are also registered under the National Trust Register. Both proposals aimed to infill their sites with medium density housing developments and to restore the heritage buildings. Yet the DAs were concluded differently with the refusal of Hawthornden and approval of Brougham.

The cases have also major differences. Although both cases were determined in the absence of a formal heritage policy and a formal procedural guidelines, the Brougham proposal occurred in a different procedural context. WMC had developed a DCP for the Brougham site after the approval of rezoning of the site. The zoning was changed from "Special Use/Child Welfare Home" to "Special Use/Integrated Residential/Community Uses" in order to allow the proposed development to proceed. Eventually, the Brougham proposal was assessed under the heritage provisions of WLEP 1995 and the DCP for the site. The Brougham proposal consisted of the construction of 37 aged persons' housing units and basement car parking, with the use of Brougham as a long day child care centre. On 11 March 1996, the application was approved by WMC.

The history of the Hawthornden proposal differed from that of Brougham. The owners of Hawthornden had been seeking an approval since the 1960s for medium density housing development for the site. All previous applications except one were concluded with refusals. However, the one approval was never carried out. As a result of the current two refusals which are subject to this study, a subsequent appeal to the Land and Environment Court (LEC) was also concluded with refusal. The case brought out an important outcome at the end of the process which led to the formulation of a policy for the site by WMC. A DCP was prepared to define a conservation policy and to specify controls for the future proposals for the site.

The cases illustrate different outcomes and issues relating to heritage. Given this, it was decided to compare two proposals, analyse the determination processes and outcomes and observe the changes which had occurred in the way the heritage DAs...
were determined in two different procedural contexts. The cases should demonstrate the way in which WMC applies its heritage policy in practice. A comparison of the two cases also reveals the role of political issues in decision making. One of the most important outcomes of the study is the observation that “decisions can be made politically”.

The decision to study WMC’s heritage DA determination process was made for a variety of reasons, primarily because of the researcher’s personal interest in heritage issues. The case studies in Woollahra were considered to be good examples involving important heritage related issues. It was believed that the cases would provide a useful insight into the planning process. The choice of topic was also based on practical reasons. The researcher was employed at the time at WMC. Working on a case study such as this relies heavily on gaining easy access to files and other documented information as a primary resource. Another reason was the opportunity to consult regularly with Council’s planning officers who were involved in the cases.

Urban conservation processes, urban design issues and the merits of Section 90 (s.90) are not examined or discussed in this study. The study aims to demonstrate the determination process of two heritage development applications and the role of different stakeholders in the decision making process. The study is an attempt to demonstrate how heritage matters were handled at WMC through the case studies.

1.2 METHODOLOGY

Multiple sources of evidence were used in data collection for the case studies. They were mainly documentary information and interviews.

1.2.1 DOCUMENTATION:

Documentary information of the cases included letters from adjoining property owners, the applicant and advisory bodies; Council’s agendas, minutes of meetings and other written reports of events; administrative documents such as progress reports, internal documents and referrals from different departments of the Council, and finally newspaper articles which appeared in the mass media. The majority of the newspaper articles were obtained from the State Library’s The Sydney Morning Herald CD-ROM.
One of the most important items of documentation of the Hawthornden case was a report supplied by the applicant/architect of the Hawthornden DA from his own personal file. The document was a four page report outlining the sequence of events during the development of the proposal. The document included information about the meetings with WMC’s senior planning staff and heritage planner before and after lodgement of the application. The document was particularly important in that it revealed information about events occurring before the official lodgement of the DA, which were not documented in the Council’s files. The architect clearly indicated how the design proposal developed in time. The document is attached in Appendix 8.

Chronological study of both the Hawthornden and Brougham proposals may be found in Appendix 5a and Appendix 5b. This information provides a chronological summary of the history of the proposals from the lodgement to the decision making time frame. The Chronological documents also provide brief summaries of letters submitted by different stakeholders. Those letters demonstrated the stakeholders’ role in the determination process and their understandings of the different issues such as heritage. Newspaper articles concerning the cases, particularly the Brougham case, appeared in the Sydney Morning Herald and may be found in Appendix 18.

1.2.2 INTERVIEWS:

Among the most important sources of information for the study were the interviews. The type of the interviews used in the study is described as “focused interviews”, in which respondents were interviewed for a short period of time (half an hour to an hour). In most cases, the interviews remained open-ended in a conversational manner; however, a certain set of questions was followed derived from the research questions. In some situations, the respondent was asked to propose his or her own insights into certain occurrences and some of the propositions were also used as the basis for further inquiry.

One purpose of the “focused interviews” was to corroborate certain facts that the researcher thought were established. In this situation, the specific questions were carefully worded to allow the respondents to provide a fresh commentary about the subject (see Appendix 19b).
The interviews were recorded with tape recorders, used with the permission of the respondents. One of the interviews was done by phone through note taking, since the respondent preferred this method. The telephone conversation took approximately half an hour. Afterwards, the questions and answers were typed in detail.

The interview questions were designed to find out answers and clarifications to certain points and to get different stakeholders' comments about the application determination process. The original objectives of the case studies and research propositions reflected the interview questions. The interviews basically aimed to clarify: "the problems experienced by the applicant during the process"; "WMC's efficiency in providing information and guidance for the proposal"; "the roles of technical and elected staff of WMC in the decision making process"; "the roles of other stakeholders in the determination process"; "how the heritage matters/issues were handled in WMC" and the reason(s) behind the outcome of the proposals.

The audio tapes were played back repeatedly in order to analyse the interview data. The tapes of each interview were converted to text form through listening to the audio tapes and typing the complete conversations. The conversations were typed as separate paragraphs, each paragraph providing the respondent's answer to a specific question. The answers sometimes came out as general comments on more than one issue. This helped to group the interview data according to themes. Direct quotes from stakeholders were used to depict a clear picture of their position in the determination process. Some of the recordings were of lower quality than others (some respondents spoke in quiet voice or the recorder was not close enough to respondent). Thus some indecipherable parts could not be converted to text form. However, this problem occurred only in some parts of two interview records and was therefore not a major problem. At the end of the listening and typing process, the text data derived from the audio tapes was a twelve page document (6300 words).

Subsequently, the audible (recordings) messages were sorted according to their themes. A table was created for each case study and each table provided a list of the specific issues which were the objectives of the interviews. The recorded messages (as paragraphs) from different respondents were placed under the relevant issues. In this way the researcher could find different respondents' comments on the same issues for both cases (Appendix 19c and 19d).
The analysis of the case study evidence was based mainly on research propositions. The original objectives and design of the case studies were based on certain propositions “that unwritten policies and actions have been the common way of determining an application at WMC since the Council does not provide a formal heritage policy or formal procedural guidelines on the heritage determination process”; “that decisions can be made politically”; and “that WMC displays inconsistency in dealing with heritage issues (policy in practice)”. These propositions shaped the data collection plan (i.e., documentary information and interviews) and guided the case study analysis. The propositions helped to focus attention on certain data and to ignore other data.

A list of different stakeholder (names need to be kept confidential but, positions are listed), who were interviewed is provided in Appendix 19a. The people who interviewed were selected according to certain criteria. The applicant/architect and the planning officers for both applications as well as the heritage planner were interviewed. It was thought that they were the essential players of the two applications. It was decided to interview two Councillors as representative the elected members of the WMC. One person from the advisory bodies was interviewed as a representative this stakeholder group. Adjoining property owners were not approached for interview mainly because they were too many (27 objections for the Hawthorneden DAs and 15 objections for the Brougham DA) and it was too difficult to select the representatives. It was believed that the documented information (objection letters, reports prepared on behalf of the neighbours) was sufficient to reflect their role in the determination process.

The architect/applicant of the Hawthorneden proposals who also represented the owner of the land during the application process was interviewed. Two members of the project managers of the Brougham application who lodged the application were approached for interview. However, the request was refused. One of them was currently working overseas at that time and the other did not want to be involved since his firm was not dealing with the application any more and quit before the determination of the proposal. Secondly, the owners of the Brougham were approached for interview. Two representatives of the owner of Brougham (The Temple Emanuel) refused to speak about the proposal. One of the reasons for not
wanting to talk about the proposal was "not to speak much about it until the job is carried out". Eventually, a member of a town planning consulting firm who was involved in the process of the Brougham proposal was interviewed.

Three technical staff of WMC were interviewed. They were the two town planners who assessed the Hawthornden and Brougham applications (one of them was the manager of Development Control section of WMC who contributed on both cases) and the heritage planner who commented on the applications.

It was decided to interview only two Councillors as representing the other members of Building and Development Committee (B and D Committee) which determined both proposals. Councillor DL was approached for interview since both proposals were located in his ward. The interview request was refused by him with the reason that he "does not remember too much about the proposals since they were determined quite a long time ago and if anything is needed it could be found out from the Council’s files". Councillor JN was interviewed as one of the B and D Committee members who voted for both proposals. Councillor JL was also interviewed for the Brougham case because of his involvement in the assessment process as representing the Jewish Committee of Woollahra. Councillor NG (who was Mayor of WMC when the Brougham application was determined) was approached for interview after his role in the determination of the Brougham application was noted; however, he was overseas when the study was undertaken.

The president of the Woollahra History and Heritage Society was interviewed. Personnel from other heritage organisations, The National Trust and Heritage Council, were not interviewed.

Adjoining property owners were not interviewed. The documentary information from the public provided strong evidence to the study. Objection letters to the original and amended scheme of the applications, consultants’ reports prepared on behalf of some adjoining property owners and petitions clearly demonstrated the public’s contribution to the decision making process.

Ethical issues and concerns of the study were identified during the planning stages of the research and the ethical justification was considered for different situations of the cases. WMC consented to use of the documented information in Council’s files as one
of sources of evidence of the cases since Council’s files are open to the public under the Freedom of Information Act. The files did not contain any “confidential” document which prohibited public use. The author was asked by the WMC management that not to include the original letters of the adjoining property owners as Appendices but to use them, with names and addresses, as sources.

1.3 THE CONTENT OF THE CHAPTERS:

Chapter 2 details the theoretical content of the study. However, the study does not provide an extensive literature review, because the study area (development application determination process, stakeholder analysis etc.) lacks theoretical studies especially in Australia. The methodology is case study research and within this research area there is little theoretical discussion in the literature. However, the study attempts to gather relevant theoretical issues and discuss them in the framework of the case study. In this regard, communication and decision making theory, mainly Patsy Healey’s work, are examined.

Chapter 3 includes a history of WMC’s heritage provisions. Current heritage policy documents at WMC and the general heritage provisions in LEPs which applied to the cases are explained. WMC’s heritage DA process is also discussed as “policy in words” or “policy in action”. Current policy changes in heritage with the introduction of “heritage report information requirements” and “checklist” are also examined.

Chapter 4 comprises a summary of each case and a detailed examination of the Hawthornden DAs. The first part of this chapter introduces both cases. The differences and similarities (see Appendix 3, Table 1) between the cases and reasons for their selections for the study are explained. The chapter continues with the DA process of the Hawthornden case. The first and second proposals are examined. The differences between the two proposals and the issues applied to the cases are discussed. Chapter 4 also includes the Land and Environment Court’s decision on the proposal and the Council’s policy relating to the site and the current progress on it.

Chapter 5 deals with the Brougham application and goes on to compare the two cases. The proposal is examined from the beginning of the rezoning application and the preparation of the DCP for the site. The DCP for the site is particularly examined to find out how it affected the assessment of the DA. Chapter 5 compares the cases and
comments upon them. The discussion and comments on the assessment and decision making processes also reflect the views of the different interest groups involved in the cases as well as the author's contribution as a researcher. This information used was derived from Council’s files including submission letters, internal memoranda, meeting minutes and outcomes of interviews with different interest groups.

Chapter 6 deals with the stakeholders. Adjoing property owners, applicant (architect and project managers in two cases), architect and the Council (technical and elected) are defined as stakeholders who were different interest groups involved in the process of applications. This chapter provides a full and detailed assessment of the interactions between the stakeholders. Their roles in the decision making process are carefully examined.

The concluding Chapter 7 provides findings from the examination of the case studies on WMC's heritage policy in dealing with the heritage DAs. Comments are provided on the determination processes and outcome of each case which occurred in two different procedural contexts. This chapter also provides suggestions for improving the existing situation in terms of interactions between stakeholders. The findings of the study and possible general suggestions are made in the context of planning. The problems and concerns arising from assessment of the cases and the decision making process are highlighted. Comments are provided in the light of the cases and possible recommendations are made in regard to heritage.
2 CHAPTER 2

2.1 THEORETICAL CONTENT

This part of the study addresses a broad theoretical base which is mainly found in British writings related to the topic and content of the study. The theoretical content does not include an extensive literature review, for two reasons. Firstly, there is a lack of available theoretical study in Australian literature related to the topic. Secondly, the study is basically comprised of two case studies (a story of two cases) and their outcomes. In this regard, the topic is quite specific and self-explanatory in its context.

While it is not possible, for the above reasons, to provide an extensive review of relevant literature, this chapter considers selected literature related to the topic, most of it British, concerning the development process, the role of stakeholders in the development process, and negotiation or communication between main players. This chapter is mainly derived from Patsy Healey’s work on planning and its implications in local government practice, focusing on the development process and the relationships between different interest groups.

The Australian theoretical studies relate mainly to current changes in the operation of local governments and current changes in the legislation system and their possible implications in the development application process.

2.2 DEVELOPMENT IMPACTS, THE COMMUNITY INTEREST AND THE PLANNING SYSTEM IN BRITAIN

The book by Healey, Purdue and Ennis (1995) provides an account of the interaction between land use planning regulation and development activity in Britain from the mid-1980s to the early 1990s. The relation between development impacts and community interest in the planning system is examined, as well as the way in which these issues are addressed in the current planning system. The book especially draws attention to the issue of “planning agreements” and the term “planning gain” to explain the negotiative process between planning authority and developer.
By the 1980s, the concepts of the diversity of interest and conflicts between different interests were recognised in local environmental planning. The different interest groups are defined as: land and property owners, developers; people who live near the proposed development; the infrastructure providers and various influential groups concerned with the quality of local communities, with the protection and enhancement of environmental assets and with a range of social, economic and environmental issues. According to Healey et al. (1995), as a result of government policy in the mid-1980s to reduce the role of plan, the negotiation between those different parties and the mediation of conflicts took place around individual projects, in a “project-led” approach.

The “project-led” approach is explained as a process of a political challenge and addressing the claims of different interests while enabling agreed development to proceed. Healey et al. (1995) argue that one of the results of this approach of the 1980s was to raise the issue of planning agreements, referred to by the term “planning gain”, to the forefront of public interest. The frequently cited example was the retail firm which offered a swimming pool in a deal which allowed development of a superstore on the edge of town. The authors assert that this system represented “buying planning permission”.

Although this plan-led approach still exists in the 1990s in Britain, it is as a continuation of negotiative practice together with increasing awareness of implications of the environmental issues in land use planning.

2.3 DEVELOPMENT, ITS IMPACTS AND STAKEHOLDERS’ INTERESTS

Development is a transformation of a site or property from one form to another. It involves a series of events, tasks, interests and driving forces. This constitutes the development process. The analyses of the various forms of the development process and of the roles of different players and strategies help to identify the different ways of undertaking development and the potential for variation in the relations between actors in the development process (Healey et al., 1995, p.46).
Development projects exist in different scales, from an extension of an existing building to a major residential/commercial project in an urban centre. In this regard, development is a production process.

Much of the literature on development impacts, planning agreements and planning gains makes relatively simple assumptions about projects: that development is profitable; that its impacts are easy to identify; that it is relatively simple to work out who should bear the cost. As a consequence, little attention has been given until recently to ways of expressing policies in plans which will guide the discussion of impacts and their mitigation on individual projects (Healey et al., 1995, p. 9).

In order to identify the impacts of a development, it must be considered in relation to its specific site and surroundings. Healey et al. (1995) define the main players of the development control process as:

- applicants for planning permission
- local residents affected by proposed development in an area
- the wider general public in an area
- the business community (if there is any), other than in the capacity of applicants for planning permission
- interest or pressure groups in the community
- other departments of the local authority
- the elected members of the council
- professional staff (planners, heritage planners, surveyors, engineers)

2.3.1 THE INTEREST AND PERSPECTIVES OF DEVELOPERS:

The applicant/owner/architect represent the developer’s interest, for the purpose of presenting and receiving approval for the developer’s wishes for the proposal. The developers’ interests may be mainly oriented towards operational and marketing issues, particularly focusing on the profit to be made from the proposed development.

The aim of the applicant is to obtain approval from the planning authority, usually the local council. The applicant may need to negotiate with this planning authority and with public and other interest groups. Frequently, the applicant negotiates with the
planning authority in the preliminary stages of the proposal and regularly during the assessment.

For developers, delay in granting of a planning permission can have important financial consequences. For example, an opportunity to benefit from a rising property market may be missed, or the overall cost of the development may rise because the period for which interest charges have to be paid is extended.

A survey performed by Healey et al. (1995) to determine developers’ interests and perspectives showed that the securing of a speedy permission was the important consideration for all the developers who were interviewed. Developers prefer the local authority to be willing to negotiate, and to seek solutions to problems rather than to issue instant refusals.

2.3.2 COMMUNITY INTERESTS AND PLANNING POLICIES:

The community interest is not easy to identify because it is very diverse. The local authority represents the political community of its area, and has responsibility for local planning. It has also other responsibilities such as to create community facilities, and look after social and physical infrastructure (e.g., road maintenance, landscape maintenance) in its jurisdiction.

However, neighbourhoods and residence organisations may campaign to have a formalised voice in planning decisions. They may claim to represent their community better than the local authority. Local residents expect to be consulted on matters which affect them. They want to be assisted to understand what the proposals are and the potential impacts on their properties. If there is a need, they want to have adequate time and opportunity to make submissions and to be helped in doing this in order to influence the decision making process in their favour.

The planning system considers the impacts of development on the community through detailed guidance for development control through planning policy objectives. Development control practice has built up over the years a wide-ranging list of considerations which are seen to be ‘material’ to a case. This has grown by accretion, by custom and practice, as much as by deliberate policy (Healey et al., 1995, p. 13).
Another concern of the local or planning authority is that of planning policy objectives and strategies for the management of land use and development in its area. This should be the primary focus of its Local Environment Plan and more specifically of its development plans concerning residential, commercial and open spaces and heritage conservation issues. Those specific plans and guidelines include possible controls and ideas about field of impact which a development might effect.

Drawing up a development control plan for specific development proposals might be technically and politically challenging. It may also be a time-consuming and cost intensive process. On the other hand, development control plans for site specific proposals help to give political legitimacy to the policies of local planning authorities as the plans go through public exhibition and consultation process.

The lack of a plan does not necessarily mean that there is no strategy. Authorities which have allowed their development plan to lapse into neglect through lack of revision, may nevertheless have very clear ideas about what is acceptable and what is not. (Healey et al., 1995, p. 15).

2.3.3 THE ELECTED MEMBERS OF THE LOCAL AUTHORITY OR COUNCIL:

Councillors play various roles in local government. They may be representatives of certain areas (wards) who provide guidance and advice to the residents of that area. They may be members of a political party. They may be members of different committees including a planning committee, which normally makes major decisions on different issues as a part of planning service.

They are members of the Council and participate in the formal and informal debates that surround the transaction of the Council’s business, expecting the loyalty of staff to the Council’s decisions. As individuals with a particular personal interest or professional commitments and ideals (e.g. members of a related discipline, such as architects or planners), they might influence some planning decisions.

Councillors are criticised for not being competent in planning or development matters. They are also criticised for the perception that local issues are given disproportionate weight in comparison with other planning issues.
The relationship and communication between Councillors and the professional officers of Council is an important element in the assessment process. Councillors do not always make decisions on the advice of the professional officers. They may refuse applications against the advice of the professional officers. This situation is costly and time consuming for the applicant who may have spent some time discussing and amending the proposal to the point where it is supported by the planning officer.

2.3.4 THE ROLE OF PLANNERS:

The role of planners has changed together with the changes in planning, its definition and implementation throughout the world. Healey (1991) describes five role models for planners.

The first role model is that of “urban development manager”, which was the main role model for planners from the 1950s until the 1970s. They are land managers and urban designers. According to Healey this model was grounded in the idea of planning as the production and management of good urban design and urban development.

The second role model of the planner is that of “public bureaucrat”, being a part of the planning bureaucracy. In this role, serving the customer is one of duties, and planning duties are generally defined by politicians.

The third role model is that of “policy analyst”. The planner in this category focuses on policy issues, analysis and evaluation. According to Healey such planners were around in the London Boroughs in the 1970s, providing information and systematically considering policy issues.

According to Healey, the fourth role model evolved in the 1970s. Here the planner appears as an “intermediator”. Social relations and micro-politics of organisation and the processes of interest “intermediation” are seen a part of the routine practice of planning work in public sector.

The fifth role model is that of “social reformer”. Such planners are committed to changing society. Planners in this role have a distinctive role as experts within the political processes of social transformation as well as handling ethical issues.

A central issue is how the “planner as expert” may be distinguished from other roles – the politician, the administrative official, the architect of surveyor, the
negotiator. Are the planners are distinguished by what they know and do (knowledge and skills) or by their approach to what they know and do (values and ethics)? It may perhaps be argued that planners are distinguished as much by their self-reflective capacity and awareness of the issues reviewed here as by their monopoly of particular areas of knowledge. Very little attention has, however, been given to how planners actually address these issues in their day-to-day work (Healey, 1991, p.33).

John Mant in a paper presented at the Royal Australian Planning Institute (RAPI) 1997 NSW Division Annual Conference, draws attention to the changing role of the planning profession in the Australian context. He focuses on the role of the planners in government organisations where they create a monopoly on their positions to perform their duties. He argues the need and importance of different disciplines (economists, traffic and water engineers, social policy person, urban designer etc.) in managing urban and rural environments. He does not agree that planners can perform all planning duties. He asserts that all jobs will be in a single neutral classification and all members of the team would be expected to contribute to the tasks at hand whatever skills they had.

Mant emphasises recent concerns about the quality of Australia’s urban design and draws attention to the planners’ technical area called “planning advice” which is seen as a monopoly. He adds that Task Force Report on Urban Design in Australia (1994) states that urban design should not be the preserve of any one professional group. He states:

We should no longer attempt to maintain a professional monopoly over the word Planner. We should accept that planning is an activity that may be needed to achieve an outcome, such as improving the performance of an urban or natural system. We should accept that development control is but one possible strategy for achieving a place or system outcome. We should recognise that some of us may become urban managers, some development controllers, some urban designers and some place managers. It is impossible to encompass all these roles into the one profession (Mant, 1997).
2.4 DEVELOPMENT CONTROL IN PRACTICE

The process of development control can include certain set procedures. Although the process cannot be standardised, some set procedures are expected to be followed. Nicholson (1991) defines these areas or sources of knowledge/information under five headings.

“Precedent” involves decisions on earlier proposals on the same site and on similar proposals on adjacent sites, and the wording and decisions in the planning authority’s letters. Although precedent is not readily transferable it helps to ensure that discretion in control is exercised over time. Obviously, there are always points to argue if the proposal differs from the earlier cases and this allows a different decision to be considered.

“Policy” is always an important input into the assessment process as long as it is relevant and can be clearly applied to the proposal. Policies are also subject to interpretation and planners have great discretion as to the choice of which policies apply and what weight to place on different policies.

“Consultations” are generally undertaken with adjoining property owners as third parties whose interests are affected by specific proposals. In this process, objections from neighbours and local residents are considered. Although objections from adjoining property owners may fail to raise relevant planning issues, they may still influence the eventual outcome.

“Negotiations” is a critical part of the development control process, influencing applications at both pre- and post-submission stages. Negotiations can also take place as the applicant decides whether to appeal, to resubmit or to abandon projects.

“Technical test/Professional opinions” are the views of expert (in areas such as traffic generation, drainage, heritage, and environmental impact) on the proposal during the assessment process. Planners give weight to such expert views. In the absence of one of those expert views, planners may have to deal with such important issues without a professional opinion and this may mean that some issues are not given equal weight in the assessment process. Even though those views are present, planners may not have sufficient expert knowledge to challenge such views.
Nicholson (1991) defines two key questions that can be asked about applications and can be answered referring the above relevant issues. They are:

- is this the proposal so unacceptable that it should be refused (cannot be made acceptable by imposing conditions)?
- is the proposal acceptable in principle (are the details negotiable)? (pp. 53-60)

2.5 THE NEGOTIATION

Healey et al. (1995) discuss negotiative practice and management questions, the role of main players in the negotiative process, their relative strengths, and the sequence of the negotiation process and the legal issues involved in drafting agreements. They also make suggestions for a more systematic approach to the management of the negotiation and the obligations. They summarise the three main stages through which an agreement moves:

**Pre-application discussions** between a developer and the planning authority
Such discussions are normal on major projects. An applicant may contact a planning department prior to official submission, to discuss the proposal with technical staff. An outline application can also be submitted to test a committee approval before the lodgement. If there is a development brief prepared either by the planning authority or the developer, the principle of agreement and its contents should be well defined.

**Official submission** of the planning application to planning committee approval subject to agreement
When an application is received, it has to be formally considered by the planning authority. If pre-application discussions have not taken place, the planning authority may need to inform the developer of its requirements. In cases where a development control plan for the specific site or a development brief exists, this stage involves discussions between the planning authority and the developer in detail issues. At this stage the planning authority notifies adjoining property owners about the application and the application is circulated to the relevant departments to get expert views on a range of issues.

**Post-approval negotiation** starts after a planning committee decision
The planning committee decision gives planning permission subject to an agreement. In Australia, when a planning committee gives an approval, no more negotiation is possible. If the applicant is not happy with the result, the applicant can apply to the Council to amend it. At this stage the applicant approaches Council with the objective of obtaining support for the proposed amendments. If Council does not support the changes, there is little point in lodging another application. At this point, therefore the applicant may decide not to go ahead with the approval.

In the British planning system, after the committee’s decision, negotiation moves into a new phase, focusing on the details of obligations (community benefit such as highway works, car parking, open space, public swimming pool or childcare provision) and legal drafting. This is a stage of bargaining, striking of a deal and then drawing up a technical contract.

Healey et al. (1995) state that this stage may involve complex discussions with the various parties who have made claims for development obligations, and with the developer. Solicitors for both the local authority and the developer play a central role at this stage. The planning authority’s solicitors take the lead in drafting agreements. However, some developers send the first draft to local authority solicitors in order to reduce the time for this stage. Giving the agreement to developers for drafting is avoided by local authority solicitors, in case developers would draft the agreement from their point of view.

Healey et al. (1995) make the following recommendations as their “policy proposals” in order to address the problems and confusions:

- government policy should be expanded to include both the on-site and off-site impacts of development projects
- development plans should specify the scope of impacts and what measures to alleviate or compensate for impacts are expected, linking explicitly such measures to the impacts concerned
- a systematic and plan-based approach to identifying obligations is to be preferred to the general use of impact fees, though there may well be a case for standardised charges in some instances
clear arrangements should be introduced for reporting, registering and monitoring agreements

They argue that such an approach should provide a stable and accountable framework so that community concerns and commercial interests can negotiate mutually beneficial and effective solutions to local development problems (Healey et al., 1995, p. 226).

2.6 AUSTRALIAN CONTEXT

The examples of Australian theoretical studies of this chapter are derived from submission papers which were presented at the Royal Australian Planning Institute's (RAPI) 1997 NSW Division Annual Conference. The papers from this conference which are relevant to the study mainly concern current changes in NSW legislation (integrated planning), impacts on development control practice in local governments, and performance improvement in the regulation of development in local governments.

The recent extensive reviews of NSW planning legislation and the effects of these changes on state and local planning practice are currently arousing much discussion amongst professionals. The Environmental Planning and Assessment Draft Exposure Bill (1997) aims to bring changes to the provision of services to the development industry. The draft Bill would repeal Part 4-Environmental Planning Control of the Environmental Planning and Assessment Act (1979) and replace it with "integrated development assessment". The Bill introduces structural changes to the process of granting development consent, and introduces new categories of development.

Although neither the Environmental Planning and Assessment Act (1979) nor the Environmental Planning and Assessment Draft Exposure Bill (1997) are subjects of this study, it is still interesting to envisage the prospective changes within local government as a result of these legislative changes, particularly to consider the nature of skills which will be required for integrated development assessment and whether this process will change the current role of local government planners.

It is of interest to query whether planners will need to have more engineering knowledge and to know more about building codes of Australia, and to query how councils which do not have those skills already going to obtain them. Whatever the
answers will be, it is obvious that there will be a need for multiskilling to some extent (Monks, 1997).

Gill (1997) proposes a tool, Strategic Environmental Assessment (SEA).

The author describes SEA as a systematic procedure for ensuring the comprehensive consideration of environmental factors in development assessment procedures. One of the most important objectives of SEA is to consider the different views and perspectives of different interest groups that would constitute the relevant stakeholders associated with any development proposal.

SEA aims to achieve an effective communication between those different interest groups and effective stakeholder participation in project assessment. Gill asserts that if done properly, SEA becomes a vehicle to progress stakeholder communication, learning and ownership. It constitutes all parties with an interest in specific development assessments as participants in the public side of development decision making process.

Gill (1997) proposes an “Integrative Decision Making Process” (IDeaMap) as a SEA toolbox. IDeaMap is explained as a four-stage process. The first step is “project scoping” which is simply to develop a comprehensive map or picture of a situation, issue or proposal. This stage aims to provide the capacity to integrate the thoughts and reactions of as wide a group of stakeholder interests as possible. Through this stage, stakeholders will obtain an understanding of what is intended and can present some articulation of their concerns at an early stage of the project development assessment process.

The second stage is “refining the mud map”. In this stage, the details of the proposal (all relevant issues) are developed in a more systematic way through the software that is an integral component of IDeaMap. Once the map is created any available data can be plugged in.

Integration of different data (scientific, technical or impressions, social welfare terms) into picture and analyses are done in stages three and four. Once the all data have been integrated it is possible to see how the group’s impressions/visions/hypotheses have developed over time. This allows the tracking of any variable specified within the model, to note how it changes or relates to other variables.
Although the whole process (SEA) and proposed tool is related to Environmental Impact Assessment (EIA), it can be applied to any development proposal. It is claimed to be especially important and useful for community consultation and stakeholder communication and learning.

Walsh (1997) provides an outline of a project which used the benchmarking technique as a tool to assist councils to achieve systematic performance improvement in the development control process. Baulkham Hills, Blacktown, Fairfield, Liverpool Councils, and the Western Sydney Organisation of Council (WSROC) participated in the project. After a highly consultative process, an agreed benchmarking framework was developed. The framework suggests a structure for monitoring the quality of organisational performance relevant to the development control process, focusing on leadership, strategy and policy framework, customer focus, people management and process improvement. At the end of the project, an implementation strategy was developed which was also integrated with the wider management planning processes of councils.

The first part of the study involved initial scoping and analytical work and the collection of data on the existing approval systems within the participating councils. Answers were sought to questions such as “what outcomes do we seek from the approvals system?” or “what are the key contributing factors for a successful approvals system?” The answers focused on “good quality decisions and development”, “happy, or at least, satisfied customers” and “a low cost system”. Key contributing factors were stated to be competencies and qualities of the people participating in the system, policy settings, the process in place, use of technology, and pricing of services.

2.7 CONCLUSION

This chapter focuses on literature relevant to the subject of the study. Consideration of issues derived from Healey’s work in the British planning system promotes understanding of these issues in a theoretical context. It also facilitates comparison with Australian planning practice at local level. Recommendations are reported to improve the existing situation (problems observed as a result of the case studies) in the context of this study.
3 CHAPTER 3

3.1 HISTORY OF WMC’S HERITAGE PROVISIONS

3.1.1 HERITAGE POLICY IN DOCUMENTS: WMC’S STATUTORY CONTROLS

WMC has five heritage conservation areas, each of which has different characteristics. A part of Watsons Bay and Bondi Junction, West Woollahra, Double Bay and the whole of Paddington have been designated conservation areas since early 1980s (Appendix 1). There are in total 608 heritage items listed under WLEP 1995 which have state and regional or local significance.

Statutory heritage controls have been defined under the “heritage provisions” of WMC’s Local Environmental Plans (LEPs). WMC’s “Policy for the control of changes to facades” applies to the heritage items in heritage conservation areas. WMC does not have a heritage LEP or a heritage DCP. Currently, heritage DCPs for each conservation area are in the process of preparation.

The case studies were assessed under LEP 24 and WLEP 1995. LEP 24 was gazetted on 15th January 1988 and repealed by WLEP 1995 on 10 March 1995. DA 94/211, the first DA of Hawthornden, was assessed under LEP 24. The second DA of Hawthornden, DA 95/057, was assessed under WLEP 1995. The Brougham application was determined under WLEP 1995 and the DCP which was prepared for the site.

Heritage Provisions under WLEP 1995 (Appendix 2a) have been extended compared with LEP 24. Sections 21-26 (inclusive) of LEP 24 refer to heritage provisions (Appendix 2b). WLEP 1995 has heritage provisions defined in Part 4 of the document (Appendix 2a). Part 4 defines heritage provisions for heritage items and properties within heritage conservation areas. A “heritage item” is defined as a building, work, relic, tree or place located on land described in Part A and B of Schedule 3 (see Appendix 2a). The document states that any development to a heritage item and any building in a heritage conservation area require Council’s approval. The document also states that “Council must take into consideration the likely effect of the proposed development on the heritage significance of a heritage item, heritage conservation...
area, archaeological site or potential archaeological site, and on its setting, when determining an application for consent to carry out development on land and its vicinity.". In the decision-making process the Council is required to consider the extent to which the carrying out of the proposed development would affect the heritage significance of the item and its setting and the heritage significance of the conservation area.

WMC’s current Residential Development Control Plan (RDCP) applies to all development in residential zones, and to all forms of residential development throughout the Municipality, irrespective of the zoning of the land. That is the document applied to the case studies. WMC has a draft RDCP which does not apply to heritage conservation areas because the Council is currently working on separate heritage DCPs for each heritage conservation area with the aim of generating detailed controls for developments relating to heritage items and properties in heritage conservation areas.

RDCP states that Council may also take into consideration the recommendations of its Urban Conservation Advisory Committee (UCAC) for development involving demolition of buildings, erection of new buildings, and major alterations and additions to buildings in conservation areas or in relation to heritage items.

WMC’s UCAC consists of representatives from the National Trust, the Royal Australian Institute of Architects and the community. The committee provides conservation advice which is used in the assessment of heritage applications. UCAC’s comments were especially important for the Hawthornden proposals since the Council’s heritage planner was not involved in the assessment of applications.

Council’s first heritage policy, “Policy for the Control of Changes to Facades and Alterations to buildings in Watsons Bay, Bondi Junction, Paddington and West Woollahra” or in short “Facade Policy”, was introduced in 1984. It is the Council’s first policy in relation to heritage conservation, which also applied to the Brougham case. In general, the main objective of the policy is retention of facades of important buildings. The policy has a graded classification for all buildings within the heritage conservation areas of Watsons Bay, West Woollahra, Paddington and Bondi Junction which has been developed to provide a reference to appropriate controls and guidelines. Each grade also has a general policy which applies to these buildings.
The buildings are graded as A1, A2, B, C, D, E and X in descending order (Appendix 2c). The grade “A1” refers to buildings listed by the National Trust and the Heritage Council or those that should be considered of historic importance in addition to their importance in the streetscape of a conservation area. The grade “A2” refers to buildings which are a significant part of the character of the area and are important in streetscape sense. The grade “B” refers to buildings which are important to the streetscape in terms of age, style and general design and form (including modern buildings). However, because of their position or discontinuity they do not have such an important impact on the streetscape as the previous category. The grade “C” includes buildings of similar scale to those in the higher categories, but because of poor design, workmanship, physical condition or inappropriate style, play no part in establishing the character of the streetscape. Within this category are also buildings having no particular conservation merit, where demolition is possible. The grade “D” refers to vacant lands where new buildings are to be in scale and character with other highly graded buildings. The grade “E” is defined as existing public open space, and grade “X” are sites that are not visible from the street and therefore not assessed.

The policy applied only to the Brougham proposal since Hawthornden is not located within a heritage conservation area. Brougham house is classified as grade “C” in the document (Appendix 2c). The policy of this grade is defined as “demolition will not generally be opposed but rebuilding will be encouraged in a scale and form to enhance the existing street and townscape”.

The facade policy is very old and has not been amended since its introduction. It does not provide a full heritage assessment of buildings within heritage conservation areas and also does not apply to heritage items which are not located within heritage conservation areas. When the heritage DCPs currently being prepared by the Council come into force they will repeal the document. The document’s recommended policy for grade “C” into which Brougham house falls was not considered in the assessment of the DA.

3.1.2 POLICY IN PRACTICE: THE DA PROCESS AT WMC

The preliminary DA process starts at the front counter or on the phone with obtaining information and relevant application forms in relation to lodgement of an application.
The Council’s staff (counter staff and technical staff) are responsible for giving technical advice. WMC did not have a written document for lodgement of a building and development application prior to August 1995. WMC now has a “Checklist” which must accompany all applications. The document includes a matrix which indicates the information that the applicant needs to supply for a particular type of application (Appendix 2d).

Prior to the “Checklist” the DA form was the only document which provided information about requirements for the lodgement of DAs. The form is still used in its old format which gives a very broad idea of what has to be submitted with a DA. The form does not provide any specific information for a particular type of development. The form also does not provide any information about requirements related to a heritage report.

WMC formerly had problems with incomplete applications which caused delay in the application assessment process. With the introduction of the checklist, the counter staff has been informed that any incomplete application should be rejected.

The DA process may also start with a pre-DA lodgement session. A pre-DA lodgement session can be organised in the preliminary stage of the proposal if the applicant wishes to discuss the proposal with Council before its official lodgement.

The DAs in relation to heritage items or properties within heritage conservation areas include special information requirements such as a heritage report which addresses the heritage issues of the proposal. The checklist asks for a heritage report for work on a heritage item or properties within a heritage conservation area. The DAs involving heritage issues are generally not straightforward and need a heritage expert’s assistance.

A pre-DA lodgement session is normally sought by the applicant. The applicant wishes to find out Council’s general approach to the proposal and if Council opposes something, so that the applicant can have a chance to amend it before its official lodgement. If the applicant wishes to discuss the proposal, a meeting is organised with the applicant and Council’s technical staff (senior staff, town planners or building inspectors).
The pre-DA lodgement sessions help applicants to understand Council’s requirements for the potential proposal. Council staff may require documents and special reports to be submitted for the proposal, and knowledge of this avoids possible delays in the application process.

Prior to July 1996, WMC did not have formal procedural guidelines on information requirements for developments to heritage items or buildings in heritage conservation areas. Since this date, WMC has published “Heritage Information Requirements for Heritage Items” (Appendix 2e) and “Heritage Information Requirements for Properties within Conservation Areas”. The document on “Heritage Information Requirements for the Demolition of Buildings” is still in draft form, awaiting approval as Council policy like the other publications.

The Hawthornden and Brougham applications were lodged when WMC did not have formal heritage policy or procedural guidelines. Before the Hawthornden application was lodged, the applicant had pre-DA sessions with Council’s technical staff as well as elected staff (councillors). Since the owners of the Hawthornden site had been seeking an approval since the 1960s (see Appendix 3, Table 2) for the purpose of medium density residential development, WMC did have a history about the site.

The applicant of the Brougham DA approached Council with a rezoning request together with a proposal which was the Brougham proposal. As a result of acceptance of the rezoning, WMC decided to prepare a DCP for the site. The proposal was determined under the DCP which defined clear guidelines for future developments for the site. The Brougham proposal did not have pre-DA lodgement sessions.

Both proposals did have Conservation Plans (CP). The Brougham application’s CP was prepared by Dawson Brown and Ackert Pty. Ltd. for the Department of Planning (DOP), in February 1991, and titled “Brougham’s Hostel Woollahra”. The Department prepared the CP in order to apply to change the existing zoning from Special Uses 5(a) Child Welfare Home to a rezoning to Residential 2(a) or 2(b) zone permitting residential developments. However, this request was refused by WMC. The heritage planner of WMC criticised the CP as not being adequate for preparation of a DCP since it was prepared for the purpose of a rezoning and did not provide a curtilage for the heritage item.
3.1.2.1 Current Changes: Introduction of "Checklist" and "Heritage Information Requirements" and New Studies on Heritage:

As was stated previously, WMC has been moving to a more structured heritage approach with the recent publications of heritage information requirements and "checklist" since August 1995.

The "checklist" (Appendix 2d) has to be completed and must accompany all building and development applications. WMC now places the responsibility on the applicants to submit the correct documentation with applications. The document is not a guide which provides information on building and development applications. The document does not answer questions such as why an application has to be lodged or what kind of application has to be lodged for a particular type of development or work (building or development application, strata title application, change of use application etc.). The document must be supported with a guide which provides information on different types of applications and Council's policies, procedures and actions dealing with the applications.

The "checklist" recommends that the applicant discusses the potential proposal with Council's staff prior to lodging the application. The document does not mention a pre-application consultation session.

The publications "Heritage Report Information Requirements for Heritage Items" (Appendix 2e) and "Heritage Report Information Requirements for properties within Heritage Conservation Areas" were prepared by Council's Heritage Planner. They have been Council policy since July 1996.

The documents provide guidelines for the preparation of a heritage report including "heritage assessment" and "heritage impact assessment". The publications provide information on why a heritage report is required, when it is required and at what time in the design process a heritage report should be written. They also provide information on who should write heritage reports, useful contact details and heritage source information checklist (see Appendix 2e).

WMC now is able to comment on a heritage report submitted with a DA in terms of its acceptability to Council. During the interview with the Heritage Planner of WMC,
she indicated that Council could have asked for a new CP for the Brougham DA if the document had been available when the DA was determined.

WMC is also working on the introduction of a pre-application consultation service for development and building applications. The minutes of the Policy Committee meeting of WMC held on 26 August 1996 include the report of the Director of Land Management Services regarding the introduction of a pre-application consultation service. According to the minutes, WMC is seeking to adopt a policy on pre-application consultation. WMC's main objectives on the policy are to provide information and guidance to applicants, to avoid delays to applications and to seek the best possible environmental outcome, to maintain effective communication between Council and the applicant and to increase the efficiency and effectiveness of the application process administered by Council.

In order to achieve these objectives, WMC plans to establish a pre-application group comprising at least two members of Council's professional staff and professionals necessary to address issues raised in each application. The purpose of this group is to enable intending applicants and relevant staff to meet and discuss proposed developments prior to their official lodgements.
4 CHAPTER 4

4.1 CASE STUDIES

4.1.1 AN INTRODUCTION TO THE CASE STUDIES: SIMILARITIES AND DIFFERENCES OF TWO CASES

6-12 Roslyndale Avenue known as "Hawthornden" and 118 Wallis Street known as "Brougham" are located in the suburb of Woollahra. Brougham house is located within West Woollahra Conservation Area whereas Hawthornden is not located in one of WMC's designated heritage conservation areas. Both buildings are listed heritage items under WLEP 1995 and under the National Trust register. Hawthornden has been listed under the National Trust Register since 1974. Brougham was listed under the register in 1976 (Appendix 1a). In 1984, WMC commissioned Hughes, Trueman, Ludlow P/L with Howard Tanner & Associates P/L to conduct a heritage study. The study listed both properties as heritage buildings of individual merit and having historical and streetscape values (Appendix 1b).

The Hawthornden and Brougham proposals were chosen for the study because of their similarities and differences (see Appendix 3, Table 1). Both buildings have similar heritage significance in Woollahra Municipality. The DAs were lodged to propose major developments for these sites as well as to restore the heritage buildings. The Hawthornden DA proposed to build ten residential units. The Brougham application was lodged for the purpose of community uses as construction of 37 aged persons' units and using Brougham as a child care centre. The DAs were lodged when WMC did not have a formal heritage policy or formal procedural guidelines dealing with the heritage DAs.

The cases also have major differences. The Brougham DA was determined under a DCP which was prepared by WMC as a result of the rezoning of the site whereas the Hawthornden DA was determined under no formal heritage policy or procedural situation.

The cases bring out different issues and concerns relating to heritage. With similar heritage significance and similar proposed developments in their sites, the cases were
concluded with the refusal of the Hawthornen DA and the approval of the Brougham DA. It was decided that to examine the cases and discuss the DA determination processes. The study will also analyse the interest and interactions of different groups during the process and their influence in the decision making process.

4.2 CASE STUDY OF HAWTHORNEN

4.2.1 THE HISTORY OF HAWTHORNEN SITE: PREVIOUS DAS

6-12 Roslyndale Avenue, Woollahra known as Hawthornen has five different proposals in its history, excluding the two proposals subject to this study. The owners of Hawthornen had been seeking approvals for residential developments from multi-storey residential flat buildings to medium density housing (town houses, group houses) since the late 60s (see Appendix 3, Table 2).

The first development application (DA 265/69) was lodged in 1969 for the land known as 4-12 Roslyndale Avenue, Woollahra and 315 Edgecliff Road, Edgecliff. It was proposed to erect a 15 storey residential flat building comprising 60 units with a cluster of five group houses. The proposal was refused by WMC on 29 September 1970 (Appendix 4a).

Another application was received in 1971 (DA 30171) for the land known as 4-12 Roslyndale Avenue and 317-319 Edgecliff Road (Appendix 4b). It was proposed to construct two residential flat buildings, one 13 storey and one 16 storey, together with nine town houses. During the process of the DAs the zoning of the land was changed from Residential 2(c) to Residential 2(b), which prohibited multi-storey residential flat buildings. Consequently the proposal was refused on 14 September 1971 for a number of reasons, mainly because the proposed use was prohibited under the current zoning (see Appendix 4b).

WMC refused another application for the Hawthornen site in 1972 (DA 202/72) to construct 29 town houses. One of the many reasons for the refusal was that the proposal constituted an overdevelopment. The applicant was asked to amend and redesign the proposal including a deletion of not less than three dwelling units and reduction of the site coverage.
On 5 September 1973, a further development application was lodged (DA 171/73) for the erection of 30 town houses in three separate blocks. It was considered by WMC and the State Planning Authority that the design of the houses did not constitute town house development as many units did not have areas of private open space contiguous to them. The proposal was refused by Council. Following Council’s decision, an appeal was lodged to the Local Government Appeals Tribunal; however, it was withdrawn by the applicant.

In 1975, an application was lodged (DA 26/75) to construct 30 town houses for the lands known as 2-12 Roslyndale Avenue and 315 Edgecliff Road (Appendix 4c). The application was approved, subject to the number of town houses being reduced to 26 with a proportionate decrease of site coverage and subject to conditions (see Appendix 4c).

Following the Council’s decision, the subsequent appeal to the Local Government Appeals Tribunal was refused by the Board as well. The proposal was not carried out and no further development proposal was received for the subject site until 1994.

All the proposals for the Hawthornden site aimed to demolish the existing building, "Hawthornden", and develop its site for residential purposes. During the assessment of the proposals the significance of Hawthornden was not considered as an issue.

The only application which mentions the existing trees and the existing building on the site is the last proposal, DA 26/75, lodged in 1975. The town planner’s report presented to the Building Health Committee on 21 April 1974 mentions the existing trees and the existing building in the site. The report indicates the site consists of well established trees which are part of old Hawthornden garden including four Camphor Laurels. The report recommends that the applicant must assure the preservation of all existing trees on the site and if Council decides to approve the application, that the applicant would need to carry out a detailed survey plan in order to assure Council of this fact (see Appendix 4c).

4.2.2 DA 94/211 - THE FIRST PROPOSAL

On 22 September 1994, DA 94/211 was lodged by EP for construction of ten residential units and an underground carpark together with restoration of existing house, Hawthornden, at 6-12 Roslyndale Avenue, Woollahra.
4.2.2.1 The Site:

The site known as 6-12 Roslyndale Avenue is a large, irregularly shaped lot, with a total area of 6,517 square metres. The existing two storey residence, Hawthornden, is located on the site together with a tennis court to the north-west and a swimming pool to the north (Appendix 6, Plan 1). Photographs of the site may also be found in Appendix 6.

The existing residence includes six bedrooms, a nursery, maid’s quarters, and a morning room on the first floor; a kitchen, guest room, study room, dining room and billiard room on the ground floor and a cellar and storage area on the lower ground floor (Appendix 6, Plan 2 and Photograph 2).

According to the Landscape Heritage Assessment Report of August 1994 prepared by LandArc Landscape Architects for the Hawthornden DA, the existing building has an expansive historical garden with some trees dating back to the original development in the site. These early specimen plantings are typical of late 19th and 20th century plantings in the Woollahra area. The report states that Hawthornden, located on the steep north-easterly section of the Woollahra escarpment, is in an elevated and prominent position. The gardens were planted originally over very shallow sandy soils on this ridgeline. Hawkesbury sandstone outcrops are still evident in the western boundary lawn near the entry and along the eastern property boundary.

The report mentions the early plantings, dating from the mid-to-late nineteenth and early twentieth century, include Camphor Laurels and Bunya Pine clustered on the eastern terraces. Other mature trees of this period are located along the western boundary. These include a Brush Box, Blackbean and Southern Magnolia. There are also specimen plantings of Silky Oak in the southern boundary garden and the less common Lacebark, adjacent to the south-western corner of the building.

Planting which dates from around 1927 include Chinese Elms, White Poplars, Coral Trees, Palms and Strelitzia among others and these are in scattered locations on the site. Recent planting within the past few decades includes Bungalow Palms, Jacarandas, Magnolias, Liquid Ambers and a single Queensland Kauri Pine. Two Port Jackson Figs located below the wall on the eastern boundary are the only remnant indigenous species on the site.
Also of importance is a Bunya Pine located about two metres below road level. This tree, listed on WMC’s Significant Tree Register (1991), is 23 metres high, with an upper canopy spread of 12 meters and a trunk diameter of 1 metre above ground level. It is estimated to be at least 100 years old and forms part of an important historical grouping along the ridgeline.

4.2.2.2 The History of Hawthornden:

The existing two-storey residence, Hawthornden, was erected in 1858 on the land which once was a part of the extensive holdings of land in the possession of Lieutenant John Piper. According to the Conservation Study, August 1994, prepared by Rod Howard Heritage Conservation P/L for the Hawthornden DA, John Piper sold his properties including a grant of 150 acres at Point Piper known as Point Piper Estate in 1830 to the firm of Cooper and Levey. The early ownership of the site and its association with the Point Piper Estate are important issues relevant to the identification of the cultural significance of the site.

In 1918 the whole site, which was one of the largest in the locality, underwent subdivision into smaller leasehold estates for private sale.

The first alterations and additions occurred in 1927. The alterations to the building, prepared by the firm of Wilson, Neave and Berry, an important and respected architectural firm at that time, were approved by WMC. The Conservation Study states that although the alterations retained much of the existing form and layout of the house, additional works both enlarged it and changed a part of its character. The study indicates that the major changes occurred in the northern part of the house. The changes involved the construction of a new stair, rebuilding of the verandah on the north and south sides, removal of a bay window on the western side of the northern facade, and extensions of 100m on both levels at the south eastern corner. More substantial changes occurred in the southern part of the house with the demolition of several rooms and construction of a new kitchen.

When the site was purchased by a property developer in 1972, several proposals were submitted as construction of flats and town houses. These DAs, which were briefly examined in the beginning of the case study chapter, were refused by WMC with the
exception of the last proposal, DA 26/75. However, that approval was not carried out by the applicant (Appendix 4c).

Major alterations and additions were carried out in 1978. Modifications included extensions to the kitchen and addition of a deck to the east, relocation of the laundry area and conversion of a former servants’ room and the adjacent laundry into a guest suite. The study indicates that further modifications took place when the deck on the eastern side of the kitchen was modified to become a glazed conservatory in 1984.

The Conservation Study indicates the cultural significance of Hawthorned as below:

- the house is significant as a surviving mid-nineteenth century building which underwent major modifications by the firm of Wilson, Neave and Berry, which has formed much of the existing character of the house today
- the house and its grounds are important evidence of the subdivision and past use of the site as an estate in a suburban context. The surviving nineteenth century trees are important evidence of nineteenth century gardening practice, as well as being important local landmarks
- the house and grounds are evidence of early development on Woollahra and provide evidence of social change in the nineteenth and twentieth centuries
- the site has considerable aesthetic value as a large, landscaped, private space in Woollahra. (Conservation Study by Rod Howard Heritage Conservation P/L, August 1994, p 38)

The study also identifies the heritage significance of various components of Hawthorned in three groups as items of most significance, items of some significance and items of little significance.

The category “Items of Most Significance” includes the external form and plan configuration of Hawthorned, including all that dates from the nineteenth century and from the 1927 modifications in the northern part of the house; extant nineteenth century building fabric including stone walls, timber joinery, secondary stair, pressed metal ceiling and ceiling rose in the first floor dressing room; the entrance porch and stone flagging on the western side of the residence; extant fabric from the 1927 modifications including timber joinery items, fireplace surrounds, the main stair,
ceilings and pantry fitments; the stone gateposts; the configuration of the driveway; the Billiard Room and stone stairs in the garden areas (Appendix 6, Plan 3). This category is considered by the Conservation Study to indicate that these items should be preserved intact.

The category “Items of Some Significance” includes items which contribute the overall significance if the site. It is considered desirable but not essential to conserve these items. This category includes the modifications executed in the southern portion of the house in 1927; the glasshouse; the portion of the garage dating from 1927 and the timber tennis pavilion on the western side of the tennis court (see Appendix 6, Plan 3).

The last category, “Items of Little Significance”, includes items which contribute little to the significance of the site and its interpretation, whose retention is not considered essential. These items are the glazed conservatory on the eastern side of the house, the modifications to kitchen carried out after 1978; the swimming pool and lower pond; the tennis court; internal modifications to the house including bathroom modifications, the chimney piece in the sitting room, fabric and decorative painted internal wall finishes; the timber deck on the eastern side of the billiard room; the later addition to the garage; some borders and retaining walls in the garden areas and the brick boundary wall located near the south east corner of the site which is of relatively recent origin (See Appendix 6, Plan 3).

4.2.2.3 Development of Hawthornden Proposal: Preliminary Stages of The DA Before Its Official Lodgement

The information used in this section was obtained from the applicant of the Hawthornden DAs. During the interview, he also presented a copy of a report he prepared for his own record (Appendix 8). The document provides the information of the preliminary stages of the Hawthornden DA. The information is particularly important, since the Council’s files do not include any information prior to the official lodgement of the Hawthornden proposal.

The applicant prepared a preliminary design for the Hawthornden site which consisted of nine apartment units, two penthouses and two townhouses located on the existing tennis court in the north-west corner of the site. The sketch plans were discussed with
the Council’s heritage planner and manager of the Development Control section. These people were not involved in the application after its official lodgement due to the changes of their employment status. At the end of the meeting it was agreed to discuss the proposal on the site in order to visualise the footprint of the new development in relation to the existing residence, its garden setting and the adjoining properties.

At this meeting the applicant was informed that Council had been approached with numerous designs for the site. These included proposals to demolish the existing building and to develop the whole site; to construct 20 small cottages around the existing residence and to construct a town house development. Council’s planning officers agreed that the applicant’s concept was the most appropriate one for the site. It was also agreed that the curtilage of the site needed to be defined in order to finalise the footprint of the proposed development. The applicant approached Rod Howard Heritage Consultants. After numerous meetings between the applicant, the heritage consultant and the Council’s officers, the curtilage of the site and the location of the proposed development were defined.

After the preparation of a detailed survey plan, it was decided to reduce the number of units by deleting the two town houses. During the discussion of the final preliminary design, it was agreed to investigate a taller building by reducing the footprint of the proposed development. It was also confirmed by the Council’s planning officers that the adjoining properties would not suffer if the height of the building was increased. The final design of the proposed development was lodged by the applicant (EP) in September 1994 (see Appendix 8).

4.2.3 THE PROPOSAL - DA 94/211:

4.2.3.1 Alterations And Additions to Hawthornden

The proposed works to Hawthornden included internal and external changes, some demolition of existing fabric and new additions to Hawthornden. At the lower ground level a rumpus room and three-car garage were to be constructed on the eastern corner of the dwelling.

The billiard room on the ground level was proposed to be relocated from a NE-SW orientation to a roughly N-S orientation. The kitchen was also proposed to be
extended and open out onto a terraced area on the eastern corner of the residence. Also proposed on the ground floor was servants’ quarters, reusing the existing garages located to the south of Hawthorn den.

Additions to the first floor included the construction of ensuites adjoining bedrooms 2, 3 and 4 and the maid’s quarters and an extension of the master ensuite.

The conservatory, a contemporary addition, was proposed to be demolished.

The report prepared by Rod Howard Heritage Conservation P/L of October 1994 included the comments of the applicant in relation to various aspects of the proposed development and was based upon the findings of the Conservation Study prepared by the same company. The document stated that the majority of building fabric proposed for demolition was of little or no significance. However, the proposed removal of certain original internal masonry walls and the intended removal of the existing pantry were identified as significant fabric. The report stated that, the proposed removal of these parts were regarded as being somewhat unfortunate. The report added that the intact c.1927 pantry was a rare example of its type, and from a heritage viewpoint its loss was not considered desirable.

The relocation of the billiard room, as an element of considerable significance, was considered to be consistent with the recommendations of the conservation policy for Hawthorn den. The document stated that the free standing weatherboard billiard room located on the southern side of the house, by nature of its form and construction, could be readily moved to another suitable location.

4.2.3.2 The Proposed New Medium Density Development:

The three storey structure together with underground carparking was proposed to be constructed in the northern section of the site, after removal of the existing tennis court and swimming pool (Appendix 6, Plan 5).

It was proposed to build a total of ten units, one unit on the lower ground floor, three on the ground floor and first floor, two on the second floor and a penthouse suite on the third floor. There also was a proposed gatehouse to be located to the east of the entrance driveway which included one bedroom, a living room and bathroom facilities.
Various modifications to the landscaping of the site included the upgrading of certain areas of the existing garden, introduction of new vegetation and construction of a new tennis court and swimming pool on the north-eastern portion of the site.

The comments of the applicant in relation to various aspects of proposed development prepared by Rod Howard Heritage Conservation P/L stated that the proposed new building was positioned on what was the least significant and least sensitive location on the site. The document stated that the proposed location of the new building generally respected the recommended curtilage for the house (Appendix 6, Plan 4).

According to the report the proposed gatehouse would result in only minimal disturbance to the root systems of the existing vegetation in this vicinity of the site. Although the ramped entrance to the underground carpark and proposed gatehouse would be in the most significant area of the existing garden, the report stated that these changes would not have on adverse impact upon the character of this part of the property.

4.2.4 THE DA PROCESS

On 5 October 1994, the proposal was advertised in the local newspaper and a total of 87 adjoining property owners was notified. As a result of the adjoining owners responses, 27 letters of objection were received together with a petition signed by 29 people and one letter of support (see Appendix 5a).

The issues raised in the submissions included excessive size and height of the new proposal, increased traffic, storm water drainage, overshadowing, heritage, loss of privacy, views and value. The town planner's report to the B and D Committee dated 6 March 1995 summarised the issues and the reasons of the objection letters to the proposal.

The Woollahra History and Heritage Society objected to the proposal in that the new development would completely dominate the site, diminishing of the present impact of the historic house and its trees (Appendix 7, Letter 1).

The National Trust agreed that the proposed location for units would have less impact than a similar development at any other location on the heritage significance of Hawthornden. The Trust stated that the scale and bulk of the proposed building in its
current form would dominate Hawthorn and compromise its settings. The Trust suggested that the proposal be reduced in height by one storey to achieve a more sympathetic relationship to the scale of Hawthorn and to the escarpment in general. The Trust also stressed that it was essential that any work approved for the site be conditional upon a serious commitment to conservation works to significant fabric at Hawthorn (Appendix 7, Letter 3).

Other departments of Council commented on the proposal. The Building Department raised no objection to the proposal in principle, though some concerns were raised which needed to be addressed prior to issuing of the development consent. The Engineering Department was satisfied with the proposal in relation to general traffic issues as access and traffic generation resulting from the development. However, the Engineering Department commented that the development application should not be approved until the storm water drainage problem of the site was resolved. The trees Officer of Council recommended that special consideration should be given to the historic value of “historic kitchen garden” of the property prior to approval of the tennis court at the proposed location. She also recommended that the proposed works be re-designed to allow for successful retention of the trees in the site.

As a result of the responses from adjoining property owners and from other departments of Council, the planning officer of the proposal sent a letter to the applicant relating to matters of heritage, car parking, landscaping and drainage. The letter stated that amended plans needed to be submitted incorporating the following:

- deletion of the proposed gate-house, proposed tennis court and proposed pool for Hawthorn (it might be relocated)
- consideration to be given to the deletion of the basement car parking within Hawthorn and the use of the existing garage appropriately altered for that purpose
- a conservation analysis of each room of Hawthorn addressing the impact and necessity for the proposed works to those rooms
- consideration of the need to relocate the billiard room
- reduction in the height and bulk of the proposed flat building. The development to be ideally reoriented to prevent any visual overlapping with
Hawthorn. An alternative design may be more appropriate in achieving this objective
- consideration of the impact of the proposal in the landscape/trees on the site
(Appendix 7, Letter 2)

On 2 December 1994, amended plans, landscape plans and a landscape report and a heritage conservation report in relation to the amended DA were received. In the amended plans the proposed gate house and tennis court were deleted including footpath and steps leading from the northern veranda for the proposed billiard room. It was stated that there would be no car parking within the basement area of the existing house and the construction of the proposed garages would have little effect on the existing fabric of the lower ground areas of the house.

The design of the proposed new residential apartment building was modified by the applicant as a result of Council’s concerns about its apparent bulk and scale and its likely visual impact on the existing building. According to the report, the amendments to the design of the new building would have the combined effect of an overall reduction on its apparent bulk and scale, which in turn would result in a diminished adverse impact on the aesthetic qualities and the heritage significance of Hawthorn.

Relocation of the billiard room was not reconsidered in the amended scheme, keeping the structure in its existing location as requested by Council. According to the report since the structure had already been moved from its original position, from a heritage point of view the notion of relocating this building was acceptable given its “portable” character.

Adjoining owners’ responses to the amended plans consisted of 17 letters of objection (see Appendix 5a). The majority of them repeated the previous concerns and stated that very little had been done with the amended scheme and bulk; the height and scale of the new proposal were still unacceptable. The National Trust commented on the amended scheme. The Trust stated that the proposed building still dominated Hawthorn. However, the Trust acknowledged that an attempt had been made to reduce the size and scale of the new building by stepping back the building and lowering the ridge line. The modified carpark entrance was considered by the Trust to
be a definite improvement on the previous proposal. The Trust’s comments were received on 6th of March, on the same date the application was referred to B and D Committee Meeting, and were considered as late correspondence (Appendix 7, Letter 4).

On 6 March 1995, the report of the Council’s planning officer was referred to the B and D Committee (Appendix 9, Report 1). The report stated that consideration of the proposal had involved a balancing of many and often competing matters, such as heritage conservation, increased density of development and adjoining neighbours’ concerns. The report stated that the proposed development was consistent with the 2(b) zoning of the site. It was also accepted that the proposed area was the least sensitive area in terms of the heritage integrity of Hawthornden and its landscape setting. However, this part of the site was closely adjoined by neighbouring properties and therefore any building on this part of the site would impinge on the existing amenity enjoyed by neighbouring developments, most particularly the townhouses to the west.

The report included that the planning officer was not fully satisfied with the overall height of the development, its significant exceeding of Council’s controls and the consequent impact on views which results in a visual encroachment and enclosure to adjoining residents. The report also stated that whilst the proposal complied with the floor space ratio permissible by being only 0.53:1 instead of a maximum of 0.625:1, all the proposed additional floor space ratio was to be located in the north-western corner of the site. This resulted in a perceived over-development in this area due to the scale, height and bulk of the development.

On 6 March 1995, the DA was determined by refusal of consent for the following reasons (Appendix 9, Report 1):

- the proposed development exceeds Council’s maximum height limit pursuant to LEP No 24 and such has a detrimental impact on adjoining residents by way of loss of view and visual massing
- the scale, bulk and height of the development is considered unsatisfactory given its location within the site and its juxtaposition to adjoining residents
- circumstances of the case and the public interest
Although the applicant sent a letter to WMC on 6 March 1995 to request to defer the application to a later date of B and D Committee meeting so that some of the issues could be solved with an amended plan, the letter was considered by Council as late correspondence.

4.2.5 DA 95/57- THE SECOND PROPOSAL

On 5 April 1995, DA 95/57 was lodged as “Restoration of Hawthornden and Proposed Eight Units and Underground Carparking”. The significant variation from the previous proposal was removal of one level of the development to comply with Council’s height limit. The number of units was also reduced from ten to eight and significant modifications were done to both scale and bulk of the proposal.

Adjoining property owners were notified and as a result of the notifications 16 objections were received including a petition signed by 27 people (see Appendix 5a). Neighbours were still worried about the same issues they had raised for the previous application. According to them the second proposal still exceeded height limit, caused loss of light, privacy and increased traffic. They argued that the amendments were not substantial and they were specially concerned about the storm water drainage issue.

The National Trust commented on the second proposal. The Trust stated that “it is ideal no further development takes place on the site” as previously stated for the first proposal. The Trust considered the second proposal a substantial improvement in scale by a reduction in one floor and shifting of the massing of the proposal in regard to its formal relationship to Hawthornden. The Trust also considered the proposed elevational treatment to be more appropriate as companion to the main elevation of Hawthornden than previous scheme (Appendix 7, Letter 5)

On 8 May 1995, a petition (Appendix 10) was tabled from residents of the Municipality concerning DA 95/57. The petition was signed by 71 people. They objected to the application on height, privacy, overshadowing, traffic, drainage, landscaping and heritage value of Hawthornden.

The trees officer of WMC commented to the second proposal on driveway alignment and protection of the heritage listed Bunya Pine. She considered that the setback for
excavation for the driveway entrance at only four meters from the tree trunk was unacceptable and should be at least seven meters.

On 5 June 1995, the planning officer of the DA referred the application to the B and D Committee. The planning officer considered the second proposal as a significant reduction in terms of the proposed building’s height and a full compliance with Council’s controls. According to the planning officer, in the reducing the height, the visual scale and mass of the building had also been reduced.

The report noted that the elements of redesign involving the removal of the rear terrace eliminated an aspect of privacy concern for the townhouses. She concluded that “having regard to the amendments undertaken, the advice of Council’s experts and heritage comments, the proposal is now considered reasonable having regard to the zoning of the site, in terms of its design and impact on adjoining residents and Hawthornden”. The report recommended to the B and D Committee approval of the application subject to conditions. (Appendix 9, Report 2)

The meeting resolved to refer the application to the Inspection Committee Meeting to be held on 7 June 1995. As a result of the Inspection Committee Meeting the matter was referred back to the B and D Committee for a further report and the Inspection Committee recommended an interim conservation order to be lodged over the Hawthornden estate as matter of urgency.

On 19 June 1995, a report was presented to the B and D Committee meeting by the director of Land Management Services. As a result of this meeting Council refused development consent for the following conditions (Appendix 9, Letter 2):

- the proposed development by virtue of its scale, bulk and position relative to Hawthornden would have a detrimental impact on the heritage significance of that building and the site as a whole
- the proposed development by virtue of its scale, bulk and position and proximity to the cliff line to Wallaroy Road properties would result in damage to and loss of the natural cliff face
- the proposed development by virtue of its location on the site would result in loss of views to adjoining properties
- the proposed development by virtue of its location on the site would result in an unequitable "subdivision" of the land between development and the existing building Hawthornden
- the proposal is considered to be an over development of the site by virtue of the developments location on the site and its relationships to adjoining properties and Hawthornden itself
- the circumstances of the case and the public interest (Appendix 9, Letter 2)

On 21 June 1995, the applicant appealed to the Land and Environment Court against the refusal of DA 95/57.

WMC defended its decision specifically on the issues 1) scale, bulk and location; 2) heritage issues; 3) cliff line stability, loss of vegetation, sight lines and privacy; 4) issue of trees; 5) issue of drainage and 6) subdivision history of land.

4.2.6 THE RESULT OF THE COURT CASE

On 1 November 1996, the Land and Environment Court dismissed the case and refused consent. The Court’s conclusion was:
- the Court agreed the scale, bulk and location of the development is unsatisfactory
- the Court agreed the proposed development would have a detrimental impact on the heritage significance of "Hawthornden" and the site as a whole

The Court considered;
- the technological concerns related to the natural cliff face are capable of resolution, especially if the building were to be setback as now proposed and to conform with the setback requirements of the DCP
- that the loss of views occasioned by non-compliance with the height standards of the WLEP 1995 is unreasonable and does not represent a fair sharing of views
- the issue to be largely hypothetical as no subdivision was proposed. The floor space ratio for the whole site conforms with the standard in the WLEP 1995 (Appendix 11a)
The letter of on 16 November from WMC's solicitors to WMC indicated the reasons for the Court's judgement. According to the letter, the Court essentially dismissed the appeal on heritage grounds, in particular that the proposed development in the north-east part of the land would destroy the cultural and heritage significance of the site. The Court rejected the evidence of the applicant's heritage witnesses and stated that a more professional approach was adopted by Council's heritage witnesses.

The Court decided that any future development on the site must be subservient to the importance of the heritage item and accordingly, any development would have to be a lesser floor space ratio than permitted under Woollahra LEP 1995 and conform more closely to the existing ground levels. It was accepted the evidence of Council's heritage witness that the whole site should be considered a curtilage.

The letter also indicated the effect of the Court's decision on Council. The letter stated that it was quite possible that a further development application would be lodged for the site. Accordingly, WMC needed to consider what type of development on the site would be acceptable. Council might need to be pro-active in its protection of Hawthornden and its grounds. The following two options were suggested to WMC:

- it could rezone the property from Residential 2(b) to Residential 2(a). This would have the effect of prohibiting a residential flat building
- it could prepare and implement a DCP specifically for the site to protect the grounds in accordance with the views expressed by the Court in its decision

The solicitors recommended the second option was the most preferable for Council's purpose (Appendix 11b).

4.2.7 THE CURRENT PROGRESS ON THE SITE

The report of the manager of Strategic Planning to the Community and Environmental Planning Committee included the possible recommendation on the Hawthornden site. According to this report, the Heritage Council considered Hawthornden to be an item of environmental heritage significant to the Woollahra area, and its conservation could be dealt with under the provisions of WLEP. It was recommended by the Heritage Council to the Minister to take no action at this stage under the Heritage Act, 1977 in
regard to this property. The Minister approved the Heritage Council’s advice in this matter.

The report stated that it was likely that a new development application would be lodged with Council. Desirably, any development proposal for the house and its grounds should be guided from a conceptual stage by clear controls. It was also recommended that a DCP should be prepared to ensure that the issues raised by the Court were covered and to strengthen Council’s position in the event of a further unacceptable application and further appeal.

4.2.7.1 The DCP for Hawthornden:

The objectives of the DCP are defined as:

- to define and conserve the cultural significance and curtilage of the property known as Hawthornden

- to encourage the preservation, restoration or reconstruction of its buildings, landscape elements (including vegetation) and setting which together contribute to its heritage significance

- to specify controls to ensure that any future development within its curtilage is subservient to the principal building and is undertaken in a manner that is sympathetic to and does not detract form its overall heritage significance

The plan includes the Figure 1 which shows the heritage items of the site listed under three categories as items of most Significance, items of lesser significance, and later elements of little significance. Figure 2 of the plan shows the principal viewsheds of the site to the north and north-east as being “view to Sydney Harbour” and “visual catchment to Bellevue Hill”.

The plan determines the curtilage of the site which comprises the whole of the property. The criteria used to define the curtilage of the site are also attached to the plan. Figure 3 of the plan shows the curtilage of the site, also indicating the south-east corner of the site as the area where future development might be permitted to occur, if all requirements of this DCP are satisfactorily met. (However, the proposed development of the Hawthornden DA had been positioned on the northern section of
the site, after the removal of the existing tennis court and pool. This is totally different from what it is proposed by the draft DCP).

The DCP states that any development should be small in scale, subservient to the purposes of the main building, and with no subdivision or strata titles on the land involved. The plan indicates that such development must be undertaken in a manner that is sympathetic to and does not detract from the overall heritage significance of the dwelling house and the place as a whole.

The DCP also defines specific controls on the proposed works to Hawthornden including its interior and exterior; heights, setbacks, external materials, colours and finishes of new structures on the site; landscaping and management of significant vegetation; protection of view sheds and pedestrian and vehicular access and parking.

The DCP provides detailed provisions for future developments on the site. The plan does not support any kind of medium density development in the site although the current zoning of the site still allows town houses and residential buildings.

The applicant of the Hawthornden DAs obtained an approval from WMC with the third DA, which proposed a new wing addition and alterations to the existing dwelling before the DCP came into force.

### 4.3 CONCLUSIONS

The Hawthornden DAs were determined in a situation where no formal heritage policy or formal procedural guidelines existed.

The applicant of the Hawthornden DA discussed the proposal with Council’s officer prior to its official lodgement and the parties agreed on the principle of the proposal (i.e. the location of the proposed development, its overall height etc.). During the interview with the applicant he drew attention to the B and D Committee’s recommendation for the DAs. He emphasised that he had preliminary meetings with the Councillors and they did not raise any specific objections for the proposal. He argued that political reasons (i.e. neighbours’ objections) influenced the outcome of the cases.

The Hawthornden DAs demonstrate that policies are made through decision making at WMC. At the end of the determination process of the DAs, WMC decided to prepare
a DCP for the site to provide detailed controls for future developments on the site. The DCP brings very important changes to the case which are the location and type of the new development on the site. The DCP proposes the south-east corner of the site as the area where future development might be permitted to occur. The DCP indicates that the proposed development should be small in scale, subservient to the purposes of the main building, and no subdivision or strata titles on the land should be involved. However, from the very beginning of the DA process, Council and the applicant agreed that the most suitable location was the north-west corner of the site.

The DCP, in its current form, does not support any kind of medium density development on the site. During the interview with the applicant he indicated that he would not have considered seeking an approval for the proposal if the DCP had been available when the DAs were lodged.
CHAPTER 5

5.1 THE CASE STUDY OF BROUGHAM

5.1.1 THE HISTORY OF BROUGHAM HOUSE:

118 Wallis Street, known as “Brougham”, is located on the corner of Wallis and Nelson Streets in Woollahra. Brougham is located in West Woollahra Heritage Conservation Area and is an identified heritage item under WLEP 1995 as well as a National Trust registered heritage building.

The history of Brougham and its heritage significance are derived from the “CP of Brougham” prepared for the Department of Planning by Dawson Brown and Ackert in February 1991. The CP was prepared for the Department of Planning in the purpose of a rezoning application in 1991 and was used in the preparation of the Brougham application (DA 941282) and the preparation of the DCP for the site.

According to the National Trust’s register information and the CP, the house was erected in three main periods with small alterations and additions carried out in recent years. Brougham House, once known as “Morianda Cottage” was originally a stone cottage of four rooms built in 1860. It is said to have been built by Judge Dowling. A brick wing was built in the second stage. In the third stage, in 1900, a number of alterations and additions were done by the King family. It was used as a private residence until 1943, when it was purchased by the New South Wales Government. There are a large number of mature trees dating from the original 1870s garden, including Norfolk Island Pines, Magnolias and Peppercorns. Two Norfolk Island Pines and a Hoop Pine are identified heritage items under WLEP 1995 (see Appendix 1a and Appendix 14, Photograph 3 and 4)).

The CP states that in 1943 Brougham House was established to operate as a shelter for boys. During 1944-1945 there were five shelters in NSW. The function of those shelters was for the temporary detention of children or young persons, apprehended as neglected or uncontrollable, or as juvenile offenders before their appearance at Court. The CP states that Brougham had accommodation for twenty inmates who were
suitable younger boys and the house was described as a ‘modern’ and well planned, and a well equipped Home which was bound to have a rehabilitative effect upon its inhabitants.

In 1947, Brougham ceased to be classified as a ‘shelter’ and was designated as a ‘home’ for younger boy wards to the age of 12 years. The policy at Brougham at this time was to promote socially acceptable behaviour in wards who were unstable, insecure, uncertain, often compensating for this lack of personal adequacy by abnormal behaviour. The new functions of Brougham as a house were to provide a home for boys of primary school age who were unsuitable for foster home placement, to provide a special school program to establish positive ego identification, develop self discipline and social adequacy.

According to the CP, is general philosophy of care was maintained until 1964. From this point, the number of children in residence increased dramatically. The information indicates that stays were relatively short and that the functioning Brougham had changed to an emphasis on short term care.

The CP concludes the history of Brougham as one of the oldest residences in the Woollahra area. As a private residence it was occupied by two families, the Dowlings and the Kings. Judge Dowling was a prominent member of the legal fraternity and there are many references to his judgements on various issues in the latter half of the last century. The house itself reflects the life-style of the middle-class professionals who occupied it for almost 80 years. The use of Brougham as a children’s shelter, and its initial selection as being suitable for use as such a facility reflect attitudes at the time regarding child welfare. Subsequent structural changes also reflect changes in attitude to the care of children and the use of the centre as a children’s home.

The CP defines the cultural significance of Brougham as of both primary and secondary significance. The primary significance of the building is its architectural significance as an example of a continually re-modelled and extended Victorian cottage of the 1860’s still retaining its grounds and mature 19th century plantings.

The secondary significance of Brougham is defined in the plan first as its historical significance for its association with Judge Dowling in the later half of the 19th century. Its garden setting is important due to its prominent position on the crest of the...
hill. The CP draws attention to the archaeological resource at Brougham Hostel which could provide new evidence for those aspects of the house’s history that are unavailable through documentary sources. Finally, its social significance was defined through its initial selection as suitable for a children’s home and secondly its continuous usage as a child welfare facility since 1943.

5.1.2 PREVIOUS PROPOSALS FOR BROUGHAM SITE

In June 1991, the NSW Government’s Property Services Group wrote to Council and advised that the Department of Family and Community Services declared Brougham Hostel surplus to its needs. The Property Services Group requested a rezoning to Residential 2(a) or 2(b) to facilitate disposal of the site and advised that a rezoning would be required to allow uses other than child welfare purposes (Appendix 12, Letter 1). At that time the site was zoned Special Uses 5(a)-Child Welfare Home under LEP 24. In February 1991, a CP was prepared for the Department of Planning by Dawson Brown and Ackert for the purpose of the rezoning application which addressed development options and recommendations.

A report presented to the Community and Environmental Committee of WMC on 27 June 1994 provided a brief summary of Council’s actions and decisions relating to Brougham Hostel over the past three years. The report also provided information on Council’s decision relating to the rezoning request of the Department of Planning. On 2 December 1991, WMC resolved not to proceed with the rezoning of the site to Residential 2(a) or 2(b) to facilitate disposal of the site. In this regard the Council commented on the appropriateness of the use of the building and land by other community facilities and drew attention to its Community Services Needs Survey (March 1990). The survey highlighted the need for a range of community facilities within the Woollahra Municipality, including day-care/respite centres for the elderly youth care centre, long day child care centres and nursing homes. The report emphasised that 22 percent of the Municipality’s population was aged 60 years and over which is the largest proportion of aged persons per head of population for any Metropolitan Local Government Area. The report stated that this statistic is particularly relevant when considering the need for community facilities for the elderly (Appendix 12, Report 1).
On 24 December 1991, the Department of Planning advised that it proposed to rezone the site to Residential 2(a) through an amendment to Sydney Regional Environmental Plan No. 7 (SREP No. 7)-Multi Unit Housing: Surplus Government Sites (Appendix 12, Letter 2). WMC objected to the amendment and expressed an opinion that consideration of any rezoning should be through the local environmental planning process where local issues as well as regional issues could be adequately addressed. WMC advised the Property Services Group and the Department of Planning that Council would welcome discussions on alternative zoning for the site which might accommodate:

- as the primary source of the site, other community facilities for which there was a demonstrated demand, including housing for aged and disabled

- as a secondary use on part of the site, multi-unit housing (Appendix 12, Report 2)

Newspaper articles regarding the rezoning and the Department's intention for the Brougham site may also be found in Appendix 12.

On 5 June 1992, the Department of Planning advised that the Brougham Hostel site would not be rezoned under SREP No. 7 (Appendix 12, Letter 3). The Department advised that it was preparing building guidelines for future development and identifying a possible building envelope for the site within which future development might occur (Appendix 12, Letter 4). This envelope comprised an area of approximately 2200 m² and covered the south-western section of the site. On 24 August 1992, WMC advised that the proposed "building envelope" should represent an absolute development area which, if necessary, would form the boundary of a future land subdivision and also a boundary for the purpose of any rezoning. That development area should incorporate all required vehicle access points, driveways, vehicle manoeuvring areas, parking areas, building and landscape areas. Council stated that the conservation policy contained within Brougham Hostel CP, February 1991, should be reviewed to take into account the new requirements of the Property Services Group as illustrated in the proposed "building envelope" (Appendix 12, Report 3).
5.1.3 REZONING OF THE SITE

In 1993, the site was purchased by the Congregation of the Temple Emanuel. On the 20th December 1993, a DA was submitted by GB for a “Residential Redevelopment in conjunction with a Crèche”. The letter from WMC to the applicant dated 27 January 1994 stated that, under the current 5(a)-Special Uses zoning a residential flat building was a prohibited use. Accordingly, Council was not in a position to determine the DA until a zoning that permits residential flat buildings applied to the subject site. The letter added that in order to have a rezoning to Residential 2(b) assessed, Council required that a separate rezoning application be submitted justifying the proposed rezoning and that the DA be withdrawn (Appendix 12, Letter 5). After the recommendations, the DA was withdrawn by the applicant.

In April 1994, a rezoning submission was received by the owner of the land, the Congregation of the Temple Emanuel, for the purpose of a residential development for aged persons’ accommodation and refurbishment of Brougham and use as a child care centre. In June 1994, WMC resolved to prepare a draft local environmental plan (Draft Woollahra LEP 76) to rezone 118 Wallis Street, Woollahra from Special Uses 5(a) (Child Welfare Home) to Special Uses 5(a) (Integrated Housing for Aged Persons/Community Facility).

The adjoining property owners objected to the proposed rezoning mainly because an extra amount of traffic and noise would be created by the proposed development. The objectors argued that there were already parking problems in the area because of too many community facilities located in one small area and large numbers of residential blocks with little or no off-street car parking. The area contained a mix of community uses such as the Temple Emanuel fronting on to Ocean Street, the Montefiore Home (elderly accommodation), a hospital on the corner of Nelson and Wallis Streets, a child minding centre in Nelson Street, the Temple Emanuel Kindergarten in Woods Avenue and a senior citizens’ centre.

The report of the Manager-Strategic Planning to Council of 10 October 1994 considered the public submissions on Draft Woollahra LEP 76. On 27 October 1994, Council notified the applicant of its decisions made as a result of Council’s resolution on that report. The applicant was advised:

-
- the Council recommended a full analysis of existing traffic and parking conditions within the immediate area of the site be undertaken
- the Council considered that the design of future development on the site should adhere to the building envelope and building guidelines prepared by the Department of Planning in July 1992 with the following amendments: the proposed building envelope should represent an absolute development area which should incorporate all required vehicle access points, driveways, vehicle manoeuvring areas, parking areas, building and landscape areas; and the proposed building guidelines should be amended to include reference to the retention of the Hoop Pine and White Quandong tree (Appendix 12, Letter 6)

The letter did not include the Council’s resolution of 24 August 1992 on proposed building envelope and guidelines (See Appendix 12, Report 3) that the CP prepared for the Department of Planning in February 1991 should be reviewed to take into account the new requirements in the proposed building envelope. Later, Council resolved to prepare a DCP for the site using the CP without making any amendments.

5.1.4 THE DCP PROCESS

Following the preparation of the local environmental plan to rezone the site, Council resolved that a DCP be prepared to provide detailed provisions for new development on the site. The plan aimed to achieve a high standard of development of the site and ensured that any development on the site would have regard to the heritage significance of Brougham, its mature garden setting and the surrounding neighbourhood amenity.

The draft DCP was placed on public exhibition for 29 days. A total of 15 submissions was received. The issues raised in the submissions were the impact of traffic and parking on the area; retention of significant trees on the site; the general impact of development on the neighbourhood amenity; setbacks for new development; the form and bulk of the new development and the heritage significance of Brougham. The draft DCP was also forwarded to WMC’s UCAC, The National Trust and The Heritage Branch of the Department of Planning for their consideration.
The draft DCP was amended according to the submissions received from neighbours and advisory bodies. On 27 March 1995, a report which considered submissions received during the exhibition of draft DCP together with the DCP in its final form for adoption by Council was presented to the Community and Environmental Planning Committee (see Appendix 13). The DCP for the site was approved by WMC on 22 May 1995 and came into force on 31 May 1995.

The DCP established a number of important controls including a curtilage around Brougham and its garden settings and provisions to ensure that the form of any future development of the site would be compatible with the design, scale, form and character of Brougham and its garden settings and the surrounding development.

During the interview with the heritage planner of WMC, she indicated that she criticised the DCP preparation process for using the CP prepared for the Department of Planning in 1991. She asserted that the CP was not sufficient to prepare a DCP since it was originally prepared for the purpose of a rezoning and did not include a curtilage for the heritage item (see Appendix 19d).

5.1.5 DA 282/94—BROUGHAM PROPOSAL

On 23 December 1994, after the exhibition of the draft DCP, DA 282/94 was lodged by CA Retirement Services on behalf of the owner of the site for “use of Brougham as a long day child care centre and construction of two buildings of aged persons' housing incorporating of 37 units and underground parking” at 118 Wallis Street, Woollahra.

5.1.5.1 The Site

118 Wallis Street, Woollahra known as “Brougham” (Appendix 14, Photographs 1,2,3 and 4) is an irregular allotment on the corner of Wallis and Nelson Streets. Brougham is located in the south-eastern corner of the site and was constructed in 1850s, of rendered brick/sandstone and timber with a slate and metal roof. The entire site, including two Norfolk Island Pines and a Hoop Pine, is an item of environmental heritage under WLEP 1995 and National Trust Register. A high stone fence on the Nelson Street frontage also has heritage significance. The site includes an inground swimming pool which has no heritage significance. There are also a garage,
aluminium sheds, shade houses and a small timber building located in the site (Appendix 14a and 14b).

5.1.5.2 The Proposal

It was proposed to construct two buildings for aged persons’ housing being a part two and three storey development (see Appendix 14b). In the planning officer's reports, the two proposed buildings were referred to as Block A and Block B. The same terminology is used in this study. Block A is located at the south-western corner of the site, having street frontage to Wallis Street. Block B extends along the western boundary of the site and is adjacent to a number of dwellings on Woods Ave. These dwellings are listed heritage items under WLEP 1995 as well as Australian Heritage Commission Register buildings.

The report prepared by the planning officer noted that Block A and Block B were designed to conform with the heritage curtilage established for the Brougham site in the DCP and to incorporate and enhance the significant landscape garden and setting of the site. According to the applicant of the proposal, the two proposed aged persons’ buildings were located to maintain the integrity of Brougham, retain the significant trees on the site, obtain an acceptable level of solar access and maintain the privacy of neighbours.

The proposal included the retention, refurbishment and re-use of Brougham as a child care centre. The works to Brougham involved the removal of non-significant and intrusive alterations and additions including the removal of a number of less significant walls. The centre was intended to cater for 30 children between the ages of 0-2 years. It was also proposed that part of Brougham be used as a sitting room, study and library for the residents of the aged persons’ housing. These uses were proposed to be located in the highly significant rooms of Brougham and would retain the integrity of these spaces. It was proposed to retain all significant mature trees on the site and to enhance the garden setting of Brougham.

The report of the planning officer recommended that the established garden and significant trees in the centre of the site form part of the identified curtilage for Brougham and defined the area where development should not occur. In accordance
with the DCP, development on the site was restricted to an area of approximately 3200 m$^2$ at the south-west and north-west of the site.

5.1.6 THE DA PROCESS

On 18 Jan 1995, the proposal was advertised in the local newspaper and 33 adjoining owners were notified. As a result of the notifications, an total of 12 letters of objection was received. Issues were raised in the submissions included neighbourhood amenity, heritage significance, height, setback, overshadowing, traffic generation, on-site parking and conservation of Brougham (see Appendix 5b).

Adjoining property owners of the houses along Woods Avenue (Appendix 14, Photograph 5) objected very strongly against the proposed development (Block B) on heritage grounds. They argued that the cottages on Woods Avenue had higher heritage listings (listed under WLEP, the National Trust Register and the Australian Heritage Commission Register) than Brougham and the proposed development gave them no consideration. The report prepared by Diane Berstein Design on behalf of the owner/occupier of 13 Woods Avenue, indicated that “the residences of Woods Avenue, on the western boundary of Wallis Street development, should be afforded equal (if not increased) consideration as Brougham House during the formulation of the design of any development within the Wallis Street site”.

The adjoining property owners were also concerned that traffic and parking problems would be created because of the proposed development. They argued that the area has already had traffic and parking problems because of the existing community uses in the area. It was indicated that there were already too many existing community facilities located very densely within in the close proximity. They indicted that there were serious problems in the area at school pick up and drop off times at the Temple Emanuel Kindergarten in Woods Avenue and child care centre in Nelson Street, and parking problems were also acute at times of religious observances. It was stated that the existing situation would be worsened with the proposed development.

After the approval of the DCP in May 1995, and following discussions with Council’s, Officers the applicant lodged amended plans on 17 November 1995. According to the planning officer’s report (see Appendix 17a), the proposal, as amended by revised plans, represented an improvement to the aesthetic
appearance of the development and the amenity on the site and to adjoining properties. The amendments were summarised:

- reduction in height to comply with Council’s height limit
- reduction in floor space by 1133m²
- increased setbacks on some boundaries
- the replacement of a hipped roof form with a parapet roof form
- re-design of the car parking area and provision of visitor car parking in the basement of Block A
- increase in the number of units by two to 39 units
- increase to the podium area on the south-eastern side of Block B
- new cabana adjacent to the south-eastern corner of Block B
- conservation works to the Brougham building and the surrounding curtilage (Appendix 17a)

The applicant in modifying the proposal submitted the following justification in support of the amendments:

- the amended proposal satisfies the aims and objectives of Council’s statutory and policy documents. Amendments have lowered the overall height of the proposal, increased setbacks from neighbouring properties and refined external appearance. Additionally, they have removed additional unsympathetic elements of Brougham, changed the configuration of Block A, provided roof gardens and provided a split level parking design

- an appropriate level of parking for residents and visitors will be provided on the site. Time restricted kerb side parking on Wallis Street is warranted to cater for the setting down and picking up for children at the child care centre. The proposal will result in a negligible increase in traffic generation

- the proposal will have positive social and economic effects, will not have an adverse affect on the amenity of the area and is considered to be in the public interest (Appendix 17a)
On 20 November 1995, the revised plans were advertised as previously and 13 objections were received (see Appendix 5b). The submissions received in respect of the revised plans repeated previous concerns including likely impact of the development on amenity, loss of privacy, overshadowing, increased parking and traffic and compatibility of building design in the neighbourhood context. The adjoining property owners indicated that little had changed with the amended plans to satisfy previous objections. The owners of Woods Avenue houses argued that the heritage character and value of these houses would be compromised by the proposed development. It was stated that there was an urgent need for an independent heritage report on the houses of Woods Avenue (see Appendix 14, Photograph 5).

The letter of 15 December 1995 from the applicant to the planning officer included the issues discussed at a meeting which was held on 6 December 1995 with the applicant and a majority of Woods Avenue residents. In accordance to the letter, the applicant was able to satisfy a number of neighbours regarding privacy and other concerns by retaining existing Camphor Laurel trees on the western boundary. It was also undertaken to relocate a car park air grille further away from the boundary for acoustic concerns. The applicant also asserted that, although they did everything to satisfy the neighbours in complying with the DCP, there were still a few who unrealistically did not want any development on the land.

On 14 December 1995, as a result of the adjoining property owners’ responses to the amended plans a site meeting was organised with the planning officer and owners of Woods Avenue houses and the owner of No 16 Wallis Street at 15 Woods Avenue. As a result of the site meeting, some points of concern were highlighted including consideration of the height of Block A and Block B exceeding height of Camphor Laurel trees, that is, being visible in elevation behind properties of Woods Avenue; possibility for pedestrian access to child care centre on Nelson Street only, and concerns of local residents about traffic speeds, with the need to consider may local traffic devices.

The Health and Building Departments of WMC raised no objections in the DA stage but attached a number of conditions relating to certain requirements that would need to be satisfied at the building application stage. Council’s Trees Officer recommended approval of the proposal subject to sixteen conditions which were included in the
recommended development consent by the planning officer. Although a number of neighbours raised issues relating to traffic and car parking, with the information provided by the applicant in respect of traffic generation and traffic impacts and the models used to generate the data, WMC’s Engineering Department was satisfied that the development was acceptable.

5.1.6.1 Heritage Concerns:

UCAC of WMC, the National Trust and the heritage planner assessed the proposal and raised their concerns relating to heritage issues. According to the minutes of the Committee of 17 January 1996, regarding the heritage item the Committee recommended that the external form and detail of the house be restored to its pre World War II presentation (Appendix 15a).

The heritage Planner of WMC commented on “integrity of Brougham” and “infill development” (see Appendix 15b). She criticised the CP of Brougham prepared for the Department of Planning in 1991 and the heritage report prepared by Rod Howard Conservation P/L arguing that the report addressed only the exterior of the building and the schedule of work contained in the report was based on superficial inspections and should not be considered comprehensive or complete. She stated:

Accordingly Council should insist on a more extensive conservation assessment that considers both the interior and exterior of Brougham. Brougham is an important heritage item and this the only opportunity Council will have to insist upon its proper conservation (Appendix 15b).

She said that the location of the infill to the north west of the site was consistent with the recommendation in the CP. The height and scale of the infill development in relation to the south west boundary, however, was unacceptable to the adjacent Woods Avenue cottages (see Appendix 14, Photographs 5). She also recommended that the archaeological potential of Brougham fabric should also be explored to address gaps in information available on Brougham during its use as a hostel (Appendix 15b).

The National Trust strongly objected to the proposal. The Trust sent two letters to Council regarding the original plans as well as the amended plans. The first letter
(Appendix 16, Letter 1) dated 10 January 1996 stated that the proposal had been assessed against the DCP. The letter objected to the proposal on the siting of development, height, building form, external materials, colours and finishes and open space and landscaping issues. The letter stated that the scale and proportion of the development in the context of Brougham and the Wallis Street/Woods Avenue properties were considered excessive (Appendix 16, Letter 1).

The second letter (Appendix 16, Letter 2) dated 14 February 1996 for the amended plans stated that many of the comments contained in the previous letter still remained. The Trust considered the infill development and stated that the proposed development made very little attempt to be compatible with surrounding development or the character of the streetscape. In general the Trust’s comments were as follows:

- the quality of the surrounding area is particularly fine and should be respected in the new buildings, along with Brougham itself. The proposed building does not comply with the character of the area surrounding Brougham which is made up of buildings with small street frontages
- it is clear that the design of the development is not compatible with Brougham and surrounding development. Details are very important in this context and detailed consideration should be given
- the whole development shows a lack of appreciation of site context and historic building proximity and sensitivity (Appendix 16, Letter 2)

The applicant’s response to the issues raised by The National Trust was prepared by Mr Robert Staas, Heritage Consultant, of Noel Bell, Ridley Smith and Partners and is attached (Appendix 16, Letter 3).

The report (Appendix 15c) from the Heritage Planner to the planning officer dated 20 February 1996 repeated her previous concerns and included her recommendations.

On 4 March 1996, the application was referred to B and D Committee meeting. The report (Appendix 17a) stated the planning officer’s recommendations for approval of DA 94/282. The Committee resolved that the matter be referred to the Inspection Committee meeting to be held on 6 March 1996. As a consequence of these two meetings, the concerns were clarified specifically relating to overshadowing and loss
of residential amenity to Woods Avenue properties (western boundary) (Appendix 14, Photograph 5) as a consequence of the bulk, scale and height of Block B.

On 11 March 1996, the applicant submitted amended plans of Block B which proposed an additional two metre setback from the western boundary. The planning officer of the DA sent a memorandum to all Councillors regarding the amended plans for the B and D Meeting which was held on the same day (see Appendix 15d).

The DA was approved by B and D Committee on 11 March 1996 subject to 85 conditions. A copy of consent is attached in Appendix 17b.

5.2 CONCLUSION

The Brougham application was lodged in a situation where no formal procedural guidelines existed. However, it was determined under a DCP which was prepared by WMC as a result of the rezoning of the site.

The CP came with the DA which was originally prepared for the Department of Planning in 1991 for the purpose of a rezoning of the site which was criticised by the Heritage Planner and found not adequate to prepare a DCP. Although WMC’s resolution of 24 August 1992 recommended that the CP should be reviewed to take into account the new requirements of the proposed building envelope for the site within which future development may occur, the CP was used in the preparation of the DCP and the determination of the DA without any amendments (See Appendix 12, Report 3). This situation is an example of the lack of criteria to determine what constitutes an adequate CP or any kind of a heritage report.

WMC supported the Brougham application with the approval of the rezoning of the site, which permitted aged persons’ housing units together with use of Brougham as a child care centre. Council spent much time on the proposal with the preparation of the Draft LEP and preparation of the DCP. All these factors played an important role in the outcome of the DA.
6 CHAPTER 6

6.1 STAKEHOLDER ANALYSIS

6.1.1 INTRODUCTION:
This chapter examines the roles of players who participated in the process of the DAs. The study aimed to elucidate understandings and interests of the stakeholders and to examine interactions and levels of meetings between different parties. Examination of the issues and concerns discussed between parties, and consideration of the impact of those issues on the assessment and decision making process may also reveal the political side of the process.

The term “stakeholders” in this study refers to different players who had roles in the assessment and decision making process. Stakeholders fall into four different groups. The first group is the WMC. The Council is considered as either technical staff or elected members because of their different roles in the DA determination process. The second group is the applicant-owner-architect whose aim was to achieve a certain goal. The third group is the public who were adjoining property owners affected by the new proposal. The last group is the advisory bodies and special interest groups who commented on the proposal and played a part in the assessment of the DAs. They are the National Trust, WMC’s UCAC and the Woollahra History and Heritage Society.

6.1.2 DEFINING STAKEHOLDERS OF THE CASES: WHO ARE THEY?

6.1.2.1 Woollahra Municipal Council:
Local governments are the representatives of local people; this means they are responsible for implementing the wishes of the community. Their main role is to supply services for different local activities, and they aim to be sensitive to local community needs. Local governments consist of a mix of politicians, specialised professionals (engineers, planners, community workers, etc.) and a general administrator.
The role of WMC in the determination of the DAs is examined in two major sections dealing with technical/professional staff (planning officers, senior technical staff) and elected members of the Council (Councillors comprising the B and D Committee) respectively.

**Technical/Professional people** specialise in different disciplines (planners, architects, heritage planners/heritage architects, engineers, building and health inspectors, landscape officers) which are involved in assessing building and development applications. Technical officers assess applications according to NSW legislation and Council's LEPs, codes and policies, and put their recommendations to the Planning Committee to make decision.

The DAs of this study were assessed by professional officers with qualifications in town planning. Expert views for different kinds of issues for the proposals (heritage, drainage, landscaping, traffic, etc.) were obtained from the heritage planner, building and health inspectors, engineers and the trees officer. Senior officers of WMC (the manager of the Development Control Section and team leaders) were also involved in the pre-DA discussion meetings and during the determination process of the DAs.

The planning officer involved in the Brougham application also worked in the preparation of the DCP for the Brougham site. She was working as a strategic planner when the DCP was prepared. Later she moved from the Strategic Planning section to the Development Control section. Since she was familiar with the site and the potential proposal (the proposal was known when the DCP was prepared) she was nominated to assess the development application although the site did not fall in her assessment team's area (each team is responsible for assessing development/building applications within specified boundaries generally divided by suburbs).

The same planning officer assessed both the Hawthornden proposals. During the assessment process of the second DA, her position changed from planning officer to manager of the Development Control Section.

The heritage planner was involved in the process of the Brougham application, commenting on heritage issues. However, she was not involved in either of the Hawthornden applications. When she was appointed to the heritage planner position, the first Hawthornden DA was in the process of assessment. Later, she was not asked
to be involved. Heritage assessment and expert views for the proposals were obtained from UCAC, WMC’s special advisory committee on heritage issues.

Elected Members (Councillors) represent the interests of the whole community including ratepayers and service users. They also instigate the making of policies and codes based on what the residents want or do not want. Councillors are elected by the community to work and act on what is important to the residents of the Municipality. Councillors make decisions on applications considering both the wishes of local people and recommendations from the technical staff.

Disputes may occur between politicians and technical officers. The officers have been known to complain about the low level of intelligence, lack of technical knowledge, and short-term perspectives among councillors. These disputes arise from the different responsibilities and priorities of each party. The main responsibility of councillors is to represent their constituencies (i.e., public interest). Technical officers give advice based on their evaluation of policy decisions.

The HawthornDen and Brougham DAs demonstrated two different outcomes by the B and D Committee, which consisted of the same councillors. The HawthornDen DAs were refused twice by the Committee, firstly according to the planning officer’s recommendations and secondly against her recommendations. The same committee, in accordance with the planning officer’s recommendations, approved the Brougham proposal.

6.1.2.2 Applicant/Architect/Owner/Developer:

The applicant/architect/owner/developer act for the same purpose: to gain acceptance of the landowner’s wishes for the proposal. They are the ones who fight for the approval.

In the HawthornDen proposals, the architect of the proposal represented all the above players. He was the applicant, designer and representative of the owner/developer of the site. In the Brougham proposal, there were project managers who were employed by the owner and who acted as applicant in the first part of the proposal. Later, they quit and the architect continued the applicant’s role. The role of “applicant” here
represents a person(s) handling a variety of issues including consultations and negotiations with the planning authority as well as with the other stakeholders.

The owner of the Brougham site was a community and religious organisation. This, as will be seen later, plays an important role during the assessment process. The owner of the Hawthornden site was an individual developer. Both owners aimed to develop their sites.

6.1.2.3 Public: Adjoining Property Owners

Local Councils represent ratepayers and residents. Councils consider people’s will when they make decisions. Public participation is particularly important in planning issues. People have the right to know of any changes in Council’s plans and policies. WMC advertises all development applications in the local newspaper and notifies the adjoining property owners who are likely to be affected by the proposed development. Public responses to planning matters are normally high in the municipality.

The public was much concerned about the Hawthornden and Brougham proposals. The adjoining property owners raised their concerns about the proposals with the letters of objection and petitions. Some of the adjoining property owners raised their concerns about the DAs through private planning firms. Some of those consultant submissions included extensive reports about the impact of the proposed development on the subject adjoining property owner’s land.

A total of 27 letter of objection together with a petition signed by 29 people and one letter of support were received for the first Hawthornden proposal. When the proposal was amended by the applicant, 17 objection letters and a petition signed by 26 people were received. The adjoining property owners’ responses for the second DA were 16 objection letters and a petition signed by 27 people (see Appendix 5a).

The Brougham proposal received 12 objection letters for the original and 13 objections for the amended scheme. The adjoining property owners also put submissions concerning the DCP for the Brougham site when it was publicly exhibited. A total of 15 submissions was received during the exhibition period (see Appendix 5b).
Adjoining property owners were mainly concerned about the impact of the proposed infill developments on their properties. Privacy, overshadowing, traffic, noise, loss of property value and heritage were the main issues raised by residents. The chronology tables (Appendix 5a and 5b) for the Hawthornden and Brougham proposals include a detailed description of each submission letter.

6.1.2.4 Special Interest Groups/Advisory Bodies: WMC's UCAC, Woollahra History and Heritage Society and The National Trust

Urban Conservation Advisory Committee (UCAC) consists of representatives from the National Trust, the Royal Australian Institute of Architects and the community. The panel meets fortnightly and provides heritage advice. The Committee comments on building and development applications relating to heritage items and properties in heritage conservation areas which are later used in the planning officers’ reports. The Council’s heritage planner is also one of the members of the Committee.

UCAC's comments were especially important in the Hawthornden DAs since the heritage planner was not involved in the determination process. UCAC commented both on the first proposal and the subsequent amended scheme and declared it was satisfied with the amendments to works to the heritage building. However, the Committee stated that the bulk and scale of the apartment building was considered unacceptable, particularly when viewed from the entrance and driveway to the site, its scale detracted from the setting and heritage significance of Hawthornden. The first DA was refused by the B and D Committee, in accordance with the planning officer’s recommendations.

UCAC commented on the second DA of Hawthornden and generally concurred with the comments of the National Trust, which were stated in the Trust’s letter of 28 April 1995 (see Appendix 7, Letter 5). A primary concern of the Committee was the retention of Hawthornden’s grounds and setting and the retention of all major landscape features. The Committee recommended that Council considers seeking a Permanent Conservation Order (PCO) over the site (apart from the proposed unit block) to further assist in precluding any further subdivision of this site and any further loss of landscape setting and detail. The second DA was refused by the B and D Committee, against the planning officer’s recommendations.
UCAC's comments for the Brougham proposal were that the new buildings were insensitive to the nature of the site, its surroundings and the conservation values of Woollahra. Although some of the issues raised by UCAC for the Brougham DA were addressed by the applicant, UCAC was of the view that the design of the infill development was not appropriate to the site.

In general, the planning officer's recommendation for the Hawthornden DAs concurred with the comments of UCAC.

The Woollahra History and Heritage Society was founded in 1985. The aim of the Society is to encourage the study and understanding of all aspects of the history of the Woollahra Municipality. The members of the Society are residents of Woollahra who are conscious of the heritage and history of the area. The Society has more fully defined its objectives since it was established. The main objectives of the society are to broadcast, publish, hold meetings, lectures, exhibitions and to do all other things necessary and incidental to encourage the growth and dissemination of information pertaining to and the preservation of the history and heritage of the district and to educate others accordingly.

The Society commented on the Hawthornden DAs. In its submission, the Society provided information on the historic importance of Hawthornden and its site and the effect of the proposed development (see Appendix 7, Letter 1). The Society argued that the new development would completely dominate the site, diminishing the present impact of the historic house and its trees.

The National Trust of NSW was actively involved in the Hawthornden and Brougham DAs since both buildings are listed heritage items under the Trust's Register.

The Trust expressed concerns about the first DA for Hawthornden that the scale and bulk of the proposed building would dominate Hawthornden and compromise its setting. It was acknowledged that the location of the proposed units would have less impact on the heritage significance of Hawthornden than a similar development at any other location.

The Trust repeated its concerns when commenting on the second DA for Hawthornden. However, the new proposal was considered by the Trust as a
substantial improvement in regard to its formal relationship to Hawthornden and more appropriate in relation to the main elevation of Hawthornden than the previous scheme.

In general, the Trust opposed the proposed development for the Brougham site. The Trust commented on the design of the infill development, stating that the development made little attempt to be compatible with the surrounding development or the character of the streetscape. It was also stated that the whole development showed a lack of appreciation of site context and historic building proximity and sensitivity. Although the applicant addressed some of the Trust’s concerns, the design of the new development remained unchanged (see Appendix 7, Letters 3, 4 and 5).

The Department of Urban Affairs and Planning’s Heritage Branch was also given the opportunity to assess the proposals and provide Council with comments. However, no submissions were received for either the Hawthornden or the Brougham DAs.

The comments of the special interest groups/advisory bodies on both DAs were considered by the planning officers, and the applicants were asked to address these issues on amended schemes. Some of the issues were addressed and some changes occurred for both proposals. As a general comment, the recommendations of the planning officer for the Hawthornden DAs to the B and D Committee concurred with the comments of the advisory bodies. However, the heritage experts differed on some issues for the Brougham DA. The planning officer was satisfied with the proposal and the amended scheme and her recommendation of approval for the Brougham DA was also supported by the Councillors.

6.1.3 THE INTERACTIONS BETWEEN DIFFERENT INTEREST GROUPS (STAKEHOLDERS)

6.1.3.1 WMC and Applicant

As briefly discussed in Chapter 3, the development process of the Hawthornden and Brougham applications occurred differently in term of following a set of procedures, particularly providing discussions before submission of the applications.

The interview with the applicant/architect of Hawthornden application (see Appendix 19c) and the document he provided for this research from his own file (Appendix 8)
indicated numerous pre-DA discussions, site inspections and meetings between Council’s professional officers and his professional team in order to discuss the preliminary design proposal before its official lodgement. During the interview he stated that:

“I have been guided by the Council’s technical staff who were AR (Heritage Planner of WMC at that time) and BO (Manager of the Development Control Section at that time). They have realised that the only location of the proposed development would be the existing tennis court site and I was asked to establish the curtilage of the house. Later SF (subsequent Manager of the Development Control Section) came along to assess the application and she did not support the proposal mainly because of the height and for other reasons”.

The applicant’s document for his own record (see Appendix 8) documented pre-DA negotiations between two parties even more in detail:

“The sketch plans were discussed with AR and BO at the Council’s office where it was agreed to discuss the development further on site to visualise the footprint of the new apartment block in relation to the residence (Hawthornden house), existing vegetation and adjoining properties. At this meeting I was also informed that the Council had been approached with numerous designs for this property.

At the site inspection, Council officers agreed that my concept was the most suitable for the site. During the discussions it was agreed to approach a Heritage Architect Consultant, so that an appropriate curtilage around the residence could be established.

After preparation of a very detailed survey, it was decided to delete the two townhouses, as there were too many constraints due to the location of the trees and the adjoining townhouses.

At a meeting with AR, BO, the client and myself at the Council’s office, we discussed the final design. During the meeting it was agreed to investigate the possibility of creating a taller building thereby reducing the footprint of the proposed development.
The Council officers agreed that by going to the 4 storey plus carparking design and stepping the building West to East, the impact of the development to the adjoining buildings on the western boundary would be reduced”.

The above evidence shows that the applicant had various detailed discussions, site inspections and meetings with the Council’s professional staff before the lodgement of the application. Just after the lodgement, the Council’s officers who had participated in those discussions ceased to be involved with the application. The new planning officer who later came to assess the application (SF) had major concerns about the proposal. Obviously, this created problems, particularly on the applicant’s side. Eventually, the first application was refused by the B and D Committee according to the recommendation of the planning officer.

As discussed in detail in Chapter 5, the Brougham proposal developed quite differently from the Hawthornden. The lodgement of the first application by the project managers on behalf of the Congregation of Temple Emanuel for developing the site for residential purposes and using the Brougham house as a crèche went back to 1993.

The proposal for the site (community uses plus childcare centre) came as a new proposal with a rezoning application, as WMC had clearly indicated that the above mentioned DA would not be assessed unless the current zoning was changed. During the interview with the planning officer who dealt with the Brougham DA, (SR), she said that there were no previous discussions with Council before the rezoning application (see Appendix 19d)

“...The rezoning came with an indicative proposal. The indicative proposal, as far as I am aware, came without any previous discussions with the Council. And, from the start there were a lot of objections on that certainly from the community. Because when they (neighbours) came up to look at the rezoning proposal (when it was publicly exhibited), they have all of a sudden seen this development that was proposed for the site because there was no discussion with Council. They have lodged amended plans after the DCP”. 
WMC's file for the Brougham application does not report any previous pre-DA discussions or any meetings between the applicant and Council before the rezoning application. Discussions started with the rezoning application.

When the researcher asked a member of the firm of advisers, (GK), who was involved in giving advice to the applicant and architect on planning issues, whether he had any difficulties during the assessment process in terms of arranging meetings with Council's planning officer or Councillors to get advice and feedback on the proposal, he answered:

"In terms of arranging meetings, we never arranged meetings with Councillors, only with the Council staff and we never had any problems organising any meetings with them. So that was not a problem. I suppose the problem may have been getting some certainty not so much from Council's officers but at least commitment from the Councillors".

Elected members' involvement in the cases and their role during the assessment process were criticised by the applicants of the proposals. As stated above, GK talked about the uncertainty regarding the outcome of the proposal. He continued:

"...Council officers cannot provide whether the Council will go ahead with it, whether they are going to approve or not. ...We will be given advice based on...the likely be an approval as the recommendation from Council's officer. We cannot guess what the Council (Councillors) will say. We can sometimes guess with the level of controversy that's likely to be generated and if it is in the area of Woollahra ...in the area whether is going to be overshadowing ...and we know that the next door neighbour of the property that will be affected and will likely to object and we know that there is going to be some problems".

As documented above, although the Hawthorned applicant had various discussions with the Council's planning officers before the lodgement of the application, he met different views and approaches from different planning officers. However, he did not raise this issue of inconsistency between Council's planning officers in providing guidance to the applicant as a problem. On the contrary, he accused Councillors of not being competent and co-operative in the assessment and decision making process. In the interview (Appendix 19c) he stated:
"...My point is even if you have right guides like the information we have, the final word comes from the Committee (Councillors) and the neighbours...And one of the Councillors, RW, read the planning officer’s report during the meeting. They were discussing item twelve and she was reading item thirteen. How can you determine a development application reading the report on the night of the meeting? It should not work like this.

"I invited all Councillors (member of the B and D Committee) to the site inspection and they refused. I asked them to defer the meeting to other time (this is after he saw the planning officer’s recommendation to the B and D Committee for refusal for the first DA) to look at the issues and they refused it. Nobody was on the site before and when they came the only thing they picked up was the cliff issue”.

6.1.3.2 WMC, Applicant and Adjoining Property Owners

As stated before, public participation in the assessment processes of both proposals was high. Adjoining property owners first raised concerns through objection letters when the proposals were publicly exhibited. During the preparation of those objections, adjoining property owners or their representative planning firms consulted with the planning officer of the applications in order to obtain further information about the proposals. Both Council’s records (DA files) and interviews with the applicants indicated that there had been various discussions and site meetings between Council’s planning officers, applicants and adjoining property owners (see Appendix 5a and 5b).

The objectors of Hawthornden played an important role during the assessment and decision making process. During the interview (see Appendix 19c) with the applicant of the Hawthornden DAs he argued that the main reason for the two refusals was public pressure on Councillors. He said:

"WMC is not assessing applications, assessing the objections. But, they are not looking at the content of the objections, they are not looking at whether they are relevant or not".
In the Hawthornden proposals one of the issues that adjoining property owners were most concerned about was storm water. During the interview with the applicant (Appendix 19c), he stated:

"We had so many meetings organised by WMC (with the four property owners who were concerned about the issue—one was a foreign consulate, Council planning officer and experts) about the storm water issue. The four properties around Hawthornden have the same problem and they have agreed to create an easement and suddenly they have changed their mind."

The petitions (Appendix 10) lodged with WMC came not just from adjoining property owners but from a wider community as well. However, this community was so wide that people who lived in distant locations signed the petitions. During the interview with Hawthornden applicant, he stated:

"RW (one of the B and D Committee members) said at the meeting that "we never had that many objections before, we got a petition from 100 people". No one went through the petition (people from Point Piper, Paddington, Randwick, Redfern etc.). I sent a letter with a list to Council to show where those people actually live."

WMC's files documented that two property owners (one property owner and one Body Corporate) also gave financial support to Council when the applicant took both refusals to the Land and Environment Court. Those property owners paid the half of the expert witness's fee on the basis that the expert witness who was retained by those owners at that time was representing their interest as well as Council's.

6.1.3.3 WMC, Applicant, Adjoining Property Owners and Special Interest Groups/Advisory Bodies:

The main concern of special interest groups was heritage. The issues in their submissions to the Council were concerned the impact of the new developments on the sites to the existing (Hawthornden and Brougham) houses. During the interview with SF (Appendix 19c), she alluded the special interest groups’ views on the second Hawthornden DA:
The second proposal was considered acceptable by the National Trust. The Heritage Council and Council's UCAC recommended the proposal to be approved. But, they depended on major problems. I think they saw that it means to restore Hawthornden, which was still under great risk from deterioration and needs total renovation. ... So the heritage advisors had given their OK and have said that it is acceptable.

Woollahra History and Heritage Society was one of the special interest groups which totally the Hawthornden proposal. During the interview with the president of the society (Appendix 19e), he was asked whether they wanted to act together with the other objectors (i.e. adjoining property owners) to the proposal. He answered:

"No. Because as a Woollahra History and Heritage Society our objection is purely under "heritage". And the other people object to the proposal under the other issues (traffic, noise, overshadowing etc.) rather than heritage.”

The planning officer of Brougham application mentioned during the interview that Council had sent a copy of the proposal to the National Trust for comment. She also said that the applicant had had a number of discussions with the National Trust and had provided some additional details.

6.1.4 CONFLICTING ISSUES

The documents from WMC’s files and the interviews with the stakeholders revealed that there were some conflicting issues during the assessment process of both proposals. Some of those issues were specific to the content of the proposals, such as the adequacy of the CP in the preparation of the DCP for the Brougham site, or the discussion of the site constraints and implementation of statutory requirements (zoning, floor space ratio, etc.) for the Hawthornden site. Some of the issues were broader, such as discussion of the importance of the issue of “heritage” in the determination of the both proposals. The following section is a discussion of those issues, and refers to the stakeholders’ views about those issues using the interview data.
6.1.4.1 Adequacy of CP in the Preparation of the DCP for the Brougham site

Among the issues addressed through interviews was whether WMS provided sufficient information and guidance for the proposal, and whether clear guidelines such as a DCP were important during the assessment process.

As discussed earlier in Chapter 5, the heritage planner of WMC criticised the efficiency of the CP for the preparation of the DCP for the Brougham site. During the interview, she stated:

"The CP was not sufficient, it should have been upgraded. The DCP should not have been prepared using that CP."

When the planning officer of the Brougham application was interviewed (Appendix 19d) (she also prepared the DCP for the site) she repeated that she found the CP detailed enough to prepare the DCP. Although she could not justify why the applicant was not asked for a fresh CP for the proposal, she expressed the view that it was within her discretion as a planning officer on the matter even though she was advised differently by an expert on the issue. She stated:

"...So she (heritage planner of WMC) was not involved in the preparation of the DCP. That was through the department (Department of Planning), more through me and through I guess discussions with the Department, the Heritage Branch with respect to the formulation of what would be a reasonable building curtilage around Brougham.

"...The CP also already detailed the levels of significance that Brougham had particularly all the ...so from that we agreed to get an application which was a part of belief that the documentation of CP was sufficient enough for us to make a decision. So, it was quite sufficient but it did not go into detail about the significance of the site, so there were a number of elements that needed to be respected to the whole site not necessarily to the building. So it did not go any details....In the matter of looking at the details in that CP in assessing an application and that was satisfactory what we required."

When she was asked whether she agreed that a DCP was still required if there was no rezoning request for the site, she responded:
"The rezoning request was a difficult application in that a rezoning request came in for a new proposal for the site. So they would look at it in conjunction but basically in the preparation of the DCP. I mean I had in my mind that yes the site was going to be redeveloped for a retirement village but it certainly did not write the DCP to comply with the proposal. I mean it worked fine having a DCP because it was effective instead of... Brougham and put in place of guidelines for objectiveness but, certainly the application of the site is a merit assessment so, they do not necessarily be made a site specific DCP. It is really a merit assessment what they are proposing in its context and it is considered that is suitable. Perhaps if we did not have a DCP, there would have been a need for a new CP."

6.1.4.2 The role of “development of the site of Brougham for community purposes” in the decision making process:

The interviews with the different stakeholders showed that the majority of the stakeholders agreed that the development of the site of Brougham for community process affected the decision making process. The manager of Development Control Branch at that time, the planning officer, the planning consultant of the proposal, and a Councillor all agreed that the Councillors supported the proposal from the beginning mainly because of the community gain at the end. The following quotes reflect the different groups’ view on the issue:

The manager of Development Control Branch, SF, indicated that the approval of Brougham was a community gain by virtue of a childcare centre and the upgrade and restoration of Brougham house, which was giving nothing to the public at the current stage. When the planning officer of the application was asked her opinion on the issue, she responded:

"Yes, the site was appropriate for community uses. The site has always had a long association with a community use as a boy’s hostel and that was the intention of the rezoning that it would continue to have that community association and it will continue to have that now. And there is a shortage of facility for aged persons’ housing. We do have an ageing population in
Woollahra. And that was another reason to rezone the site. That was one of the strategies, housing strategies of WMC”.

JL, one of Councillors of WMC who had a special interest with the case because of his association with the Jewish Community and his father's position as a Board member of the Congregation of Temple Emanuel, agreed that it was the issue. He indicated his views about the issues in the interview (Appendix 19d):

“Yes yes, I do. I think the Council generally used the facilities, as something has to be encouraged rather than discouraged. I think that because of the community facility, particularly an aged care facility that was something that the Council wanted to encourage. It is different than someone wants to build flats. I think we, the Councillors are people who like getting community facilities, and a positive thing brings people in the area”.

When he was asked how he could describe the other Councillors’ (members of the B and D Committee) general approach to the application, he responded:

“...I remember that Councillor ML had some concerns and I know that Councillor DH supported Temple Emanuel particularly ... good development. And RW always campaigned for greater housing for the aged, facilities for the aged. And it was nice to have something for the aged people. I know that RW was in favour of it”.

Councillor JN was the only person who responded differently when asked to comment on the same issue (Appendix 19d). He said he did not agree that either the proposed use of Brougham as a child care centre or the development of its site for community purposes played a major role in the decision making. He stated:

“...The community facility application was generated by somebody take a good price of a block of land and wanted to generate to make money. The community facility could have been put in any other place in the area. I do not believe that Brougham was aimed to be developed by a non profit organisation. My mother is in a retirement village. I mean it is an up-market money making business and costs money to me and to my sister to keep her there. And you know... you know there are apartments there and they are going to make money. A charitable institution where a charity development asset buy.... a charitable institution is
women's refuge grief we know what costs a lot of money to maintain. The money goes in and nothing comes out of it. That would be sold or rented or half rented, half sold for a profit to be able to keep everyone's lifestyle...That's what I objected. They said that it is a charity. They are providing a great lifestyle.”

Even though it is not possible to evaluate to what extent the proposed use of the Brougham site affected the outcome of the proposal, the interviews revealed that the majority of Councillors approached the application positively and some of them actively supported it.

6.1.4.3 Site Constraints for Hawthornden Proposal:

As discussed earlier the Hawthornden site is zoned as 2(b) with a floor space ratio: 0.625 and 9.5 meters maximum height under WCLEP 1995. The current statutory controls allows medium density housing development which is mainly town houses and residential flat buildings.

According to the statutory controls of the site, the applicant had expectations of obtaining approval for a medium density housing development for the site. However, both applications were refused for different reasons. One of those grounds was that the proposal was considered to be an over-development.

After the court case WMC’s solicitors wrote to Council regarding future planning policies on the Hawthornden site (see Appendix 11b). WMC was warned that the applicant might lodge a further development application relating to the site. The letter made it clear that Council needed to consider what type of development on the site would be acceptable and needed to be pro-active in its protection of Hawthornden and its grounds.

WMC was advised on two options. The first was to rezone the site from 2(b) to 2(a), which prohibits a residential flat building. The second, which was described as more preferable, was to prepare and implement a DCP for the site in order to protect the grounds in accordance with the views expressed by the Court in its decision.

WMC decided on the second option and a DCP was prepared for the site. During the interview with the applicant he argued that he would not have lodged the application in its current form if WMC had provided a DCP and made clear the controls for the
site. It was obvious that there was a kind of conflicting situation for the applicant where the current statutory controls permitted development of the site for apartments but it was also difficult to justify approval. According to the researcher, this situation demonstrated a lack of Council efficiency in providing information and guidance for the proposal, and the need for clear guidelines (such as a DCP) during the assessment process.

The planning officer of the application did not agree that the applicant was confused during the assessment process (particularly in the process of the second DA) on what Council wanted to see on the site. She said:

“I do not think the applicant was confused. He had a site zoned 2(b) with a floor space ratio 0.625:1. He has done a CP, which identified the house, the grounds, wherever he wants to touch. He supplied everything. They identified what part of site could be developed. There was no argument that this part of site could be developed. There is no argument even now. Just that the subject site’s potential was not 0.65:1 because of the heritage, because of the relationship adjoining buildings and … The changes in definition of height came on same time, you know and the Council did not want to see three level building.

“He was not confused but I think he had expectations from the side of Councillors for the second DA. I think they probably were expecting an approval for it although they always knew that it was a bit awkward site and always knew that there is a strong objection from the neighbours. And the issue of cliff face (storm water could be sorted out) which had to be engineered to be satisfactory”.

When she was asked whether the application was difficult to assess by her as a planning officer in the absence of the clear guidelines, she responded:

“It was not that much difficult to assess the proposal but the site as known is special on what is zoned 2(b). It did not really mean that they could maximise that. And perhaps the site’s zoning should be changed or a DCP done and that exactly what they have done that. So it was not confusing but it certainly was not clearly indicated”.

However, she agreed that the whole process could have been different if there had been clear guidelines for the site. She said:
"It would be better if there was a DCP. Sites with heritage items suitable for flats. You have got to be specific in order to be proactive. And exactly what is happening now".

It was also interesting to see her comments on the financial cost of the refusals to Council. Her comments reflect a senior planning officer’s comments. She said:

"...My anticipated solution would be a two storey pitched roof building (one or two dwellings) located in the old tennis court site or something like that. ...Do not forget that this one cost $70,000 to win that case. And perhaps you have won that it was appropriate. I do not know. You cannot tell, you cannot put a price on it. But if you want to stop, you have to do so, you have got all the expertise, and you have to get the right people who fight for the battle. But that does not come cheap. So you have to make a decision in making any of these determinations how much is it is worth to you to make that decision? You like it or not there has to be a financial ticket on it because community pays for it. The whole community pays for it not just the immediate neighbours. Very difficult. But the decision on Hawthornden was not straightforward, not all Councillors agreed. Certainly, it was not unanimous. They are very difficult pictures."

6.1.4.4 Consideration of the issue of “heritage” in the determination process:

As discussed in previous chapters and as revealed in interviews, that “heritage” was one of the big issues that was considered as a concern by various stakeholders in the determination process of both applications.

In the Hawthornden application, one of the reasons for refusal of the application by the B and D Committee (see Appendix 9, Report 1and Letter 1) was “heritage”. The Committee agreed that the proposed development would have a detrimental impact on the heritage significance of the item and the site as a whole. The subsequent appeal to the Land and Environment Court (see Appendix 11a) gave similar weight to the heritage issue.

One third of the objections (nine out of 27) received for the first DA by adjoining property owners included the issue of “heritage” as well as the other issues including loss of view, loss of privacy, loss of value, height, traffic, etc.
Exactly half of the objection letters (eight out of 16) received during the assessment of the second DA again included the issue of "heritage" as one of the concerns for the site. The content of the objection letters may be found either in Appendix 9, Report 1 and 2 or in Appendix 5a and 5b.

The Woollahra History and Heritage Society objected to both Hawthorneden applications on the ground of heritage. During the interview (Appendix 19e) with its president, he stated why the issue of heritage was important for the society:

"We objected Hawthorneden to because we believed that the proposed new development will have a detrimental effect to the house and proposed alterations and additions will alter the house dramatically".

When he was asked whether he thought that heritage had played an important role in the decision making process compared with the other issues, he responded:

"...heritage was definitely an important issue in the refusals, and we are very happy with the result. The Committee (B and D Committee) said this proposal would not be accepted, it will have detrimental impact to the house and this came as a big voice".

In 1995, just before the second refusal of the Hawthorneden proposal, the Inspection Committee of WMC resolved the discussion of Hawthorneden application as "that the matter be referred to the B and D Committee for a further report and an Interim Conservation Order be lodged over the "Hawthorneden" estate as a matter of urgency". However, the latter proposal did not receive support from the Heritage Council.

Heritage was also one of the substantial issues in the Brougham application. More than half of the objectors (seven out of 12 for original and eight out of 13 for the amended schemes) mentioned concerns related to heritage. However, just two of those objectors (property owners of Wallis Street and Woods Avenue houses) referred directly to Brougham house (see Appendix 14, Photographs 5 and 6). The heritage issue was mostly discussed for the Woods Avenue cottages. The owners of the cottages have considered that the heritage significance of their houses had not been addressed in the proposed DA; "the proposal destroys the historic significance of those houses"; "there is an urgent need for an independent heritage report on the houses of Woods Avenue" and "the heritage character and value of Woods Avenue
houses will be compromised by the proposed development” (see Appendix 5b). They argued that the houses had greater heritage significance than Brougham house. Those cottages have separate listings under Australian Heritage Commission Register.

The interviews with the other stakeholders revealed that although Hawthornden and Brougham houses had similar heritage significance, because of their location, physical appearance (aesthetic value) or their association (social value) with the community they were perceived differently by the public and even by people who were involved in the assessment process of the applications. SF responded to the issue as follows (Appendix 19c):

"...Big difference in connecting to the community... to see in terms of the community in Brougham it was sitting and you know little bit, was not anything special. I do not think in my memory. ...Hawthornden when you come to the drive you see the building. And I think the Hawthornden is seen as in context as an old house and its grounds. You do not even have to look at in detail. This is not what you see in Brougham. Brougham was a run-down, uninteresting building unless you have heritage knowledge. Hawthornden has a beautiful driveway, beautiful garden and setting, tennis court, totally different context.... They are very difficult pictures. You look at Hawthornden and look at Brougham and every person can see that Hawthornden is a lovely house with its garden. You look at Brougham covered up, boarded up. Very hard to see both of them in the same context although they are supposed to be same”.

The president of the Woollahra History and Heritage Society was asked the reason for not making a submission concerning the Brougham proposal, although both Hawthornden and Brougham were lodged in a similar time frame. He responded (Appendix 19e):

"We have objected to Hawthornden because we believed that the proposed new development will have detrimental impact to the house and proposed alterations and additions will alter the house dramatically. Whereas Brougham would not have altered that much and new development would not have major adverse impact to the building itself. We have not objected to the Brougham proposal because of the above reasons as well as not having enough resources to deal with
two applications at the same time. And as far as I understand heritage was not a big issue in Brougham proposal”.

The president of the Woollahra History and Heritage Society also responded to the question whether he thought that Hawthornden had greater heritage significance than Brougham itself. The response was also interesting since it came from a representative of the close community which cares about heritage, values it and tries to preserve it. He responded:

“Yes, Hawthornden is a very important building which is one of last examples located on the escarpment of Woollahra (Edgecliff) and has great contribution to the locality. Whereas Brougham is hidden behind big walls and does not contribute to the streetscape”.

However, there were other people who were involved in the assessment of the proposals who had different views about the issue. The heritage planner responded to the issue as follows (Appendix 19d):

“Both buildings (Hawthornden and Brougham) are significant heritage items for different reasons. One is sitting on more environments than the other. Different people live around. There are different attitudes about values. And they should be treated the same way”.

Councillor JN was another person who thought that both buildings were equally important to Woollahra Community. During the interview he said that he was against both the Hawthornden and the Brougham proposal and he supported the Hawthornden case when it was taken by the applicant to the Land and Environment Court. He stated that there were two more Councillors who voted against the Brougham proposal. This statement is considered particularly important since those three members of the B and D Committee are architects and have extensive working knowledge on heritage. This raises questions of how planning issues are handled by the representatives of the community and how they actually perceive heritage issue.

6.1.5 POLITICS IN THE DEVELOPMENT ASSESSMENT PROCESS

As stated in the introduction chapter, one of the most important outcomes of this study is that “planning decisions can be made politically”. During the interview with
Councillor JN, he argued that there were other reasons (political decisions) behind the Brougham approval which were directly related to Councillor NG who was the Mayor of WMC at that time, and specifically to his statements about the Jewish community which appeared in the media while the proposal was being assessed by WMC. As well known, the owner and developer of the Brougham site was the "the Congregation of Temple Emanuel" and there was a big Jewish Community in Woollahra who support the development.

The researcher collected 14 different articles which appeared in media in February and March 1996, mainly from the "Sydney Morning Herald" (SMH) related to the issue. Those articles are in Appendix 18.

Councillor NG had served Woollahra Community as a Councillor for many years and he is a notable figure in the architecture/planning field both for his works as an architect, particularly in heritage conservation issues (his recent involvement in Circular Quay East development featured in media reports) as well as his involvement with controversial issues in his professional life. He had been involved in litigation concerning his involvement in a multi million-dollar project at the historic Bellevue Hill mansion Rona that falls in the WMC's jurisdiction while had been serving both as a Councillor and the Mayor of WMC. He was an architect for the project to construct a new driveway for the neo-Gothic mansion, which is listed on the National Estate. When his firm was appointed for the project in July 1995, there were allegations that he had improperly used his position as a councillor to win a contract. His involvement in the project was also criticised by the neighbours who objected the proposal. One of the complaints was that the driveway would be to the benefit of the applicant. Later, he quit the project and the owner hired a new architect to seek an approval from WMC. (see Appendix 18, Article 4).

The matter concerning Councillor NG has a relation with the Brougham proposal which was brought out by Councillor JN. It started with a letter which Councillor NG wrote in 1992 to a lawyer in which he said (see Appendix 18, Article 1):

Many years ago I decided that I would not work for Jewish clients. May I say this was never for a racist reason or anything like that, but because there are different ways of practising and already having suffered two heart attacks I decided that it
would be unwise for me to have any kind aggravation when I could have clients whose way of doing business was similar to mine (SMH, 9 February 1996).

In the same week the letter appeared in the media, Councillor NG circulated a memorandum to his 14 council colleagues and described his comments, made "in the heat of the moment", as regrettable and stupid. He apologised at a function held by the National Council of Jewish Women:

Whatever the provocation, there was absolutely no excuse for me to go from the particular to the general in my critical comments (SMH, 9 February 1996).

The above article argued that the timing of the affair was the poor for Councillor NG as an independent, who last September became the first mayor for more than 40 years not linked with the Woollahra Action Committee (WAC).

An article in the SMH of 13 February 1996 (Appendix 18, Article 2) revealed that although Councillor NG apologised publicly, the comments had outraged Jewish residents, who circulated a petition for him to resign. The same article commented:

On 12 February 1996, in the presence of two most influential Rabbis (one of them Rabbi BF, of Temple Emanuel, Woollahra, owner and developer of the Brougham site) and hundreds of local Jewish residents pleaded for forgiveness through the Old and New Testaments of the Bible in an attempt to save off a move to oust him in the wake of alleged anti-Semitic comments he made in a letter. However, as he said before he refused to resign. On that night Jewish residents circulated a petition for him to go (SMH, 13 February 1996).

According to the article, NG's defence during a meeting at Woollahra Council Chambers was constantly shouted down by the public, most of whom were forced to stand outside the council chambers. The article continued that in a letter to the Councillors, Rabbi F had called for Councillor NG's political head:

While the Jewish community would be willing to accept the apologies tendered for the hurt done, in my opinion one who has expressed such views should not be entitled to hold public office in Australia (SMH, 13 February 1996).
The article added that when the meeting was over, and Councillor NG was given seven days to show cause why he should not resign, Rabbi S stood and shook the hands of all councillors who voted for the motion.

On 13 February 1996, the day after the meeting at Woollahra Council Chambers, the Minister for Local Government called for NG to resign as Mayor of Woollahra in the wake of the public furore over his alleged anti-Semitic comments.

An article on 14 February 1996 in the SMH (Appendix 18, Article 3) stated:

Through neither the minister nor the other 14 Woollahra councillors have the power to remove Councillor NG from office, the Minister for Local Government said he would consider reviewing the Local Government Act, including a proposal for a standard code of conduct for councillors across NSW. He also said that it could be interfering with the democratic process, but it would be worthwhile looking at options.

The Minister of Local Government also said:

The comments from Jewish residents had the potential to have a serious effect on the public credibility of the council. In the circumstances I think it would be reasonable for Councillor NG to resign, and I think the decision would be viewed favourably by the community.

The article included comments about a television interview recorded in December 1995 and revealed on 13 February 1996. In this interview NG said: “In aesthetics, very few Jewish people understand what aesthetics is all about”.

An article dated 19 February 1996 in the SMH (Appendix 18, Article 5) revealed that 14 Woollahra councillors were planning to meet that night at the home of Councillor VC to decide on their next move in their bid to oust the mayor of five months, Councillor NG.

The article added that Councillor NG refused to respond to demands for his resignation, instead describing himself as the best mayor the municipality has had for two decades. It continued that he ignored calls by the Minister for Local Government to step aside, as well as complaints by Jewish bodies which said he is unfit to hold public office.
An article entitled “Defiant mayor refuses to step aside” which appeared in the SMH on 21 February 1996 (Appendix 18, Article 6) revealed that angry Councillors told the SMH of their frustration at being unable to force Councillor NG from the mayoral chair. The article added that some had threatened to cancel civic ceremonies, to pass a resolution that the mayor not be allowed to make any policies, and to pass no-confidence votes at every meeting so he could do nothing but sit in his chair. The article included quotes from some Councillors, who said:

How long can one person defy the wishes of a community and his own colleagues? If we walk out then we are inviting the Department of Local Government to sack the Council.

An article dated 22 February 1996 in the SMH (Appendix 18, Article 7) stated that the NSW Premier, Mr Carr, had asked Councillor NG to resign as a “gesture of tolerance” in the wake of anti-Semitic allegations. According to the article, Mr Carr said he respected Councillor NG’s views on urban planning but believed he should listen to his community and stand down. However, Councillor NG said he would not change his mind on his refusal to resign.

An article headed “I won’t go... rowdy scenes as vote goes against Gruzman” in the SMH dated 27 February 1996 (Appendix 18, Article 10) included comments from Councillor JL who led a move against Councillor NG at a public meeting on 26 February 1996. He described the mayor’s apology as “vacuous, worthless and totally insincere”. As stated in this chapter, Councillor JL, the only Jewish member of the council, said:

“If you have any sense of duty, honour or respect for the law, then you would resign. People now, more than ever before, believe that something is rotten in the state of Woollahra”.

The article revealed that on that meeting, ten of the 15 Councillors voted for Councillor NG to resign. One Councillor declared an interest and left the chamber and four others, including Councillor NG, voted against the motion.

One of the articles appeared in the media connected to the issue to the Brougham application. The article of 13 March 1996 in the SMH (Appendix 18, Article 11) stated:
The mayor of Woollahra, Councillor NG, yesterday traded accusations with one of Sydney's leading rabbis over his decision to abstain from voting on a proposed development put forward by a synagogue.

The Temple Emmanuel wants to build a long-day childcare centre and housing units for the elderly in Wallis Street, Woollahra. A Council meeting on Monday approved the plans after Councillor NG vacated his chair and stood outside until after the vote.

Councillor NG insisted he had declared a "disinterest" in the matter because he did not want to be accused of being prejudiced in the wake of recent allegations of racism against him.

As documented above, the NG affair arose and became an important issue in the media while the Brougham application was being processed. The researcher interviewed Councillor JL and JN for the study. Their roles in the determination process and their interests in the case were quite different. As documented above, JL played an active role in the NG affair as a representative of the Jewish Community in WMC. Councillor JN's interest with the proposal as a member of B and D Committee was professional, as an architect who had experience in the heritage field. His comments about the proposal reflected his professional rather than his political side. In this regard, his comments are considered important. The researcher attempted to arrange an interview with Councillor NG, concerning both his role in the determination process as one of the three Councillors who voted for refusal of the proposal and the issue that made him an important media figure for a while. However, Councillor NG was not available for interview as he was in overseas for some months when the study is being prepared.

During the interview with Councillor JN (Appendix 19d), he did not accept that majority of the Councillors supported the application because of the proposed community use as aged persons' housing. He argued that the decision behind the approval of Brougham was much related to Councillor NG's statements that appeared in the media about Jewish people. He asserted that councillors were so embarrassed because of the whole thing they let it go. He continued:
"...I would not have against Brougham if this block of land has never had a building on it and heritage takes over a part of Brougham itself. The community facility application was generated by somebody take a good price of a block of land and wanted to generate to make money. The community facility could have been put in any other place in the area. It was pushed; pushed and pushed to let it ...I am still very bitter about it. I prevented the Committee ...because of the nature of the street (Woods Avenue) next to it. Brougham with the undeveloped gardens as separated from the State government's intention and massively overdeveloped. I do not agree with the staff of the assessment team and never did. It was pushed through by the Councillors. We (SD, NG and JN) argued the heritage, building. Brougham, its garden. I think the NG affair has a lot to do with it. I certainly not, I have no political, religious political persuasion side of. I do not care about that”.

Councillor JL agreed that the application had support from councillors because of the proposed use for the site. He said:

"...I think that because of the community facility, particularly an aged care facility that was something that Council wanted to encourage it. It is different than that someone wants to build flats” (Appendix 19d).

He commented on Councillor NG’s affair:

"I did not want to get involved because of the given interest that I had. I was happy to advise the applicant so that he can speak to the objectors. At that time I thought my job there was to simply to keep that the applicant informed and all the objectors...make sure that a credible consideration has given to the objector's concerns. The main concern to me was and I was very new on the Council at this stage...What was the interesting thing about Brougham as a footnote. I do not know this is very interesting a week before the Brougham was passed, all of the councillors (on the meeting that councillors voted for Councillor NG to resign.) thought and I think I did have a tested knowledge that it passed too. It was the Mayor (councillor NG) did have no confidence in his concerns. As the Mayor said there is that ...side of retirement village is going to be developed by a crucial organisation, because indicated disinterest in which that's just the plain aggravation responsibility. In order to argue things like that ...would be in the
During the interview with SF, she was asked as a manager of the Development Control Section at that time, what she thought was the main reason behind the Brougham approval. She said that it was not enough make a refusal. She also argued that the proposal was a community gain. She did not comment on NG affair. She said (Appendix 19d):

"I think the approval of Brougham was on ... gain because there was a community gain by virtue of child care centre, the upgrade and restore the Brougham house, which was giving nothing to the public at current stage, potential heritage trees and that the fact that on detail ... was certainly the buildings could have been improved in the design context. And they could have been perhaps more sympathetic. Significant and a lot ... in terms height and scale... And at the end of the day it was not perfect, it was not the ultimate development but it was not enough to make a refusal. It was truly subjective matter, which I do not think is not strong enough to refuse the application. It is difficult that we cannot get ideal applications and we do not the ideals we are asked to get the possible on the site. We are asked if what was proposed is acceptable".

Given the newspaper articles and the interview data, there is enough evidence to demonstrate the role of political issues in the Brougham application determination process. The researcher has demonstrated a relationship between the application which was proposed by a Jewish organisation in an area where a strong Jewish community existed and the statements which were made by the Mayor of WMC at that time against Jewish people. The situation was one where not only members of Jewish communities were attacking him in the media because of what he said, but the NSW Premier and the Minister of Local Government were also calling for him to resign. The WMC elected members were in a situation where they would not be able to justify the decision even if they wanted to refuse the application.
6.1.6 WHO WON, WHO LOST?

The owner and the applicant of Hawthornden application were losers. They lost time and money during the one and a half-year assessment process. Eventually, the applicant received an approval for the third proposal, which proposed to add a new wing to the heritage item without an infill development on the site.

Adjoining property owners of Hawthornden were winners, although they spent an amount of money (some of them hired private consultants to make submissions on their behalf concerning the proposal). Two property owners also agreed to share the cost of the heritage witness with the Council for the court case. However, they achieved what they had sought at the end.

The WMC was another winner, with the Land and Environment Court’s decision on the Hawthornden DAs. Councillors achieved their aim as they opposed the development. However, Council spent $70,000 for the court case. During the interview with SF (Appendix 19c) she commented on this aspect:

"You have to make a decision in making any of these determinations how much is it is worth to you to make that decision. You like it or not there has to be a financial ticket on it because community pay for it".

The WMC and the owner/applicant of the Brougham application were winners. The owner obtained development consent for the site. WMC achieved its aim of having an aged persons’ housing development for the whole municipality and the restoration and use of Brougham as a child care centre which was consisted with its earlier use.

The adjoining property owners of Brougham were losers as a result of the approval of the DA. They were the people most disadvantaged by the proposal because of the extra traffic and noise which the new development would create. They would not get the benefit of the proposed community facilities since there is another child care centre, a hospital and an elderly accommodation place in the close proximity.
7 CHAPTER 7

7.1 CONCLUSION

After examination of the case studies several comments can be made on the heritage determination process at WMC. WMC does not provide formal heritage policies in the determination of heritage DAs. WMC intends to move towards a more structured heritage approach with the introduction of some formal procedural guidelines. In the case studies, one was determined in the context of no formal policy or formal procedure; the other was determined under clear guidelines (the DCP for the site). These studies have demonstrated that the heritage DA determination process is a very complex one. It requires a clear approach in the assessment process on Council’s side in terms of what the possible issues are and how they will be handled. Council must be specific about the potential of the sites and possible implications of any future development proposals on the heritage buildings themselves.

The cases would enable the following statements to be made:

- WMC operated and is currently operating as “heritage policy in words or in actions” rather than “formal policy/procedural guidelines” situation. The individual cases were dealt with “on their merits” and actions were taken on an individual basis.

- The case studies demonstrated that individual planning officers of the DAs did have the opportunity to influence the determination processes, since they were not working within formal procedural guidelines. An example of this was the absence of criteria to determine what constituted an adequate CP.

- The Brougham proposal demonstrated that the application would have been advantaged if the current policy of “Heritage Report Information Requirements for Heritage Items” existed when the DA was determined. WMC’s heritage planner indicated that if the policy existed the planning officer could have insisted on a fresh CP from the applicant as it was found not adequate by the heritage planner.

- The Hawthornden application demonstrated that policies were made after the assessment process at WMC. At the end of the DA process, the Council decided to
prepare a DCP for the site in order to define clear guidelines and controls for future proposals for the site. This was not even considered at the beginning of the proposal nor during the assessment. During the interview with the applicant of the Hawthornden DAs, he pointed out that he would not have proposed the DAs if the current DCP existed when the DAs were lodged.

- The Hawthornden DCP defines the curtilage of the site, the permissible location and the type of proposed development which are totally different from what Council and the applicant agreed on during the process. This demonstrates that Council documents, policies and advices may mislead the applicant. The case study indicates that WMC should have a clearer heritage policy and procedures for dealing with heritage items.

- WMC supported the Brougham proposal as aged persons' housing development in principle by approving the rezoning application. Council worked on the proposal and spent much time on the rezoning and preparation of the DCP. The stakeholders had a chance to view the proposal and object to it during the rezoning and the DCP stages. These factors influenced the determination process and the outcome of the DA.

- Interviews with the stakeholders revealed that the proposed use as aged persons' housing for the Brougham application positively affected Councillors' approach to the proposal. The documented information (mainly media articles) and the interviews also suggested that political reasons were the driving factors in the outcome of the application.

- The cases indicated that the public may play a critical role in the decision making process. The Hawthornden proposal demonstrated the public's strong involvement and influence on the determination process as individual property owners as well as acting as a group of objectors.

- WMC has improved its heritage policy with the introduction of heritage information requirements for heritage items and buildings in conservation areas. Pre-DA lodgement sessions are being considered by the Council to become formal procedural guidelines for the lodgement of building and development applications. The Council is currently working on formal heritage policies (Heritage DCPs for
the designated heritage conservation areas). During the interviews with the Manager - Development Control Section of WMC and planning officers of the proposals, they indicated their opinion that the determination process of the DAs could have been improved with the current changes and the process would be improved with the proposed changes in future.

- The case studies indicated that the heritage DA determination process is not straightforward; on the contrary, it is a very complicated process. The complexity of issues relating to the process resulted in difficulty for stakeholders in understanding the determination and the decision making process.

7.2 RECOMMENDATIONS

The following suggestions are made in order to improve the existing situation where the researcher believes that some concerns and problems exist. The recommendations reflect some possible actions that WMC could implement as a result of this study as well some lessons that can be applied in planning field in general.

Planning cannot be detached from politics, because planning activities operate within a political framework. There has always been an element of political discretion when local governments handle planning issues. However, in making decisions planning officers and elected members of Council need to consider making plans and producing policies and actions. Producing site specific plans and policies may be particularly important if the subject site and proposal for this site are likely to create concerns and uncertainties for different interest groups involved in the assessment process.

Councils have a responsibility to provide adequate detail for potential developers/applicants about sites that are subject to a development. Site specific development briefs are common way of assisting developers in the preparation of development applications at British local government level. As a result of this study, it is recommended that heritage sites which have the potential to be developed should have site specific information. This could be in the form of development briefs or development control plans or under any kind of form that suits Council needs. However, the format should address Council’s requirements for the site in terms of adaptable uses for the heritage property, possible new uses, height, density, floor space ratio and if possible urban design requirements for the proposed development.
Heritage requirements and the need for a CP or a conservation study should be clearly identified in those documents.

Interactions between different stakeholders are particularly important during the development assessment process. Adjoining property owners or community organisations may have an interest in negotiating with applicant/developers. In the cases of this study the applicant was the stakeholder who attempted to negotiate with Council and with adjoining property owners who objected to the proposal. The role of planning officers in the negotiating process is particularly important since one of the duties is to get different parties together and help them to communicate with each other. While the cases of this study document various meetings between different stakeholders, they did not include any form of negotiating process. Discussions generally occurred as “consultations” between stakeholders.

WMC should identify its heritage sites which are likely to be developed and develop its general approach towards those sites. This need not be a comprehensive study, but at least should address broad planning policies for the future proposals for those sites. These policies should be submitted for approval from elected members of Council.

WMC needs a policy on pre-DA discussions. Pre-DA discussions are particularly important for major proposals or proposals which involve different issues. Pre-DA discussions may require committee approval from Councillors. This is not only important on the applicant’s side, since it creates some certainty on critical issues, but it is also important on the include elected members of Council to the assessment process in the preliminary stage of the proposal.
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