

Application Assessment Panel

Agenda: *Application Assessment Panel*

Date: *Tuesday 14 August 2007*

Time: *3.00pm*

Part: *One of Two Parts*

Outline of Meeting Protocol & Procedure:

- The Chairperson will call the Meeting to order and ask the Panel/Staff to present apologies or late correspondence.
- The Chairperson will commence the Order of Business as shown in the Index to the Agenda.
- At the beginning of each item the Chairperson will ask whether a member(s) of the public wish to address the Panel.
- If person(s) wish to address the Panel, they are allowed three (3) minutes in which to do so. Please direct comments to the issues at hand.
- If there are persons representing both sides of a matter (eg applicant/objector), the objector speaks first.
- At the conclusion of the allotted three (3) minutes, the speaker resumes his/her seat and takes no further part in the debate unless specifically called to do so by the Chairperson.
- If there is more than one (1) person wishing to address the Panel from the same side of the debate, the Chairperson will request that where possible a spokesperson be nominated to represent the parties.
- The Chairperson has the discretion whether to continue to accept speakers from the floor.
- After considering any submissions the Panel will debate the matter (if necessary), and arrive at a resolution.

Note: Matters where there is a substantive change to the recommendation of the Council Officer are referred to the next appropriate meeting of the Application Assessment Panel.

Note: Matters can be “called” from this Panel Meeting to the Development Control Committee (DCC) by Councillors subject to the following requirements:

- Calling requires one Councillor
- A Councillor may call a matter by written or oral request by 3.00pm on the business day preceeding the meeting at which the item is listed
- A Councillor who is in attendance at the Application Assessment Panel meeting may call a matter at any time prior to the completion of the meeting by orally advising the Panel Chairperson.

WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

6 August 2007

To: General Manager
Director – Technical Services
Director – Planning & Development
Manager – Compliance
Manager – Strategic Planning

CC: The Mayor
All Councillors

Application Assessment Panel Meeting – 14 August 2007

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Application Assessment Panel** to be held in the **Committee Room, 536 New South Head Road, Double Bay, on Tuesday 14 August 2007 at 3.00pm.**

Gary James
General Manager

Meeting Agenda

Part One of Two Parts

Item	Subject	Pages
1	Apologies	
2	Late Correspondence	
3	Declarations of Interest	

Items to be Decided by this Committee using its Delegated Authority

D1	Confirmation of Minutes of Meeting held on 7 August 2007	1
D2	DA188/2006 – 46 Kambala Road, Bellevue Hill – Demolition of existing dwelling & construction of new 3 storey dwelling with swimming pool – 10/4/2006 *See Recommendation Page 4	2-135
D3	DA311/2007 – 7 Dudley Street, Paddington – New side boundary fence – 15/5/2007 *See Recommendation Page 149	136-175

Meeting Agenda

Part Two of Two Parts

Item	Subject	Pages
D4	DA386/2007 – 292 Glenmore Road, Paddington – Alterations & additions including balcony & doors – 14/6/2007 *See Recommendation Page 186	176-210
D5	DA157/1994 Part 4 – 118 Queen Street, Woollahra – Section 96 Application – Proposed modification of Condition No. 2 (Hours of Trading) – 12/6/2007 *See Recommendation Page 222	211-222
D6	DA141/2007 – 158 Fletcher Street, Woollahra – Alterations & additions to rear of dwelling including new garage – 12/3/2007 *See Recommendation Page 235	223-276
D7	DA190/2002 Part 3 – 550 New South Head Road, Rose Bay – Internal & external modifications – 22/9/2006 *See Recommendation Page 278	277-316

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 7 August 2007**
Author: Les Windle, Manager - Governance
File No: See Application Assessment Panel Minutes
Reason for Report: The Minutes of the Meeting of Tuesday 7 August 2007 were previously circulated. In accordance with the guidelines for Committees' operations it is now necessary that those Minutes be formally taken as read and confirmed.

Recommendation:

That the Minutes of the Application Assessment Panel Meeting of 7 August 2007 be taken as read and confirmed.

Les Windle
Manager - Governance

APPLICATION ASSESSMENT PANEL SITE INSPECTION REPORT

ITEM No.	D2
FILE No.	DA 188/2006/1
ADDRESS:	46 Kambala Road BELLEVUE HILL 2023
PROPOSAL:	Demolition of existing dwelling & construction of new 3 storey dwelling with swimming pool.
TYPE OF CONSENT:	Local
APPLICANT:	Mrs P E Liling
OWNER:	Mrs P E Liling
DATE LODGED:	10/04/2006
AUTHOR:	Mr T Wong

Site Inspection

The subject Development Application was considered by the Application Assessment Panel on Tuesday 24 July 2007. The panel resolved:

THAT Development Application No. DA188/2006 for demolition of existing dwelling and construction of a new 3 storey dwelling with swimming pool on land at No. 46 Kambala Road, Bellevue Hill, be deferred to the Application Assessment Panel meeting to be held 7 August 2007 to allow the Panel to carry out a site inspection.

A site inspection in relation to this Development Application was conducted on Wednesday 1 August 2007. The following parties were present:

Present: Application Assessment Panel:-

T Tuxford (Manager – Compliance) (Chair)

C Bluett (Manager – Strategic Planning)

P Kauter (Executive Planner)

Staff:-

Thomass Wong (Senior Assessment Officer)

Applicant:-

Ron Lilling

Andre Baroukh

Michael Arch

Objectors:-

A. Linden, Julis Bokor (No. 44 Kambala Road)

Mr. and Mrs J. Boyarsky (No. 48 Kambala Road)

Consideration

The Panel inspected the subject property as well as the neighbouring properties at Nos. 44 and 48 Kambala Road with respect to the following areas of concerns:

- The existing level of the side (south) passageway of No. 44 Kambala Road in relation with the proposal.
- The overlooking impact from the rear balconies of the proposed development onto the rear open space of the property at No. 48 Kambala Road
- Impacts on existing view from the rear balconies (upper and lower levels) of the property at No. 44 Kambala Road
- The width of the proposed garage
- The position of the swimming pool in relation to the *Ulmus parvifolia* tree to be retained (Ref No. 4).

Following the site inspection, the Panel reviewed the documentations of the application and considered the proposal acceptable subject to conditions with regard to the following:

1. Width of the garage

Condition No. C.1a is deleted.

2. West-facing terrace on the first floor

Condition No. C.1j of the original report is replaced with the following:

C.1i The outer walls to the northern and southern sides of the west-facing (rear) terrace on the first floor are set inward by 1.5m in line with the outer wall of ensuite 1 and ensuite 2 on the same floor. In addition, the outer wall to the westernmost side of the same terrace is set inward by 2.3m rendering the maximum internal depth of this terrace being 3m. The created setback areas as a result of this condition shall be landscaped in planter boxes with inner edge not less than 1m in height.

3. Swimming pool

In consultation with Council's Tree Officer, the following amendments are recommended:

- Condition No. C.1c of the original report is replaced with the following:

*C.1b The swimming pool shall be shifted towards the south by 0.8m. The length of the timber deck shall be reduced so that its northern end is in line with the northern face of the swimming pool. This is to protect the root system of the existing *Ulmus parvifolia* tree which is located in the north-western area of the property (Council's Ref No. 4)*

- Condition No. C.1d of the original report is replaced with the following:

C.1c Excavation is not to be undertaken within 2500mm of the base of the existing Ulmus parvifolia tree located in the north-western area of the property (Council's Ref No. 4)

4. Non-solid fuel for fireplace

The following requirement is added to Condition No. C.1:

C.1n The proposed fireplace shall be designed to burn non-solid fuel only."

5. Trees along the rear southern boundary

The applicant agreed at the site inspection that condition be imposed to reduce the height of the tree along the southern boundary. Condition No. C.1h of the original report is therefore replaced with the following:

C.1 g The row of 16 Podocarpus falcatus trees along the rear southern boundary are replaced by other suitable species with a maximum mature height of 2m.

Recommendation

THAT the Council, as the consent authority, grant development consent to Development Application No. 188/2006 for demolition of existing dwelling and construction of new 3 storey dwelling with swimming pool on land at 46 Kambala Road Bellevue Hill, subject to the following conditions:

A. General Conditions

A.1 Conditions

Consent is granted subject to the following conditions imposed pursuant to section 80 of the Environmental Planning & Assessment Act 1979 ("the *Act*") and the provisions of the Environmental Planning and Assessment Regulation 2000 ("the *Regulation*") such conditions being reasonable and relevant to the development as assessed pursuant to section 79C of the Act.

Standard Condition: A1

A.2 Definitions

Unless specified otherwise words have the same meaning as defined by the *Act*, the *Regulation* and the *Interpretation Act* 1987 as in force at the date of consent.

Applicant means the applicant for this Consent.

Approved Plans mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

AS or *AS/NZS* means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

BCA means the Building Code of Australia as published by the Australian Building Codes Board as in force at the date of issue of any *Construction Certificate*.

Council means Woollahra Municipal Council

Court means the Land and Environment Court

Local native plants means species of native plant endemic to Sydney's eastern suburbs (see the brochure titled "Local Native Plants for Sydney's Eastern Suburbs published by the Southern Sydney Regional Organisation of Councils).

Stormwater Drainage System means all works, facilities and documentation relating to:

- a. The collection of stormwater,
- b. The retention of stormwater,
- c. The reuse of stormwater,
- d. The detention of stormwater,
- e. The controlled release of stormwater; and
- f. Connections to easements and public stormwater systems.

Owner means the owner of the *site* and successors in title to the *site*.

Owner Builder has the same meaning as in the *Home Building Act 1989*.

PCA means the *Principal Certifying Authority* under the *Act*.

Principal Contractor has the same meaning as in the *Act* or where a *principal contractor* has not been appointed by the *owner* of the land being developed *Principal Contractor* means the *owner* of the land being developed.

Professional Engineer has the same meaning as in the *BCA*.

Public Place has the same meaning as in the *Local Government Act 1993*.

Road has the same mean as in the *Roads Act 1993*.

SEE means the final version of the Statement of Environmental Effects lodged by the *Applicant*.

Site means the land being developed subject to this consent.

WLEP 1995 means *Woollahra Local Environmental Plan 1995*

Work for the purposes of this consent means:

- a. the use of land in connection with development,
- b. the subdivision of land,
- c. the erection of a building,
- d. the carrying out of any work,
- e. the use of any site crane, machine, article, material, or thing,

- f. the storage of waste, materials, site crane, machine, article, material, or thing,
- g. the demolition of a building,
- h. the piling, piling, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- i. the delivery to or removal from the *site* of any machine, article, material, or thing,
or
- j. the occupation of the *site* by any person unless authorised by an *occupation certificate*.

Note: Interpretation of Conditions - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.
Standard Condition: A2

A.3 Approved Plans and supporting documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with the plans and supporting documents listed below as submitted by the Applicant and to which is affixed a Council stamp “Approved DA Plans” **unless modified by any following condition**. Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
2516-1	Roof & Site Analysis Plan	Andre Baroukh Architects	12/7/2006
2516-2	Basement Floor Level	Andre Baroukh Architects	12/7/2006
2516-3	Ground Floor Level	Andre Baroukh Architects	6/4/2006
2516-4	First Floor Level	Andre Baroukh Architects	6/4/2006
2516-5	Elevations	Andre Baroukh Architects	12/7/2006
2516-6	Elevations	Andre Baroukh Architects	12/7/2006
2516-7	Section	Andre Baroukh Architects	6/4/2006
No reference	Flood and overland flow study	CPM Engineering	8/11/2006
No reference	Driveway Longitudinal Section - Driveway Profiles	CPM Engineering	8/11/2006
58686S	BASIX Certificate	Department of Planning	29/3/2006
Rprt No. 20144Zrpt	Geotechnical Report	Jeffery & Katauskas Pty Ltd	19/4/2006
LP01-1006b (Issue B)	Landscape Plan	William Dangar and Associates	April 2006
No reference	Arborist Report – Construction Impact Assessment & Management Plan, 46 Kambala Rd	Botanics, Tree Wise People Pty Ltd	July 2006
Project No. 20060024, Sheets SW01 to SW05 (Rev C), SW07 (Rev A) SW08 (Rev B)	Stormwater disposal concept plan	Lipscombe & Associates Pty Ltd	9/3/2007

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

Note: These plans and supporting documentation may be subject to conditions imposed under section 80A(1)(g) of the *Act* modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)
Standard Condition: A5

A.4 Ancillary Aspect of the Development (s80A(2) of the Act)

The owner must procure the repair, replacement or rebuilding of all road pavement, kerb, gutter, footway, footpaths adjoining the site or damaged as a result of work under this consent or as a consequence of work under this consent. Such work must be undertaken to Council's satisfaction in accordance with Council's "Specification for Roadworks, Drainage and Miscellaneous Works" dated January 2003 unless expressly provided otherwise by these conditions at the *owner's* expense.

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

A.5 Prescribed Conditions

Prescribed conditions in force under the *Act* and *Regulation* must be complied with.

Note: It is the responsibility of those acting with the benefit of this consent to comply with all prescribed conditions under the *Act* and the *Regulation*. Free access can be obtained to all NSW legislation at www.legislation.nsw.gov.au
Standard Condition: A30

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

B.1 Construction Certificate required prior to any demolition

Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is "commencement of erection of building" pursuant to section 81A(2) of the Act. In such circumstance all conditions in Part C and Part D of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the issue of a Construction Certificate, appointment of a PCA and Notice of Commencement under the Act.

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

B.2 Recording of buildings with little or no heritage significance that are to be demolished:

A photographic archival record of the building and landscape elements to be demolished is to be submitted, to the satisfaction of Council's heritage officer, prior to the commencement of demolition work and prior to the issue of a Construction certificate.

The photographic archival recording is to be bound in an A4 format and is to include the following:

Site plan at a scale of 1:200 (or 1:500 if appropriate) of all structures and major landscape elements including their relationship to the street and adjoining properties.
Postcard sized photographs of:

- a. each elevation,
- b. each structure and landscape feature;
- c. internal or external details if nominated in Council's heritage officer's assessment
- d. report; and
- e. views to the subject property from each street and laneway or public space.

Each photograph to be mounted, labelled and cross-referenced in accordance with recognised archival recording practice.

One original coloured photographic set and a coloured photocopy are to be submitted to the satisfaction of Council's heritage officer prior to the commencement of demolition work and prior to the issue of a construction certificate. The original will be retained by Council and the coloured photocopy will be provided to the Woollahra Local History Library.

Standard Condition: B4

B.3 Establishment of Tree Protection Zones

To limit the potential for damage to trees to be retained, Tree Protection Zones are to be established around all trees to be retained on site. The Tree Protection Zones are to comply with the following requirements;

- a. Tree Protection Zone areas

Council Reference No:	Species	Location	Radius from Trunk (Metres)*
1	<i>Ficus microcarpa</i> var. 'Hillii' (Hills Weeping Fig)	Council road reserve	Grassed embankment retained by sandstone
4	<i>Ulmus parvifolia</i> (Chinese Weeping Elm)	North-western area of property extending from embankment	3
5	<i>Ulmus parvifolia</i> (Chinese Weeping Elm)	Northern side of property adjacent to house	2

Note*: Where this condition relates to street trees and the fence cannot be placed at the specified radius, the fencing is to be positioned so that the entire verge (nature strip) area in front of the subject property, excluding existing driveways and footpaths, is protected.

- b. Tree Protection Zones are to be fenced with a 1.8 metre high chainmesh or weldmesh fence to minimise disturbance to existing ground conditions. The area within the fence must be mulched, to a depth of 75mm, irrigated and maintained for the duration of the construction works.
- c. Trunk protection, to a maximum height permitted by the first branches, is to be installed around the trunks of the trees listed in the table below;

Council Reference No:	Species	Location
3	<i>Chamaecyparis lawsoniana</i> (Lawson cypress)	South-eastern corner of property

A padding material eg. Hessian or thick carpet underlay, is to be wrapped around the trunk first. Harwood planks, 50x100mm and to the maximum possible length, are to be placed over the padding and around the trunk of the tree at 150mm centres. These planks are to be secured in place by 8 gauge wire at 300mm spacing.

- d. A sign must be erected on each side of the fence indicating the existence of a Tree Protection Zone and providing the contact details of the site Arborist.
- e. Existing soil levels must be maintained within Tree Protection Zones. Where excavation is undertaken adjacent such an area, the edge of the excavation must be stabilised, until such time as permanent measures are installed (eg. retaining wall etc) to prevent erosion within the Tree Protection Zone.
- f. Sediment control measures are to be installed around all Tree Protection Zones to protect the existing soil levels.
- g. The storage of materials, stockpiling, siting of works sheds, preparation of mixes, cleaning of tools or equipment is not permitted within Tree Protection Zones.

Site personnel must be made aware of all Tree Protection requirements, measures and any actions that constitute a breach of the Conditions of Development Consent with regard to tree protection on site during their site induction.

Standard Condition: B5

C. Conditions which must be satisfied prior to the issue of any construction certificate

C.1 Modification of details of the development (s80A(1)(g) of the Act)

The *approved plans* must be amended and the *Construction Certificate* plans and specification, required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation*, must detail:

- a. The front fence and driveway gate are to be at least 50% transparent so as to reduce the visual bulk;
- b. the swimming pool shall be shifted towards the south by 0.8m. The length of the timber deck shall be reduced so that its northern end is in line with the northern face of the swimming pool. This is to protect the root system of the existing *Ulmus parvifolia* tree which is located in the north-western area of the property (Council's Ref No. 4);
- c. excavation is not to be undertaken within 2500mm of the base of the existing *Ulmus parvifolia* tree located in the north-western area of the property (Council's Ref No. 4);
- d. the extended grass area at the base of the existing *Ulmus parvifolia* tree located in the north-western area of the property (Council's Ref No. 4) is deleted and the section of the existing concrete retaining wall adjacent to the tree is to remain intact;

- e. the section of the driveway crossover a distance of 4.1m from the front boundary is to remain at the existing RL to minimise the disturbance and impact on the *Chamaecyparis lawsoniana* (Lawson cypress) positioned in the south-eastern corner of the property (Council's Ref No. 3);
- f. the height of the side boundary fencing is limited to a maximum 1.8m at any point;
- g. the row of 16 *Podocarpus falcatus* trees along the rear southern boundary are replaced by other suitable species with a maximum mature height of 2m.
- h. privacy screen to a minimum height of 1.7m measured from the finished floor level of the ground floor is to be erected along the full length of the southern edge of the west-facing (rear) terrace on the ground floor;
- i. the outer walls to the northern and southern sides of the west-facing (rear) terrace on the first floor are set inward by 1.5m in line with the outer wall of ensuite 1 and ensuite 2 on the same floor. In addition, the outer wall to the westernmost side of the same terrace is set inward by 2.3m rendering the maximum internal depth of this terrace being 3m. The created setback areas as a result of this condition shall be landscaped in planter boxes with inner edge not less than 1m in height;
- j. All references to the proposed subsoil rising main discharging to a new pit located in the footpath fronting the site must be deleted. No approval is granted for stormwater disposal via a pump/ sump system;
- k. The driveway into the property must be bunded or bordered by an impermeable barrier extending from the front boundary to the crest within the property as detailed on the approved driveway profile;
- l. The pedestrian entry point at the front of the property must be raised to protect the site from inundation. The level must be no less than 200mm above the immediate boundary level; and
- m. The driveway/car parking area must be constructed utilising materials/techniques designed to ensure that the existing water infiltration and gaseous exchange to the trees root system is maintained. Driveways are to be designed in consultation with a qualified Arborist (minimum qualification of Australian Qualification Framework Level 4 or recognised equivalent) and are to utilise such measures as semiporous material; and
- n. The proposed fireplace shall be designed to burn non-solid fuel only.

Note: The effect of this condition is that it requires design changes and/or further information to be provided with the *Construction Certificate* drawings and specifications to address specific issues identified during assessment under section 79C of the *Act*.

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

Note: Clause 145 of the *Regulation* prohibits the issue of any *Construction Certificate* that is inconsistent with this consent.
Standard Condition: C4

C.2 Payment of Security, Levies and Fees (S80A(6) & S94 of the Act, Section 608 of the Local Government Act 1993)

The person(s) with the benefit of this consent must pay the following long service levy, security, development levy, and fees prior to the issue of any *construction certificate*, *subdivision certificate* or *occupation certificate*, as will apply.

The *certifying authority* must not issue any *Part 4A Certificate* until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees. Specifically

- a. prior to the issue of a *construction certificate*, where a construction certificate is required; or
- b. prior to the issue of a *subdivision certificate*, where only a subdivision certificate is required; or
- c. prior to the issue of an *occupation certificate* in any other instance.

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy Use Calculator: http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation or use their online calculator	No	
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit - Making good any damage caused to any property of the <i>Council</i> as a consequence of the doing of anything to which the consent relates.	\$98,000	No	T600
Tree Damage Security Deposit – Making good any damage caused to any public tree as a consequence of the doing of anything to which the consent relates.	\$4,000	No	T600
Infrastructure Works Bond -Completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent.	\$16,000	No	T600
DEVELOPMENT LEVY under Woollahra Section 94A Development Contributions Plan 2005 This plan may be inspected at Woollahra Council or downloaded from our website www.woollahra.nsw.gov.au .			
Development Levy	\$20,000 + Index Amount	Yes, quarterly	T94
Security Administration Fee	\$163	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$138,163 Plus any relevant indexed amounts and long service levy		

Building & Construction Industry Long Service Payment

The Long Service Levy under Section 34 of the *Building & Construction Industry Long Service Payment Act, 1986*, must be paid and proof of payment provided to the *Certifying Authority* prior to the issue of any *Construction Certificate*.

Note: The Levy can be paid directly to the Long Services Payments Corporation or to Council. Further information can be obtained from the Long Service Payments Corporation's website <http://www.lspc.nsw.gov.au/> or by telephoning the Long Service Payments Corporation on 13 14 41.

How must the payments be made?

Payments must be made by:

- a. Cash deposit with Council,
- b. Credit card payment with Council, or
- c. Bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:

- a. the guarantee is by an Australian bank for the amount of the total outstanding contribution;
- b. the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first;
- c. the bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent; and
- d. the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

How will the section 94A levy be indexed?^[d1]

To ensure that the value the development levy is not eroded over time by increases in costs, the proposed cost of carrying out development (from which the development levy is calculated) will be indexed either annually or quarterly (see table above). Clause 3.13 of the Woollahra Section 94A Development Contributions Plan 2005 sets out the formula and index to be used in adjusting the s.94A levy.

Do you need HELP indexing the levy?

Please contact our customer service officers. Failure to correctly calculate the adjusted the development levy will delay the issue of any Part 4A Certificate and could void any Part 4A Certificate (construction certificate, subdivision certificate, or occupation certificate).

Deferred periodic payment of section 94A levy under the Woollahra Section 94A Development Contributions Plan 2005^[d2]

Where the applicant makes a written request supported by reasons for payment of the section 94A levy other than as required by clause 3.9, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:

- a. the reasons given;
- b. whether any prejudice will be caused to the community deriving benefit from the public facilities;
- c. whether any prejudice will be caused to the efficacy and operation of this plan; and
- d. whether the provision of public facilities in accordance with the adopted works schedule will be adversely affected.

Council may, as a condition of accepting deferred or periodic payment, require the provision of a bank guarantee where:

- a. the guarantee is by an Australian bank for the amount of the total outstanding contribution;
- b. the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first;
- c. the bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent; and
- d. the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

Any deferred or outstanding component of the section 94A levy will be adjusted in accordance with clause 3.13 of the plan. The applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.

Standard Condition: C5

C.3 BASIX commitments

The *applicant* must submit to the *Certifying Authority* *BASIX Certificate* No. 58686S with any application for a *Construction Certificate*.

Note: Where there is any proposed change in the BASIX commitments the applicant must submit of a new *BASIX Certificate* to the *Certifying Authority* and Council. If any proposed change in the BASIX commitments are inconsistent with development consent (See: Clauses 145 and 146 of the *Regulation*) the applicant will be required to submit an amended development application to *Council* pursuant to section 96 of the Act.

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

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

Standard Condition: C7

C.4 Road and Public Domain Works – Council approval required

This development consent does NOT give approval to works or structures over, on or under public roads or footpaths excluding minor works subject to separate Road Opening Permit.

Detailed plans and specifications of all works (including but not limited to structures, road works, driveway crossings, footpaths and stormwater drainage) within existing roads, must be submitted to and approved by *Council* under the *Roads Act 1993*, before the issue of any *Construction Certificate*.

Specific works include:

Footpath works

- Full reconstruction of the concrete footpath fronting the property. Footpath levels are to generally match existing. See works following regarding installation of drainage grates. The crossfall of the footpath must be graded away from the property boundary if possible.
- Reconstruction of the sandstone retaining wall located adjacent the driveway ramp and at the base of the Council street tree. The structure must be embedded in a mass concrete footing and brickwork having mortar joints. The extent and height of the structure is to match existing.
- Reinstatement of the concrete landing located midway between the stairways fronting the property. The landing is to be flush with existing sections and of even grade.

Drainage works

- Installation of a drainage inlet pit within the footpath fronting the property. This will require the installation of a prefabricated drainage pit installed over the existing drainage line within the footpath. The inlet pit and grate must be similar to that fronting No. 48 Kambala Road. The location and size of the inlet pit is to be specified by Council's Drainage Engineer prior to construction.
- The connection of the sites private drainage system to Council's inground drainage infrastructure will require the construction of a junction pit within the drainage reserve to the south of the property. The pit design and construction must be in accordance with Councils Standard Drawing DR3.

Access levels and grades to and within the development must match access levels and grades within the road approved under the *Roads Act* 1993.

All public domain works must comply with Council's "*Specification for Roadworks, Drainage and Miscellaneous Works*" dated January 2003 unless expressly provided otherwise by these conditions. This specification can be downloaded from www.woollahra.nsw.gov.au .

Note: To ensure that this work is completed to Council's satisfaction, this consent by separate condition, may impose one or more Infrastructure Works Bonds.

Note: *Road* has the same meaning as in the *Roads Act* 1993.

Note: The intent of this condition is that the design of the road, footpaths, driveway crossings and public stormwater drainage works must be detailed and approved prior to the issue of any *Construction Certificate*. Changes in levels may arise from the detailed design of buildings, road, footpath, driveway crossing grades and stormwater. Changes required under *Road Act* 1993 approvals may necessitate design and levels changes under this consent. This may in turn require the applicant to seek to amend this consent.

Standard Condition: C13

C.5 Utility Services Generally

The *Construction Certificate* plans and specifications, required by clause 139 of the *Regulation*, must demonstrate that all utility services (telecommunications, electricity, gas, water and waste water) will be provided underground. All service ducts, pipes and conduits must be provided within the fabric of the building (excluding stormwater down pipes).

Where telecommunications and electricity are provided from existing poles in the road they must, in accordance with the relevant suppliers' requirements, be carried to the site underground directly to the main switch board within the fabric of the building.

Note: Where adequate provision has not been made for an electrical sub-station within the building, this may necessitate the lodgement of an application to amend this consent under section 96 of the Act to detail the location, landscape/streetscape impacts and compliance with AS2890 as applicable.

The location of service poles and substations required by the relevant suppliers must be shown upon the plans submitted with any *Construction Certificate* application together with a letter from each relevant supplier setting out their requirements.

Proposed water pipes, waste pipes, stack work, duct work, mechanical ventilation plant and the like must be located within the building unless expressly shown upon the approved DA plans. Details confirming compliance with this condition must be shown on the *Construction Certificate* plans and/or detailed within the *Construction Certificate* specifications. Required external vents or vent pipes on the roof or above the eaves must be shown on the *Construction Certificate* plans.

Note: The intent of this condition is that the design quality of the development must not be compromised by cables, pipes, conduits, ducts, plant, equipment, electricity substations or the like placed such that they are visible from any adjoining public place. They must be contained within the building unless shown otherwise by the approved development consent plans.

The Construction Certificate plans and specifications, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail the replacement of all private sewer pipes between all sanitary fixtures and Sydney Waters sewer main where they are not found by inspection to be UPVC or copper with continuously welded joints.

Note: This condition has been imposed to ensure that where private sewer pipes are old, may leak or may be subject to root invasion (whether from existing or proposed private or public landscaping) that existing cast iron, concrete, earthenware or terracotta pipes be replaced with new UPVC or copper continuously welded pipes between all sanitary fixtures and Sydney Waters sewer main, such that clause 25(1) of WLEP 1995 be satisfied. Further, leaking sewer pipes are a potential source of water pollution, unsafe and unhealthy conditions which must be remedied in the public interest.

Standard Condition: C20

C.6 Soil and Water Management Plan – Submission & Approval

The *principal contractor* or *owner builder* must submit to the *Certifying Authority* a soil and water management plan complying with:

- a. “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and
- b. “*Managing Urban Stormwater - Soils and Construction*” published by the NSW Department of Housing 4th Edition” (*The Blue Book*).

Where there is any conflict *The Blue Book* takes precedence. The *Certifying Authority* must be satisfied that the soil and water management plan complies with the publications above prior to issuing any *Construction Certificate*.

Note: This condition has been imposed to eliminate potential water pollution and dust nuisance.

Note: The International Erosion Control Association – Australasia <http://www.austieca.com.au/> lists consultant experts who can assist in ensuring compliance with this condition. Where erosion and sedimentation plans are required for larger projects it is recommended that expert consultants produce these plans.

Note: The “*Do it Right On Site, Soil and Water Management for the Construction Industry*” publications can be down loaded free of charge from <http://www.woollahra.nsw.gov.au/> .

Note: Pursuant to clause 161(1)(a)(5) of the *Regulation an Accredited Certifier* may satisfied as to this matter. Standard Condition: C25

C.7 Professional Engineering Details

The *Construction Certificate* plans and specifications, required by clause 139 of the Regulation, must include detailed *professional engineering* plans and/or specifications for all structural, electrical, hydraulic, hydro-geological, geotechnical, mechanical and civil work complying with this consent, approved plans, the statement of environmental effects and supporting documentation.

Detailed professional engineering plans and/or specifications must be submitted to the *Certifying Authority* with the application for any *Construction Certificate*.

Note: This does not affect the right of the developer to seek staged Construction Certificates
Standard Condition: C36

C.8 Geotechnical and Hydrogeological Design, Certification & Monitoring

The *Construction Certificate* plans and specification required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation* must be accompanied by a *Geotechnical / Hydrogeological Monitoring Program* together with civil and structural engineering details for foundation retaining walls, footings, basement tanking, and subsoil drainage systems, as applicable, prepared by a *professional engineer*, who is suitably qualified and experienced in geotechnical and hydrogeological engineering. These details must be certified by the *professional engineer* to:

- a. Provide appropriate support and retention to ensure there will be no ground settlement or movement, during excavation or after construction, sufficient to cause an adverse impact on adjoining property or public infrastructure.
- b. Provide appropriate support and retention to ensure there will be no adverse impact on surrounding property or infrastructure as a result of changes in local hydrogeology (behaviour of groundwater).
- c. Provide foundation tanking prior to excavation such that any temporary changes to the groundwater level, during construction, will be kept within the historical range of natural groundwater fluctuations. Where the historical range of natural groundwater fluctuations is unknown, the design must demonstrate that changes in the level of the natural water table, due to construction, will not exceed 0.3m at any time.

- d. Provide tanking of all below ground structures to prevent the entry of all ground water such that they are fully tanked and no on-going dewatering of the site is required.
- e. Provide a Geotechnical and Hydrogeological Monitoring Program that:
 - i. Will detect any settlement associated with temporary and permanent works and structures;
 - ii. Will detect deflection or movement of temporary and permanent retaining structures (foundation walls, shoring bracing or the like);
 - iii. Will detect vibration in accordance with AS 2187.2-1993 Appendix J including acceptable velocity of vibration (peak particle velocity);
 - iv. Will detect groundwater changes calibrated against natural groundwater variations;

details:

 - the location and type of monitoring systems to be utilised;
 - the preset acceptable limits for peak particle velocity and ground water fluctuations;
 - recommended hold points to allow for the inspection and certification of geotechnical and hydro-geological measures by the professional engineer; and
 - a contingency plan.

Standard Condition: C40

C.9 Bicycle, Car and Commercial Parking Details

The *Construction Certificate* plans and specifications required by clause 139 of the Regulation, must include detailed plans and specifications for all bicycle, car and commercial vehicle parking in compliance with AS2890.3:1993 *Parking Facilities - Bicycle Parking Facilities*, AS/NZS 2890.1:2004 : *Parking Facilities - Off-Street Car Parking* and AS 2890.2:2002 – *Off-Street Parking: Commercial Vehicle Facilities* respectively.

Access levels and grades must comply with access levels and grade required by Council under the *Roads Act* 1993.

The *Certifying Authority* has no discretion to reduce or increase the number or area of car parking or commercial parking spaces required to be provided and maintained by this consent.

Standard Condition: C45

C.10 Relocation or reconstruction of Council's stormwater drainage system

The developer must meet all costs of relocation or reconstruction of any part of Council's drainage system (including design drawings and easements) required to carry out the approved development. All engineering drawings (plan, sections and elevation views) and specifications of the new stormwater drainage system to be constructed are to be prepared by the applicant. The design plans must be lodged and approved by Council prior to the issue of a Construction Certificate.

Note: Four weeks should be allowed for assessment.

The design and construction of the works must be in accordance with Council's Draft Stormwater Drainage Management DCP (Draft Version 1, Public Exhibition Copy dated 23/08/2004) and "Specification for Road Works, Drainage and Miscellaneous Works" which include Council's Standard Drawings. Both documents are available from Council's website <http://www.woollahra.nsw.gov.au>.

Note: To ensure that this work is completed to Council's satisfaction, this consent by separate condition, may impose one or more Infrastructure Works Bonds.
Standard Condition: C.48 (Autotext CC48)

C.11 Stormwater management plan (Site greater than 500m²)(Clause 25(2) WLEP 1995)

The *Construction Certificate* plans and specifications, required by clause 139 of the *Regulation*, must include a *Stormwater Management Plan* for the site.

The *Stormwater Management Plan* must detail:

- a. general design in accordance with Lipscombe & Associates Pty Ltd (Refer to Project No. 20060024 Sheets SW01 to SW08 Rev C dated 9th March 2007) other than amended by this and other conditions;
- b. the discharge of stormwater, by direct connection, to Councils in ground drainage infrastructure located within the Council road reserve, adjacent to the southern boundary of No. 44 Kambala Road;
- c. compliance the objectives and performance requirements of the BCA;
- d. any rainwater tank required by BASIX commitments including their overflow connection to the *Stormwater Drainage System*, and
- e. general compliance with the Council's draft Development Control Plan Stormwater Drainage Management (draft version 1, public exhibition copy dated 23 August 2004), and
- f. on-site stormwater detention ("OSD").

OSD Requirements

The minimum (OSD) Site Storage Requirements ("SSR") and the Peak Site Discharge ("PSD") from the site must be in accordance with the following minimum storage/discharge relationships based upon a 1000m² site area:

Average Reoccurrence Interval	PSD L/s	Minimum Site Storage Requirement (SSR) m ³
2 year	23.5 L/s	4m ³
100 year	34 L/s	25m ³ – Dwelling House 27m ³ – Residential Flat Building 29m ³ – Other Development
All values based on per 1000m ² site area (interpolate to site area).		

Where a rainwater tank is proposed in conjunction with OSD, the volume of the rainwater tank may contribute to the SSR as follows:

- i. Where the rainwater tank is used for external uses only, 40% of the rainwater tank volume to a maximum of 4m³, or
- ii. Where the rainwater tank is used for external and internal uses, 75% of the rainwater tank volume to a maximum of 7.5m³.

Example: The Site Storage Requirements may be 25,000 litres and a 10,000 litre rainwater tank is to be used for garden irrigation. Therefore, the rainwater tank contributes 4,000 litres toward SSR. Therefore, the OSD tank needs to be 21,000 litres (25,000 litres less the 4,000 litres allowance). Note: 1m³ = 1,000 litres.

The *Stormwater Management Plan* must include the following specific requirements:

Layout plan

A detailed drainage plan at a scale of 1:100 based on drainage calculations prepared in accordance with the Institute of Engineers Australia publication, *Australian Rainfall and Run-off*, 1987 edition or most current version thereof.

It must include:

- All pipe layouts, dimensions, grades, lengths and material specification,
- Location of On-Site Detention,
- All invert levels reduced to Australian Height Datum (AHD),
- Location and dimensions of all drainage pits,
- Point and method of connection to Councils drainage infrastructure, and
- Overland flow paths over impervious areas.

On-site Detention (OSD) details:

- Any potential conflict between existing and proposed trees and vegetation,
- Internal dimensions and volume of the proposed detention storage,
- Diameter of the outlet to the proposed detention storage basin,
- Plans, elevations and sections showing the detention storage basin invert level, centre-line level of outlet, top water level, finished surface level and adjacent structures,
- Details of access and maintenance facilities,
- Construction and structural details of all tanks and pits and/or manufacturer's specifications for proprietary products,
- Details of the emergency overland flow-path (to an approved Council drainage point) in the event of a blockage to the on-site detention system,
- Non-removable fixing details for orifice plates where used,

Copies of certificates of title, showing the creation of private easements to drain water by gravity, if required.

Subsoil Drainage - Subsoil drainage details, clean out points, discharge point.

Note: This Condition is imposed to ensure that site stormwater is disposed of in a controlled and sustainable manner.
Standard Condition: C51

D. Conditions which must be satisfied prior to the commencement of any development work

D.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

For the purposes of section 80A (11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:

- a. that the work must be carried out in accordance with the requirements of the Building Code of Australia,
- b. in the case of residential building work for which *the Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

- a. to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4),
or
- b. to the erection of a temporary building.

In this condition, a reference to the *BCA* is a reference to that code as in force on the date the application for the relevant construction certificate is made.

Note: This condition must be satisfied prior to commencement of any work in relation to the contract of insurance under the Home Building Act 1989. This condition also has effect during the carrying out of all building work with respect to compliance with the Building Code of Australia.
Standard Condition: D1

D.2 Dilapidation Reports for existing buildings

Dilapidation surveys must be conducted and dilapidation reports prepared by a *professional engineer* (structural) of all buildings on land whose title boundary abuts the site and of such further buildings located within the likely "zone of influence" of any excavation, dewatering and/or construction induced vibration.

These properties must include (but is not be limited to):

- a. No. 44 Kambala Road
- b. No. 48 Kambala Road

The dilapidation reports must be completed and submitted to *Council* with the *Notice of Commencement* prior to the commencement of any *development work*.

Where excavation of the site will extend below the level of any immediately adjoining building the *principal contractor* or *owner builder* must give the adjoining building owner(s) a copy of the dilapidation report for their building(s) and a copy of the *notice of commencement* required by s81A(2) of the *Act* not less than two (2) days prior to the commencement of any work. Standard Condition: D4

D.3 Adjoining buildings founded on loose foundation materials

The *principal contractor* must ensure that a *professional engineer* determines the possibility of any adjoining buildings founded on loose foundation materials being affected by piling, piers or excavation. The *professional engineer* (geotechnical consultant) must assess the requirements for underpinning any adjoining or adjacent buildings founded on such soil on a case by case basis and the *principal contractor* must comply with any reasonable direction of the *professional engineer*.

Note: A failure by contractors to adequately assess and seek professional engineering (geotechnical) advice to ensure that appropriate underpinning and support to adjoining land is maintained prior to commencement may result in damage to adjoining land and buildings. Such contractors are likely to be held responsible for any damages arising from the removal of any support to supported land as defined by section 177 of the *Conveyancing Act 1919*.

Standard Condition: D6

D.4 Establishment of Tree Protection Zones

To limit the potential for damage to trees to be retained, Tree Protection Zones are to be established around all trees to be retained on site. The Tree Protection Zones are to comply with the following requirements;

a. Tree Protection Zone areas

Council Reference No:	Species	Location	Radius from Trunk (Metres)*
1	<i>Ficus microcarpa</i> var. 'Hillii' (Hills Weeping Fig)	Council road reserve	Grassed embankment retained by sandstone
4	<i>Ulmus parvifolia</i> (Chinese Weeping Elm)	North-western area of property extending from embankment	3
5	<i>Ulmus parvifolia</i> (Chinese Weeping Elm)	Northern side of property adjacent to house	2

***NB:** Where this condition relates to street trees and the fence cannot be placed at the specified radius, the fencing is to be positioned so that the entire verge (nature strip) area in front of the subject property, excluding existing driveways and footpaths, is protected.

b. Tree Protection Zones are to be fenced with a 1.8 metre high chainmesh or weldmesh fence to minimise disturbance to existing ground conditions. The area within the fence must be mulched, to a depth of 75mm, irrigated and maintained for the duration of the construction works.

c. Trunk protection, to a maximum height permitted by the first branches, is to be installed around the trunks of the trees listed in the table below;

Council Reference No:	Species	Location
3	<i>Chamaecyparis lawsoniana</i> (Lawson cypress)	South-eastern corner of property

A padding material eg. Hessian or thick carpet underlay, is to be wrapped around the trunk first. Harwood planks, 50x100mm and to the maximum possible length, are to be placed over the padding and around the trunk of the tree at 150mm centres. These planks are to be secured in place by 8 gauge wire at 300mm spacing.

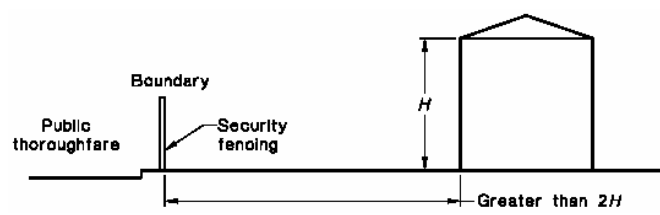
- d. A sign must be erected on each side of the fence indicating the existence of a Tree Protection Zone and providing the contact details of the site Arborist.
- e. Existing soil levels must be maintained within Tree Protection Zones. Where excavation is undertaken adjacent such an area, the edge of the excavation must be stabilised, until such time as permanent measures are installed (eg. retaining wall etc) to prevent erosion within the Tree Protection Zone.
- f. Sediment control measures are to be installed around all Tree Protection Zones to protect the existing soil levels.
- g. The storage of materials, stockpiling, siting of works sheds, preparation of mixes, cleaning of tools or equipment is not permitted within Tree Protection Zones.

Site personnel must be made aware of all Tree Protection requirements, measures and any actions that constitute a breach of the Conditions of Development Consent with regard to tree protection on site during their site induction.

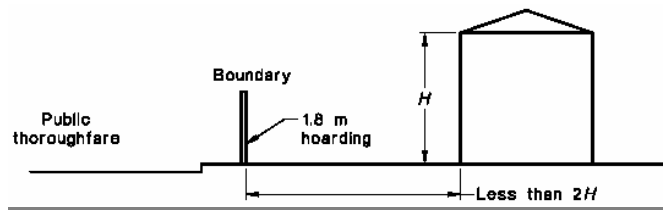
Note: Water Restrictions take precedence over this condition. Having regard to water restrictions manual hosing may be necessary.
Standard Condition: D8

D.5 Security Fencing, Hoarding and Overhead Protection

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



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

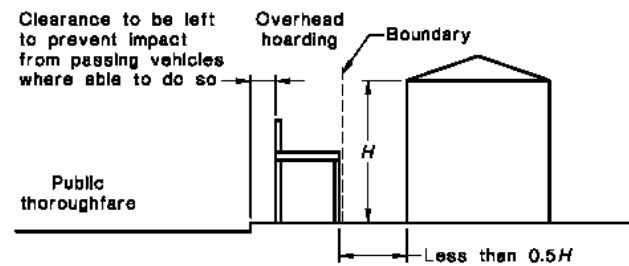


Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an *overhead protective structure* and the facing facade protected by heavy-duty scaffolding, unless either

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

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

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



The *principal contractor* or *owner builder* must pay all fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

The *principal contractor* or *owner builder* must ensure that Overhead Protective Structures are installed and maintained in accordance with WorkCover NSW Code of Practice - Overhead Protective Structures, gazetted 16 December 1994, as commenced 20 March 1995. This can be downloaded from:

<http://www.workcover.nsw.gov.au/Publications/LawAndPolicy/CodesofPractice/ohheadprotstructs.htm>.

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

Note: The *principal contractor* or *owner* must allow not less than two (2) weeks from the date of making a hoarding application for determination. Any approval for a hoarding or overhead protection under the *Roads Act* 1993 will be subject to its own conditions and fees.
Standard Condition: D11

D.6 Site Signs

The *Principal Contractor* or *owner builder* must ensure that the sign required by clauses 98A and 227A of the *Regulation* is erected and maintained at all times.

“Erection of signs

1. For the purposes of section 80A (11) of the *Act*, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
2. A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - a. showing the name, address and telephone number of the principal certifying authority for the work, and
 - b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - c. stating that unauthorised entry to the work site is prohibited.
3. Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
4. This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
5. This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the *Act*, to comply with the technical provisions of the State’s building laws.”

Note: *PCA* and *principal contractors* must also ensure that signs required by this clause are erected and maintained (see clause 227A which imposes a penalty exceeding \$1,000).

Note: If *Council* is appointed as the *PCA* it will provide the sign to the *principal contractor* or *owner builder* who must ensure that the sign is erected and maintained as required by Clause 98A of the *Regulation*.
Standard Condition: D12

D.7 Toilet Facilities

Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided:

- a. must be a standard flushing toilet, and
- b. must be connected to a public sewer, or

- c. if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the council, or
- d. if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the council.

The provision of toilet facilities in accordance with this condition must be completed before any other work is commenced.

In this condition:

accredited sewage management facility means a sewage management facility to which Division 4A of Part 3 of the *Local Government (Approvals) Regulation 1993* applies, being a sewage management facility that is installed or constructed to a design or plan the subject of a certificate of accreditation referred to in clause 95B of the *Local Government (Approvals) Regulation 1993*.

approved by the council means the subject of an approval in force under Division 1 of Part 3 of the *Local Government (Approvals) Regulation 1993*.

public sewer has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

sewage management facility has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

Note: This condition does not set aside the requirement to comply with Workcover NSW requirements.
Standard Condition: D13

D.8 Erosion and Sediment Controls – Installation

The *principal contractor* or *owner builder* must install and maintain water pollution, erosion and sedimentation controls in accordance with:

- a. The *Soil and Water Management Plan* if required under this consent;
- b. “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and
- c. “*Managing Urban Stormwater - Soils and Construction*” published by the NSW Department of Housing 4th Edition” (“The Blue Book”).

Where there is any conflict The Blue Book takes precedence.

Note: The International Erosion Control Association – Australasia (<http://www.austieca.com.au/>) lists consultant experts who can assist in ensuring compliance with this condition. Where Soil and Water Management Plan is required for larger projects it is recommended that this be produced by a member of the International Erosion Control Association – Australasia.

Note: The “Do it Right On Site, Soil and Water Management for the Construction Industry” publications can be down loaded free of charge from www.woollahra.nsw.gov.au.

Note: A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the *Protection of the Environment Operations Act 1997* **without any further warning**. It is a criminal offence to cause, permit or allow pollution.

Note: Section 257 of the *Protection of the Environment Operations Act 1997* provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution” **Warning**, irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.
Standard Condition: D14

D.9 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

The erection of the building in accordance with this development consent must not be commenced until:

- a. a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited Certifier, and
- b. the person having the benefit of the development consent has:
 - i. appointed a principal certifying authority for the building work, and
 - ii. notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- b1. the principal certifying authority has, no later than 2 days before the building work commences:
 - i. notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - ii. notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- b2. the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - i. appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - ii. notified the principal certifying authority of any such appointment, and
 - iii. unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - iv. given at least 2 days’ notice to the council of the person’s intention to commence the erection of the building.

- Note:** *Building* has the same meaning as in section 4 of the *Act* and includes part of a building and any structure or part of a structure.
- Note:** *New building* has the same meaning as in section 109H of the *Act* and includes an altered portion of, or an extension to, an existing building.
- Note:** The commencement of demolition works associated with an altered portion of, or an extension to, an existing building is considered to be the commencement of building work requiring compliance with section 82A(2) of the *Act* (including the need for a *Construction Certificate*) prior to any demolition work. See: *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.
- Note:** *Construction Certificate* Application, *PCA* Service Agreement and *Notice of Commencement* forms can be downloaded from Council's website www.woollahra.nsw.gov.au.
- Note:** It is an offence for any person to carry out the erection of a *building* in breach of this condition and in breach of section 81A(2) of the *Act*.
Standard Condition: D15

D.10 Notification of Home Building Act 1989 requirements

- a. For the purposes of section 80A (11) of the *Act*, the requirements of this condition are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the Home Building Act 1989.
- b. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - i. in the case of work for which a *principal contractor* is required to be appointed:
 - the name and licence number of the principal contractor, and
 - the name of the insurer by which the work is insured under Part 6 of that Act,
 - ii. in the case of work to be done by an owner-builder:
 - the name of the owner-builder, and
 - if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- c. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.
- d. This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the *Act*, to comply with the technical provisions of the State's building laws. Standard Condition: D17

D.11 Establishment of boundary location, building location and datum

Prior to the commencement of any work the principal contractor or owner builder must ensure that a surveyor registered under the *Surveying Act* 2002 sets out:

- a. the boundaries of the *site* by permanent marks (including permanent recovery points);
- b. the location and level of foundation excavations, footings, walls and slabs by permanent marks, pegs or profiles relative to the boundaries of the land and relative to Australian Height Datum (“AHD”) in compliance with the approved plans;
- c. establishes a permanent datum point (bench mark) within the boundaries of the *site* relative to AHD; and
- d. provides a copy of a survey report by the registered surveyor detailing, the title boundaries, pegs/profiles, recovery points and bench mark locations as established pursuant to this condition to the PCA.

Note: Where the *principal contractor* or *owner builder* notes any discrepancy between the approved development consent and the *Construction Certificate*, especially in relation to the height, location or external configuration of the building (but not limited to these issues) the *principal contractor* or *owner builder* should not proceed until satisfied that the variations as shown are consistent with the consent. Failure to do so may result in a breach of development consent.

Note: On larger developments, or where boundary redefinition is required, the placement of new State Survey Marks as permanent marks should be considered by the registered surveyor.
Standard Condition: D18

E. Conditions which must be satisfied during any development work

E.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

For the purposes of section 80A (11) of the Act, the following condition is prescribed in relation to a development consent for development that involves any building work:

- a. that the work must be carried out in accordance with the requirements of the Building Code of Australia,
- b. in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

- a. to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4) of the Regulation, or
- b. to the erection of a temporary building.

In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant construction certificate is made. Standard Condition: E1

E.2 Compliance with Australian Standard for Demolition

Demolition of buildings and structures must comply with Australian Standard AS 2601—1991: The Demolition of Structures, published by Standards Australia, and as in force at 1 July 1993.

Standard Condition: E2

E.3 Critical Stage Inspections

Critical stage inspections must be called for by the *principal contractor or owner builder* as required by the PCA, any PCA service agreement, the *Act* and the *Regulation*.

Work must not proceed beyond each critical stage until the PCA is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the *Act*. *critical stage inspections* means the inspections prescribed by the *Regulations* for the purposes of section 109E(3)(d) of the *Act* or as required by the *PCA* and any PCA Service Agreement.

Note: The PCA may require inspections beyond mandatory critical stage inspections in order that the PCA be satisfied that work is proceeding in accordance with this consent.

Note: The PCA may, in addition to inspections, require the submission of *Compliance Certificates*, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.

Standard Condition: E5

E.4 Hours of Work –Amenity of the neighbourhood

- a. No *work* must take place on any Sunday or public holiday,
- b. No *work* must take place before 7am or after 5pm any weekday,
- c. No *work* must take place before 7am or after 1pm any Saturday, and
- d. No piling, piercing, cutting, boring, drilling, rock breaking, rock sawing, jack hammering or bulk excavation of land or loading of material to or from trucks must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday.
- e. No rock excavation being cutting, boring, drilling, breaking, sawing, jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

This condition has been imposed to mitigate the impact of work upon the amenity of the neighbourhood. Impact of work includes, but is not limited to, noise, vibration, dust, odour, traffic and parking impacts.

Note: The use of noise and vibration generating plant and equipment and vehicular traffic, including trucks in particular, significantly degrade the amenity of neighbourhoods and more onerous restrictions apply to these activities. This more invasive work generally occurs during the foundation and bulk excavation stages of development. If you are in doubt as to whether or not a particular activity is considered to be subject to the more onerous requirement (9am to 4pm weekdays and 9am to 1pm Saturdays) please consult with Council.

- Note:** Each and every breach of this condition by any person may be subject to separate penalty infringement notice or prosecution.
- Note:** The delivery and removal of plant, equipment and machinery associated with wide loads subject to RTA and Police restrictions on their movement out side the approved hours of work will be considered on a case by case basis.
- Note:** Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the *Protection of the Environment Operations Act 1997*, the *Protection of the Environment Operations (Noise Control) Regulation 2000*.
- Note:** EPA Guidelines can be down loaded from <http://www.epa.nsw.gov.au/noise/nglg.htm> .
- Note:** See http://www.epa.nsw.gov.au/resources/ci_build_sheet7.pdf
Standard Condition: E6

E.5 Maintenance of Vehicular and Pedestrian Safety and Access

The *principal contractor* or *owner builder* and any other person acting with the benefit of this consent must:

- a. Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.
- b. Not use the road or footway for the storage of any article, material, matter, waste or thing.
- c. Not use the road or footway for any *work*.
- d. Keep the road and footway in good repair free of any trip hazard or obstruction.
- e. Not stand any plant and equipment upon the road or footway.

This condition does not apply to the extent that a permit or approval exists under the section 73 of the *Road Transport (Safety and Traffic Management) Act 1999*, section 138 of the *Roads Act 1993* or section 94 of the *Local Government Act 1993* except that at all time compliance is required with:

- a. Australian Standard AS 1742 (Set) Manual of uniform traffic control devices and all relevant parts of this set of standards.
- b. Australian Road Rules to the extent they are adopted under the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*.

Note: Section 73 of the *Road Transport (Safety and Traffic Management) Act 1999* allows the Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose. Any road closure requires Police approval.

Note: Section 138 of the *Roads Act 1993* provides that a person must not:

- (a) erect a structure or carry out a work in, on or over a public road, or
- (b) dig up or disturb the surface of a public road, or
- (c) remove or interfere with a structure, work or tree on a public road, or
- (d) pump water into a public road from any land adjoining the road, or
- (e) connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.

Note: Section 68 of the *Local Government Act 1993* provides that a person may carry out certain activities only with the prior approval of the council including:

Part C Management of Waste:

- “1. For fee or reward, transport waste over or under a public place
2. Place waste in a public place
3. Place a waste storage container in a public place.”

Part E Public roads:

- “1. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
2. Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.”

Any work in, on or over the Road or Footway requires *Council* Approval and in the case of classified roads the NSW Roads and Traffic Authority. Road includes that portion of the road uses as a footway.

Standard Condition: E7

E.6 Tree Preservation

All persons must comply with Council’s *Tree Preservation Order* (“the TPO”), other than where varied by this consent. The order applies to any tree, with a height greater than 5 metres or a diameter spread of branches greater than 3 metres, is subject to Council’s *Tree Preservation Order* unless, exempted by specific provisions. Works to be carried out within a 5 metre radius of any tree, subject to the *Tree Preservation Order*, require the prior written consent of Council.

General Protection Requirements:

- a. There must be no excavation or *work* within the required *Tree Protection Zone(s)*. The *Tree Protection Zone(s)* must be maintained during all *development work*.
- b. Where excavation encounters tree roots with a diameter exceeding 40mm excavation must cease. The *principal contractor* must procure an inspection of the tree roots exposed by a qualified arborist. Excavation must only recommence with the implementation of the recommendations of the qualified arborist or where specific instructions are given by Council’s *Tree Management Officer* in strict accordance with such Council instructions.
- c. Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the qualified arborist or where specific instructions are given by Council’s *Tree Management Officer* in strict accordance with such Council instructions.

Note: Trees must be pruned in accordance with Australian Standard AS 4373 – 2007 “Pruning of Amenity Trees” and Workcover NSW Code of Practice Amenity Tree Industry 1998.

Standard Condition: E8

E.7 Tree Preservation & Approved Landscaping Works

All landscape works must be undertaken in accordance with the approved landscape plan, arborist report, tree management plan and transplant method statement as applicable.

- a. The following trees must be retained:

Trees on Private Land

Council Reference No:	Species	Location	Dimension (Metres)
4	<i>Ulmus parvifolia</i> (Chinese Weeping Elm)	North-western area of property extending from embankment	
5	<i>Ulmus parvifolia</i> (Chinese Weeping Elm)	Northern side of property adjacent to house	
3	<i>Chamaecyparis lawsoniana</i> (Lawson cypress)	South-eastern corner of property	

Trees on Council Land

Council Ref No.:	Species	Location	Dimension (Metres)	Tree Value
1	<i>Ficus microcarpa</i> var. 'Hillii' (Hills Weeping Fig)	Council road reserve		

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

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

Council Reference No:	Species	Location	Dimension (Metres)
3	<i>Archontophoenix cunninghamiana</i> (Bangalow Palm)	Front court yard	Within property

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

- c. The following trees may be removed:

Council Reference No:	Species	Location	Dimension (Metres)
6	<i>Robinia pseudoacacia</i> (Robinia)	South-western corner of property	

Note: The tree/s that may be removed should appear coloured red on the construction certificate plans.

- d. The following compensatory replacement plantings must be planted to ensure the preservation of the landscape character of the area.

Species/Type	Planting Location	Container Size or Size of Tree (@ time of planting)	Minimum Dimensions at Maturity
<i>Magnolia grandiflora</i> (Bull Bay Magnolia)	South-western corner of property	100 Litre	10 (h) x 5 (w)

- e. Excavation must not be undertaken within the specified radius of the trunks of the following trees. Beyond this radius, excavation is permissible only after root pruning by hand along the specified line.

Council Reference No:	Species	Location	Radius from Trunk (Metres)
4	<i>Ulmus parvifolia</i> (Chinese Weeping Elm)	North-western area of property extending from embankment	3
5	<i>Ulmus parvifolia</i> (Chinese Weeping Elm)	Northern side of property adjacent to house	2
3	<i>Chamaecyparis lawsoniana</i> (Lawson cypress)	South-eastern corner of property	5

- f. To prevent damage to roots and compaction within the root zone, excavation undertaken within the specified radius from the trunks of the following trees must be hand dug. Small hand tools only are to be utilised, mattocks and similar digging tools are not to be used within these areas. No root with a diameter equal to or in excess of 30mm is to be cut unless approved, in writing, by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 4 or recognised equivalent).

Beyond this radius, mechanical excavation is permitted, when root pruning by hand along the perimeter line of such works is completed.

Council Reference No:	Species	Location	Radius from Trunk (Metres)
3	<i>Chamaecyparis lawsoniana</i> (Lawson cypress)	South-eastern corner of property	5

- g. Level changes are not to occur within the specified radius from the trunks of the following trees.

Council Reference No:	Species	Location	Radius from Trunk (Metres)
4	<i>Ulmus parvifolia</i> (Chinese Weeping Elm)	North-western area of property extending from embankment	3
5	<i>Ulmus parvifolia</i> (Chinese Weeping Elm)	Northern side of property adjacent to house	2
3	<i>Chamaecyparis lawsoniana</i> (Lawson cypress)	South-eastern corner of property	5

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

Note: Water Restrictions take precedence over this condition.

Note: Having regard to water restrictions manual hosing may be necessary.
Standard Condition: E9

E.8 Maintenance of Environmental Controls

The *principal contractor* or *owner builder* must ensure that the following monitoring, measures and controls are maintained:

- a. Erosion and sediment controls,
- b. Dust controls,
- c. Dewatering discharges,
- d. Noise controls;
- e. Vibration monitoring and controls;
- f. Ablutions.

Note 1: See http://www.epa.nsw.gov.au/small_business/builders.htm for additional information.
Standard Condition: E11

E.9 Compliance with Geotechnical/Hydrogeological Monitoring Program

Excavation must be undertaken in accordance with the recommendations of the *Geotechnical / Hydrogeological Monitoring Program* and any oral or written direction of the supervising *professional engineer*.

The *principal contractor* and any sub-contractor must strictly follow the *Geotechnical / Hydrogeological Monitoring Program* for the development including, but not limited to;

- a. the location and type of monitoring systems to be utilised;
- b. recommended hold points to allow for inspection and certification of geotechnical and hydrogeological measures by the *professional engineer*; and
- c. the contingency plan.

Note: The consent authority cannot require that the author of the geotechnical/hydrogeological report submitted with the Development Application to be appointed as the *professional engineer* supervising the work however, it is the Council's recommendation that the author of the report be retained during the construction stage.
Standard Condition: E12

E.10 Support of adjoining land and buildings

A person must not do anything on or in relation to the *site* (the supporting land) that removes the support provided by the supporting land to any other land (the supported land) or building (the supported building).

For the purposes of this condition, supporting land includes the natural surface of the site, the subsoil of the site, any water beneath the site, and any part of the site that has been reclaimed.

Note: This condition does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is considered necessary upon any adjoining or supported land by any person the *principal contractor* or *owner builder* must obtain:

- a) the consent of the owners of such adjoining or supported land to trespass or encroach, or
- b) an access order under the Access to Neighbouring Land Act 2000, or
- c) an easement under section 88K of the *Conveyancing Act 1919*, or
- d) an easement under section 40 of the *Land & Environment Court Act 1979* as appropriate.

Note: Section 177 of the *Conveyancing Act 1919* creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

Note: Clause 20 of the *Roads (General) Regulation 2000* prohibits excavation in the vicinity of roads as follows: “**Excavations adjacent to road** - A person must not excavate land in the vicinity of a road if the excavation is capable of causing damage to the road (such as by way of subsidence) or to any work or structure on the road.” Separate approval is required under the Roads Act 1993 for any underpinning, shoring, soil anchoring (temporary) or the like within or under any road. Council will not give approval to permanent underpinning, shoring, soil anchoring within or under any road.

Note: The encroachment of work or the like is a civil matter of trespass or encroachment and Council does not adjudicate or regulate such trespasses or encroachments except in relation to encroachments upon any road, public place, crown land under Council’s care control or management, or any community or operational land as defined by the *Local Government Act 1993*.

Standard Condition: E13

E.11 Vibration Monitoring

Vibration monitoring equipment must be installed and maintained, under the supervision of a *professional engineer* with expertise and experience in geotechnical engineering, between any potential source of vibration and any *building* identified by the *professional engineer* as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed.

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the *professional engineer* as the maximum acceptable peak particle velocity an audible alarm must activate such that the *principal contractor* and any sub-contractor are easily alerted to the event.

Where any such alarm triggers all excavation works must cease immediately. Prior to the vibration monitoring equipment being reset by the *professional engineer* and any further work recommencing the event must be recorded and the cause of the event identified and documented by the *professional engineer*.

Where the event requires, in the opinion of the *professional engineer*, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the *professional engineer* as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the *professional engineer* to the *principal contractor* and any sub-contractor clearly setting out required work practice.

The *principal contractor* and any sub-contractor must comply with all work directions, verbal or written, given by the *professional engineer*.

A copy of any written direction required by this condition must be provided to the *Principal Certifying Authority* within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining *building* or such that there is any removal of support to *supported land* the *professional engineer*, *principal contractor* and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that *supported land* and take immediate action under the direction of the *professional engineer* to prevent any further damage and restore support to the *supported land*.

Note: *Professional engineer* has the same mean as in Clause A1.1 of the BCA.

Note: *Building* has the same meaning as in section 4 of the Act i.e. “**building** includes part of a building and any structure or part of a structure”.

Note: *Supported land* has the same meaning as in section 88K of the Conveyancing Act 1919.
Standard Condition: E14

E.12 Erosion and Sediment Controls – Maintenance

The *principal contractor* or *owner builder* must maintain water pollution, erosion and sedimentation controls in accordance with:

- a. The Soil and Water Management Plan required under this consent;
- b. “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and
- c. “*Managing Urban Stormwater - Soils and Construction*” published by the NSW Department of Housing 4th Edition (“*The Blue Book*”).
- d.

Where there is any conflict *The Blue Book* takes precedence.



Note 1: A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act 1997 without any further warning. It is a criminal offence to cause, permit or allow pollution.

Note 2: Section 257 of the Protection of the Environment Operations Act 1997 provides that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”. **Warning,** irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of the occupation of the land being developed whether or not they actually cause the pollution.
Standard Condition: E15

E.13 Disposal of site water during construction

The principal contractor or owner builder must ensure:

- a. Prior to pumping any water into the road or public stormwater system that approval is obtained from *Council* under section 138(1)(d) of the *Roads Act 1993*;
- b. That *water pollution*, as defined by the *Protection of the Environment Operations Act 1997*, does not occur as the result of the discharge to the road, public stormwater system or other place or any site water;
- c. That stormwater from any roof or other impervious areas is linked, via temporary downpipes and stormwater pipes, to a Council approved stormwater disposal system immediately upon completion of the roof installation or work creating other impervious areas.

Note: This condition has been imposed to ensure that adjoining and neighbouring land is not adversely affected by unreasonable overland flows of stormwater and that site water does not concentrate water such that they cause erosion and water pollution.
Standard Condition: E17

E.14 Check Surveys - boundary location, building location, building height and stormwater drainage system relative to Australian Height Datum

The *Principal Contractor* or *Owner Builder* must ensure that a surveyor registered under the *Surveying Act 2002* carries out check surveys and provides survey certificates confirming the location of the building(s) and the stormwater drainage system relative to the boundaries of the *site* and that the height of buildings and the stormwater drainage system relative to Australian Height Datum complies with this consent at the following critical stages.

The *Principal Contractor* or *Owner Builder* must ensure that work must not proceed beyond each of the following critical stages until compliance has been demonstrated to the *PCA's* satisfaction:

- a. Upon the completion of foundation walls prior to the laying of any floor or the pouring of any floor slab and generally at damp proof course level;
- b. Upon the completion of formwork for floor slabs prior to the laying of any floor or the pouring of any concrete and generally at each storey;
- c. Upon the completion of formwork or framework for the roof(s) prior to the laying of any roofing or the pouring of any concrete roof;

- d. Upon the completion of formwork and steel fixing prior to pouring of any concrete for any ancillary structures, swimming pool or spa pool or the like;
- e. Driveway transitions and crest thresholds prior to pavement of driveways;
- f. Stormwater Drainage Systems prior to or post construction confirming location, height and capacity of works.

Note: This condition has been imposed to ensure that development occurs in the location and at the height approved under this consent.
Standard Condition: E20

E.15 Placement and use of Skip Bins

The *principal contractor* or *owner builder* must ensure that all waste storage containers, including but not limited to skip bins, must be stored within the site unless:

- a. Activity Approval has been issued by Council under section 94 of the *Local Government Act 1993* to place the waste storage container in a public place, and
- b. Where located on the road it is located only in a positions where a vehicle may lawfully park in accordance with the Australian Road Rules to the extent they are adopted under the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*.

Note: Waste storage containers must not be located on the footpath without a site specific activity approval. Where such site specific activity approval is granted a 1.5m wide clear path of travel is maintained free of any trip hazards.
Standard Condition: E21

E.16 Prohibition of burning

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

Note: Pursuant to the *Protection of the Environment Operations (Control of Burning) Regulation 2000* all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.
Standard Condition: E22

E.17 Dust Mitigation

Dust mitigation must be implemented in accordance with “*Dust Control - Do it right on site*” published by the Southern Sydney Regional Organisation of Councils.

This generally requires:

- a. Dust screens to all hoardings and site fences.
- b. All stockpiles or loose materials to be covered when not being used.
- c. All equipment, where capable, being fitted with dust catchers.
- d. All loose materials being placed bags before placing into waste or skip bins.
- e. All waste and skip bins being kept covered when not being filled or emptied.
- f. The surface of excavation work being kept wet to minimise dust.

- g. Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

Note 1: “*Dust Control - Do it right on site*” can be down loaded free of charge from Council’s web site www.woollahra.nsw.gov.au or obtained from Council’s office.

Note 2: Special precautions must be taken when removing asbestos or lead materials from development sites. Additional information can be obtained from www.workcover.nsw.gov.au and www.epa.nsw.gov.au . Other specific condition and advice may apply.

Note 3: Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution.

Standard Condition: E23

E.18 Compliance with Council’s Specification for Roadworks, Drainage and Miscellaneous Works Road works and work within the Road and Footway

All work carried out on assets which are under Council ownership or will revert to the ownership, care, control or management of Council in connection with the *development* to which this consent relates must comply with Council’s *Specification for Roadworks, Drainage and Miscellaneous Works* dated January 2003.

The *owner, principal contractor or owner builder* must meet all costs associated with such works.

Road and Public Domain Works – Council inspection required

Inspection and approval of works to Council’s drainage system is required at the following stages:

- after the laying of new inlet pits and connection of pipes, prior to backfilling and
- after the completion of all pits and connection points.

A minimum of one (1) working days notice shall be given to Council for an inspection. Further work is not to proceed until the work required is inspected and approved.

This condition does not set aside the need to obtain relevant approvals under the *Roads Act 1993* or *Local Government Act 1993* for works within Roads and other public places.

Note: A copy of Council’s “*Specification for Roadworks, Drainage and Miscellaneous Works*” can be down loaded free of charge from Council’s website www.woollahra.nsw.gov.au

Standard Condition: E24

F. Conditions which must be satisfied prior to any occupation or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)

F.1 Occupation Certificate (section 109M of the Act)

A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 109H (4) of the *Act*) unless an occupation certificate has been issued in relation to the building or part.

Note: New building includes an altered portion of, or an extension to, an existing building.
Standard Condition: F1

F.2 Amenity Landscaping

The *owner* or *principal contractor* must install all approved amenity landscaping (screen planting, soil stabilisation planting, etc.) prior to any occupation or use of the site.

Note: This condition has been imposed to ensure that the environmental impacts of the development are mitigated by approved landscaping prior to any occupation of the development.
Standard Condition: F6

F.3 Commissioning and Certification of Systems and Works

The *principal contractor* or *owner builder* must submit to the satisfaction of the *PCA* works-as-executed (“WAE”) plans, *Compliance Certificates* and evidence of suitability in accordance with Part A2.2 of the BCA confirming that the *works*, as executed and as detailed, comply with the requirement of this consent, the *Act*, the *Regulations*, any relevant *construction certificate*, the *BCA* and relevant *Australian Standards*.

Works-as-executed (“WAE”) plans, *Compliance Certificates* and evidence of suitability in accordance with Part A2.2 of the BCA must including but may not be limited to:

- a. Certification from the supervising professional engineer that the requirement of the Geotechnical / Hydrogeological conditions and report recommendations were implemented and satisfied during development work.
- b. All flood protection measures.
- c. All stormwater drainage systems.
- d. All mechanical ventilation systems.
- e. All hydraulic systems.
- f. All structural work.
- g. All acoustic attenuation work.
- h. All waterproofing.
- i. Such further matters as the *Principal Certifying Authority* may require.

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

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

Note: The *PCA* must submit to Council, with any *Occupation Certificate*, copies of works-as-executed (“WAE”) plans, *Compliance Certificates* and evidence of suitability in accordance with Part A2.2 of the *BCA* upon which the *PCA* has relied in issuing any *Occupation Certificate*.
Standard Condition: F7

F.4 Commissioning and Certification of Public Infrastructure Works

The *principal contractor* or *owner builder* must submit, to the satisfaction of Woollahra Municipal Council, certification from a *professional engineer* that all public infrastructure works have been executed in compliance with this consent and with Council’s *Specification for Roadworks, Drainage and Miscellaneous Works* dated January 2003.

The certification must be supported by closed circuit television / video inspection provided on DVD of all stormwater drainage together with works as executed engineering plans and a survey report detailing all finished reduced levels.

Standard Condition: F9

G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate

No condition.

H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (s109C(1)(c))

H.1 Fulfillment of BASIX commitments – Clause 154B of the Regulation

All BASIX commitments must be effected in accordance with the BASIX Certificate No. 58686S.

Note: Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A *certifying authority* must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."
Standard Condition: H7

H.2 Landscaping

All landscape work including all planting must be completed by the *principal contractor* or *owner* in compliance with the approved landscape plan, arborist report, transplant method statement and tree management plan. The *principal contractor* or *owner* must provide to *PCA* a works-as-executed landscape plan and certification from a qualified landscape architect/designer, horticulturist and/or arborist as applicable to the effect that the works as completed comply with this consent.

Note: This condition has been imposed to ensure that all Landscaping work is completed prior to the issue of the *Final Occupation Certificate*.
Standard Condition: H9

H.3 Road Works (including footpaths)

The following works must be completed to the satisfaction of Council, in compliance with Council's "Specification for Roadworks, Drainage and Miscellaneous Works" dated January 2003 unless expressly provided otherwise by these conditions at the *principal contractor's* or *owner's* expense:

- a. stormwater pipes, pits and connections to public stormwater systems within the *road*;
- b. driveways and vehicular crossings within the *road*;
- c. removal of redundant driveways and vehicular crossings;
- d. new footpaths within the *road*;
- e. new or replacement street trees;
- f. new footway verges, where a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street.
- g. new or reinstated kerb and guttering within the *road*; and
- h. new or reinstated road surface pavement within the *road*.

Note: Security held by Council pursuant to section 80A(6) of the Act will not be release by Council until compliance has been achieved with this condition. An application for refund of security must be submitted with the *Final Occupation Certificate* to Council. This form can be downloaded from Council's website www.woollahra.nsw.gov.au or obtained from Council's customer service centre.

Standard Condition: H13

H.4 Positive Covenant & Works-As-Executed certification of stormwater systems

On completion of construction work, stormwater drainage works are to be certified by a *professional engineer* with Works-As-Executed drawings supplied to the *PCA* detailing:

- a. compliance with conditions of development consent relating to stormwater;
- b. the structural adequacy of the On-Site Detention system (OSD);
- c. that the works have been constructed in accordance with the approved design and will provide the detention storage volume and attenuation in accordance with the submitted calculations;
- d. Pipe invert levels and surface levels to Australian Height Datum; and
- e. Contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.
- f. A positive covenant pursuant to Section 88E of the *Conveyancing Act* 1919 must be created on the title of the subject property, providing for the indemnification of Council from any claims or actions and for the on-going maintenance of the on-site-detention system and/or absorption trenches, including any pumps and sumps incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered at the Land Titles Office.

Note: The required wording of the Instrument can be downloaded from Council's web site www.woollahra.nsw.gov.au. The PCA must supply a copy of the WAE Plans to Council together with the *Final Occupation Certificate*. The *Final Occupation Certificate* must not be issued until this condition has been satisfied.
Standard Condition: H20

H.5 Sewer pipe connection

All existing underground sewer pipes affected by the works in this consent must be replaced as far as Sydney Water's sewer main. These pipes must be welded or jointed in such a manner so as to prevent leakage and must not be located less than five (5) metres from the base of any Council street tree. The replacement work must be inspected by a registered plumber who must certify, by way of a compliance certificate submitted to Council, that this condition has been satisfied.

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

I.1 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. 58686S.

Note: This condition affects successors in title with the intent that environmental sustainability measures must be maintained for the life of development under this consent.
Standard Condition: I7

I.2 Maintenance of Landscaping

All landscaping must be maintained in general accordance with this consent.

This condition does not prohibit the planting of additional trees or shrubs subject that they are native species endemic to the immediate locality.

Reason: This condition has been imposed to ensure that the landscaping design intent is not eroded over time by the removal of landscaping or inappropriate exotic planting.

Note: This condition also acknowledges that development consent is not required to plant vegetation and that over time additional vegetation may be planted to replace vegetation or enhance the amenity of the locality. Owners should have regard to the amenity impact of trees upon the site and neighbouring land. Further, drought proof vegetation being native species endemic to the immediate locality is encouraged. Suggested native species endemic to the immediate locality are listed in the Brochure Titled "Local Native Plants for Sydney's Eastern Suburbs" published by Woollahra, Waverley, Randwick and Botany Bay Councils.
Standard Condition: I8

I.3 On-going maintenance of the on-site-detention system

The Owner(s) must in accordance with this condition and any positive covenant:

- a. permit stormwater to be temporarily detained by the system;
- b. keep the system clean and free of silt rubbish and debris;
- c. if the car park is used as a detention basin, a weather resistant sign must be maintained in a prominent position in the car park warning residents that periodic inundation of the car park may occur during heavy rain;

- d. maintain renew and repair as reasonably required from time to time the whole or part of the system so that it functions in a safe and efficient manner and in doing so complete the same within the time and in the manner reasonably specified in written notice issued by the Council;
- e. carry out the matters referred to in paragraphs (b) and (c) at the Owners expense;
- f. not make any alterations to the system or elements thereof without prior consent in writing of the Council and not interfere with the system or by its act or omission cause it to be interfered with so that it does not function or operate properly;
- g. permit the Council or its authorised agents from time to time upon giving reasonable notice (but at anytime and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant;
- h. comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time reasonably stated in the notice;
- i. where the Owner fails to comply with the Owner's obligations under this covenant, permit the Council or its agents at all times and on reasonable notice at the Owner's cost to enter the land with equipment, machinery or otherwise to carry out the works required by those obligations;
- j. indemnify the Council against all claims or actions and costs arising from those claims or actions which Council may suffer or incur in respect of the system and caused by an act or omission by the Owners in respect of the Owner's obligations under this condition.

Reason: This condition has been imposed to ensure that owners are aware of require maintenance requirements for their stormwater systems.

Note: This condition is supplementary to the owner(s) obligations and Council's rights under any positive covenant.
Standard Condition: I12

I.4 Swimming and Spa Pools – Maintenance

Swimming and Spa Pools must be maintained:

- a. in compliance with the *Swimming Pools Act* 1992 with regard to the provision of child-resistant barriers and resuscitation signs;
- b. in compliance with the NSW Health "Public Swimming Pool and Spa Pool Guidelines" in force at that time. Private pools are encouraged to comply with the same standards as applicable;
- c. in compliance with AS 1926.3-2003:Swimming pool safety - Water recirculation and filtration systems ;
- d. with backwash being discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996, and
- e. with a timer that limits the recirculation and filtration systems operation such that it does not emit noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
 - before 8 am or after 8 pm on any Sunday or public holiday, or
 - before 7 am or after 8 pm on any other day.

Note: Child-resistant barriers, resuscitation signs, recirculation and filtration systems and controls systems require regular maintenance to ensure that life safety, health and amenity standards are maintained.

Note: The NSW Health Public Swimming Pool and Spa Pool Guidelines can be down loaded free from:
<http://www.health.nsw.gov.au/public-health/ehb/general/pools/poolguidelines.pdf>
Standard Condition: I13

I.5 Noise from mechanical plant and equipment

Noise from the operation of mechanical plant and equipment must not exceed *background noise* when measured at the nearest lot boundary of the site. Where noise sensitive receivers are located within the site, noise from the operation of mechanical plant and equipment must not exceed *background noise* when measured at the nearest strata, stratum or community title boundary.

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

Note: Words in this condition have the same meaning as in the:
NSW Industrial Noise Policy (http://www.environment.nsw.gov.au/resources/ind_noise.pdf)
ISBN 0 7313 2715 2, dated January 2000, and
Noise Guide for Local Government (<http://www.environment.nsw.gov.au/noise/nglg.htm>)
ISBN 1741370671, dated December 2004.
Standard Condition: I53

J. Miscellaneous Conditions

No condition.

K. Advisings

K.1 Criminal Offences – Breach of Development Consent & Environmental laws

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

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

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

Warnings as to potential maximum penalties

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council's policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order. This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

Note: The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of *the Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. You can obtain further information from the following web sites: <http://www.theshopfront.org/documents/ConvictionsCriminalRecords.pdf> and the Attorney General's www.agd.nsw.gov.au.
Standard Advising: K1

K.2 Dial before you dig



The *principal contractor, owner builder* or any person digging may be held financially responsible by the asset owner should they damage underground pipe or cable networks. Minimise your risk and Dial 1100 Before You Dig or visit www.dialbeforeyoudig.com.au.

When you contact Dial Before You Dig, you will be sent details of all Dial Before You Dig members who have underground assets in the vicinity of your proposed excavation.
Standard Advising: K2

K.3 Builders Licences and Owner Builders Permits

Section 81A of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an **owner-builder**, must appointed a *principal contractor* for residential building work who must be the holder of a contractor licence.

Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder): <http://www.dft.nsw.gov.au/building.html> .

The Owner(s) must appoint the PCA. The PCA must check that Home Building Act insurance is in place before the commencement of building work. The Principal Contractor (Builder) must provide the Owners with a certificate of insurance evidencing the contract of insurance under the Home Building Act 1989 for the residential building work.

Standard Condition: K5

K.4 Workcover requirements

The *Occupational Health and Safety Act 2000 No 40* and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

Note: Further information can be obtained from Workcover NSW's website: <http://www.workcover.nsw.gov.au/Industry/Construction/default.htm> or through their head office: Location: Workcover NSW, 92-100 Donnison Street, GOSFORD 2250 Postal address: WorkCover NSW, Locked Bag 2906, LISAROW 2252, Phone (02) 4321 5000, Fax (02) 4325 4145.
Standard Condition: K7

K.5 Asbestos Removal, Repair or Disturbance

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW.

Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence.

All removal, repair or disturbance of or to asbestos material must comply with:

- The Occupational Health and Safety Act 2000;
- The Occupational Health and Safety Regulation 2001;
- The Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (1998)];
- The Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)] <http://www.nohsc.gov.au/> ; and
- The Workcover NSW Guidelines for Licensed Asbestos Removal Contractors.

Note: The Code of Practice and Guide referred to above are known collectively as the Worksafe Code of Practice and Guidance Notes on Asbestos. They are specifically referenced in the Occupational Health and Safety Regulation 2001 under Clause 259. Under the Occupational Health and Safety Regulation 2001, the Worksafe Code of Practice and Guidance Notes on Asbestos are the minimum standards for asbestos removal work. Council does not control or regulate the Worksafe Code of Practice and Guidance Notes on Asbestos. You should make yourself aware of the requirements by visiting www.workcover.nsw.gov.au or one of Workcover NSW's offices for further advice.
Standard Advising: K8

K.6 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact:

Thomass Wong, Senior Assessment Officer on (02) 9391 7158^[d4]

However, if you wish to pursue your rights of appeal in the Land & Environment Court you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, site hearings and the use of Court Appointed Experts, instead of a full Court hearing.

This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the Section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed commissioner having the full authority to completely determine the matter at the conference.

Standard Condition: K14

K.7 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 80A of the *Act*.

The securities will not be released until a *Final Occupation Certificate* has lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council's requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council's requirements.

Council will only release the security upon being satisfied that all damage or all works, the purpose for which the security has been held have been remedied or completed to Council's satisfaction as the case may be.

Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed.

Upon completion of each section of road, drainage and landscape work to Council's satisfaction, 90% of the Bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.

Note: The Application for Refund of Security form can be downloaded from
<http://www.woollahra.nsw.gov.au/pdf/Forms/Planning/RefundofSecurity.pdf>

Standard Condition: K15

K.8 Owner Builders

Under the *Home Building Act 1989* any property owner who intends undertaking construction work to a dwelling house or dual occupancy to the value of \$12,000 or over must complete an approved education course and obtain an owner-builder permit from the Office of Fair Trading. See www.fairtrading.nsw.gov.au.

Standard Condition: K18

K.9 Pruning or Removing a Tree Growing on Private Property

Woollahra Municipal Council's *Tree Preservation Order 2006* (TPO) may require that an application be made to Council prior to pruning or removing any tree. The aim is to secure the amenity of trees and preserve the existing landscape within our urban environment.

Before you prune or remove a tree, make sure you read all relevant conditions. You can obtain a copy of the TPO from Council's website www.woollahra.nsw.gov.au or you may contact Council on 9391-7000 for further advice.

Standard Condition: K19

K.10 Compliance with the Building Code of Australia

Preliminary assessment of the development application drawings indicates that the proposal may not comply with the following sections/parts of the *Building Code of Australia*:

Part 3.7 - Fire safety

Part 3.7.1 Fire separation

Part 3.7.2 Smoke alarms

Part 3.8 - Health and amenity

Part 3.8.1 Wet areas

Part 3.8.3 Facilities

Part 3.8.4 Light

Part 3.8.5 Ventilation

Part 3.8.6 Sound insulation

Part 3.9 - Safe movement and access

Part 3.9.1 Stair construction

Part 3.9.2 Balustrades

Part 3.9.3 Pool access

Note: There must be no removal of heritage building fabric unless expressly authorised under this consent where compliance with the BCA cannot be achieved without work not authorised under this consent application to amend this consent is required.

Standard Condition: K20 (Autotext KK20)

Mr T Wong
SENIOR ASSESSMENT OFFICER

George Fotis
TEAM LEADER

Annexure: Development Assessment Report submitted to the Application Assessment Panel on 24 July 2007.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D3
FILE No.	DA 311/2007/1
PROPERTY DETAILS	7 Dudley Street PADDINGTON 2021
	Lot & DP No.: LOT: 1 DP: 437918
	Side of Street: South
	Site Area (m²): 119m ²
	Zoning: Residential 2(a)
PROPOSAL	New side boundary fence
TYPE OF CONSENT:	Local development
APPLICANT:	CSA Architects Pty Ltd
OWNER:	Mrs H Malesevic
DATE LODGED:	15/05/2007
AUTHOR:	Mr M D'Alessio

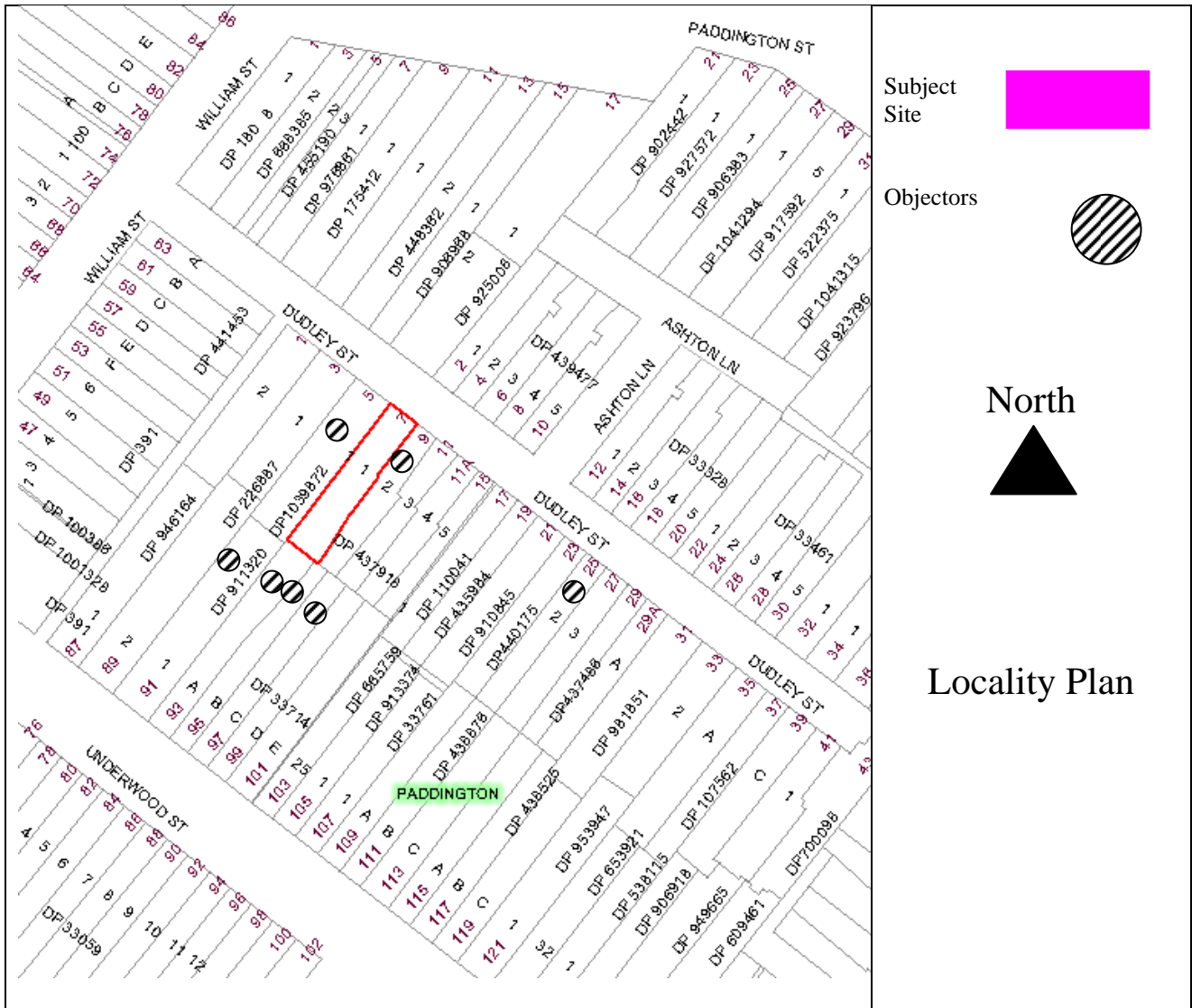
1. RECOMMENDATION PRECIS

It is recommended that development consent be granted in respect to the application.

2. PROPOSAL PRECIS

The proposal is for the construction of a 1.8m high treated pine lapped and capped timber paling fence for approximately 12.6m along the western side boundary with a 1.8m high treated pine lapped and capped entry gate to be located 9.6 metres behind the front line of the main terrace.

3. LOCALITY PLAN



- ⊙ The Paddington Society
- ⊘ Eric Coonan Price Waterhouse Coopers Legal
- ⊘ Identity of objector requested to be withheld

4. DESCRIPTION OF PROPOSAL

The proposal is for the construction of a 1.8m high treated pine lapped and capped timber paling fence approximately 12.5m in length and to be located along the western side boundary with a 1.8m high treated pine lapped and capped entry gate to be located 9.6 metres behind the front line of the main terrace.

5. SUMMARY

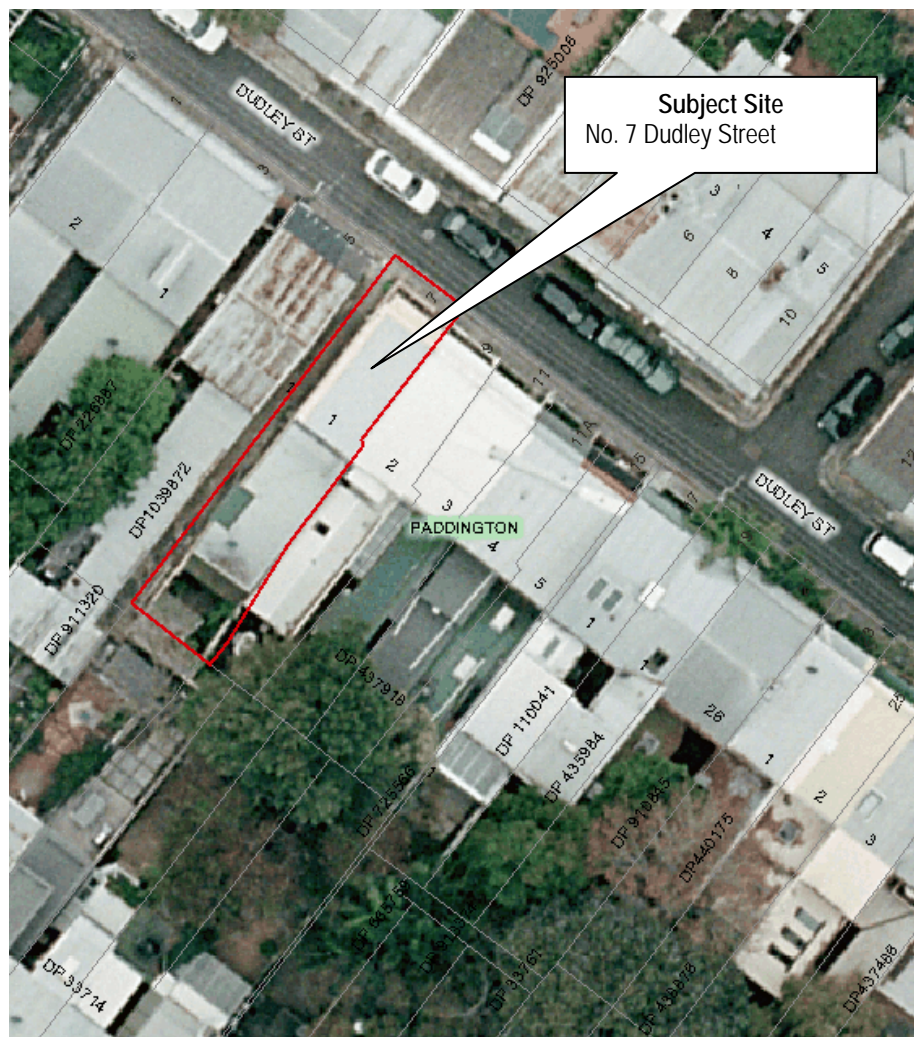
Reasons for report	Issues	Submissions
The DA does not satisfy the criteria for determination under staff delegation.	Objections	10 submissions were received.

6. ESTIMATED COST OF WORKS

Council adopted (DCC 6 June 2005) administrative changes for determining DA fees based on the estimated cost of work. Where the estimated cost of work is greater than \$750,000 or where the applicant's estimate is considered to be neither genuine nor accurate, the applicant has to provide a Quantity Surveyor's report.

The applicant's estimated cost of the proposed development at \$2 000 has been checked using our adopted practice and is considered to be accurate.

7. DESCRIPTION OF SITE OF LOCALITY



THE SITE AND LOCALITY	
Physical features	The subject site is located on the south western side of Dudley Street between the intersection to the west of William Street and to the east of Ashton Lane. The site has a rectangular shape with a small step at the rear of the main terrace to the east and a total area of approximately 119m ² . The site has a width of 4.4m to the front northern boundary and 4.845m to the rear southern boundary and a length of 23.8m.
Topography	The site is approximately level with the surrounding topography falling from the south to the north.
Existing buildings and structures	The subject site contains a Victorian terrace house, part of a row grouping comprising of 5 terraces between nos. 7 – 15 Dudley Street. The rear of the site contains a masonry rear wing and fibro laundry building.
Environment	The site is surrounded by residential terrace buildings.



View 1: View of subject site, applicant has marked western side boundary of the subject site with a yellow line. The view includes a mark up of approximate location of the proposed 1.8m high treated pine lapped and capped entry gate to be located 9.6 metres behind the front line of the main terrace and behind side entry door of adjoining no. 5 Dudley Street Paddington.



View 2: View of rear of subject site, showing that the former night soil lane behind nos. 7-15 Dudley Street and nos. 93 – 101 Underwood Street has now been substantially enclosed. The subdivision pattern suggests that the original passage would have extended east to 15 Dudley Street and 101 Underwood Street.



View 3: View west along Dudley Street of gate enclosing former night soil lane to the north of no. 74 William Street, the gate is located within the street front zone and forms part of the principle elevation of the terrace.



View 4: View of public domain walkway located west of No. Dudley Street Paddington.



View 5: View of timber gate between No. 1 – 3 Dudley Street located within the street front zone and forming part of the principle elevation of both terraces.



View 6: View of gate to former rear lane access to terrace row group between No. 17 -19 Dudley Street Paddington, located within the street front zone and forming part of the principle elevation.



View 7: View of bricked up former rear lane access to no. 31 Dudley Street Paddington, located within the street front zone and forming part of the principle elevation.



View 8: View of timber gate with masonry surround to side access of no. 33 Dudley Street Paddington, located within the street front zone and forming part of the principle elevation.



View 9: View of gate between No. 33-35 located within the street front zone and forming part of the principle elevation of both terraces.



View 10: View of bricked rear lane access to no. 39 Dudley Street Paddington, located within the street front zone and forming part of the principle elevation.

8. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	Residential
Previous relevant applications	N/A
Pre-DA	N/A
Requests for additional information	N/A
Amended plans/ Replacement Application	N/A
Land & Environment Court appeal	N/A

9. REFERRALS

No referrals were required as part of this assessment.

ENVIRONMENTAL ASSESSMENT UNDER S.79C

10. STATE/REGIONAL INSTRUMENTS AND LEGISLATION

There are none that are relevant to the assessment of this application.

10.2 REPs

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The land is within the Sydney Harbour Catchment but is outside the Foreshores and Waterways Area and therefore there are no specific matters for consideration in relation to this DA.

10.3 Section 94 contribution

Not applicable to this application.

10.4 Other legislation

None applicable to this application.

11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

11.1 Aims and objectives of WLEP 1995 and zone

The proposal is permissible and is consistent with the aims and objectives of the LEP and the relevant objectives of the Residential 2(a) zone.

11.2 Statutory compliance table

Site Area (119m ²)	Existing	Proposed	Control	Complies
Overall Height (metres)	NA	1.8m	9.5m	Yes

11.3 Site area requirements

Not applicable to this application.

11.4 Height

The proposed height of the timber fence at 1.8m is below the maximum permissible statutory height control of 9.5m prescribed in the WLEP 1995.

11.5 Floor space ratio

Not applicable to this application.

11.6 FSBL

Not applicable to this application.

11.7 Other special clauses/development standards

Clause 18 Excavation: The proposed excavation is acceptable in terms of Clause 18.

Clause 19 HFSPA: The proposal is acceptable in terms of Clause 19(2).

Clause 25D Acid Sulfate Soils: The proposed works do not require the need for an assessment of acid sulfate soils under clause 25D of Woollahra LEP 1995.

Clauses 26-33 Heritage and conservation area provisions: The subject site is within the Paddington heritage conservation area. The proposed development is considered acceptable and in accordance with the relevant clauses under the WLEP 1995.

13. DEVELOPMENT CONTROL PLANS

13.1 Compliance table Paddington Development Control Plan

Site Area (119m ²)	Existing	Proposed	Control	Complies
Building Setback to Street Frontage	1.9m	No Change	Maintain Existing Setback	Yes

Public domain

The proposal is sited wholly within the subject property and will have no impact on the public domain of Dudley Street.

Street frontages

The proposed side boundary timber fence and gate is not located within the street front zone the most forward part is located 9.6 metres behind the front line of the main terrace and 2.7m rear of the building line of the main terrace.

Site coverage, setbacks & levels

The proposed treated pine lapped and capped timber paling fence and gate is to be located behind the main terrace in this respect the proposal will be consistent with Part 5.1.5 of the PDCP.

Views 3 – 10 of this report (above), illustrates that the predominate pattern of enclosing former night soil lanes within vicinity to the subject site has been in the street front zone resulting in gates forming part of the principle elevation of terraces, the subject proposal is considered a more sensitive approach within the conservation area.

Fences and gates

The applicant has provided documentation of the proposal on a survey plan from a registered surveyor, the proposal is fully located within the subject property and the subject site is not identified as being effected by any right of way.

Council's records confirm the ownership and the subject site by the applicant.

Annexure 2 & 3 of this report are Department of Lands, Land and Property Information New South Wales – Title Searches for No. 93 Underwood Street Paddington and No. 7 Dudley Street. They identify that a 0.71m right of way over the eastern side of No. 7 Dudley Street and a passageway previously existing to the rear of 93 – 101 Underwood Street:

“- used by houses Nos 93 to 101 as a Back Entrance from Dudley Street.”

View 2 above of this report identifies that this passageway behind nos. 93 – 101 Underwood Street has now been substantially enclosed. The subdivision pattern suggests that the original passage would have extended east to 15 Dudley Street and 101 Underwood Street.

In addition documentation provided with a previous application for DA 331 of 2007 for No 5 Dudley Street Paddington identified an easement 0.71m wide located on the eastern side of that property.

The portion of the former night cart lane that is the subject of this application is owned by the applicant and there is no evidence that adjoining properties have any right of way or any legal access over the land from the information that has been provided and from Council's own records, therefore the proposal is considered to be suitably sited.

Guidelines for scale of rear sited fences are contained within Garage Design Principles of Part 5.2.6 of the PDCP, the proposed height is considered satisfactory.

Materials and details

The proposed materials and details that have been selected are considered to satisfy Part 5.2.8 of the PDCP.

Building types

The design of the proposal is not located within the street front zone and will not impact on the street front facades to the subject row group of terraces, nor impact on the significance and distinctive characteristics of this group.

13.3 Woollahra Access DCP

The Access DCP applies to all classes of buildings and includes alterations and additions.

This proposal is for construction of a timber fence and gate to the side of the subject property that will not impact on any existing openings within the subject site. The Access DCP encourages, rather than requires, visitor access for older people or people with a disability for Class 1 buildings. Details of Access have not been provided in this proposal, however, this is considered acceptable under the provisions of the DCP.

13.4 Other DCPs, codes and policies

None applicable to the assessment of this application.

14. APPLICABLE REGULATIONS

None applicable to the assessment of this application.

15. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts of the proposal have been assessed elsewhere in this report.

16. THE SUITABILITY OF THE SITE

Acid Sulfate Soil Area

The site is within a Class 5 Acid Sulfate Soil area identified in the Planning NSW Acid Sulfate Soil Risk Map. Classification 5 prescribes that works within 500mm of adjacent Class 1, 2, 3 or 4 land which are likely to lower the watertable below 1 metre AHD on adjacent Class 1, 2, 3 or 4 land require preliminary testing to be conducted to confirm the presence of potential or actual acid sulfate soils in accordance with the Acid Sulfate Soil manual 1998 Assessment Guidelines issued by DUAP, now Dept. of Infrastructure Planning and Natural Resources.

17. SUBMISSIONS

The proposal was advertised and notified in accordance with Council's Advertising and Notifications DCP. 10 Submissions were received from:

- The Paddington Society PO Box 99 Paddington
- Caroline & Sheila Adam 9 Dudley Street Paddington
- Susan Rainger 97 Underwood Street Paddington
- Name withheld
- Eric Coonan Price Waterhouse Coopers Legal 201 Sussex Street Sydney
- Alastair & Cheryl McDonald 93 Underwood Street Paddington
- Claudia Weisenberger & Petitioners 95 Underwood Street Paddington
- Sam & Niki Sourris 91 Underwood Street Paddington
- Catherine Zigas 5 Dudley Street Paddington
- Murray MacKay 25 Dudley Street Paddington

The objections raised the following issues:

- **The “lane” in its present open state makes a very narrow street seem a little more spacious. This feeling of spaciousness would be lost if a fence were erected in the lane. The proposed development will result in the remaining trafficable right of way be ugly.**
- **Preservation of existing streetscape**

Response; The partial closure of the former night cart lane is not inconsistent with the pattern of development in the subject street and will not result in any adverse impact to the existing Dudley Street streetscape.

- **Proposal will result in loss of views to Underwood Street, rear of houses within Underwood Street and the areas natural topography.**

Response; Views are retained along the existing Public Laneway to the east of no. 1. Dudley Street.

- **Application seeks to privatise a laneway that is public land.**

Response; The land that is subject to the proposal is not public land.

- **The land that is the subject of the application is currently used by adjoining residents for servicing of their properties and as an alternative access and the footpath between Nos 5 and 7 Dudley Street are recorded on the respective titles as common easements.**
- **The area that is the subject to the proposal has been open to public access for many years, and used for access/egress as well as servicing essential services including water and sewerage services. If the Council were to give approval to permit No 7 to construct and maintain a fence that interferes with this "dunny lane", the owner of No 7 and the Council would be open to civil proceedings taken by affected owners that can make an argument seeking to preserve this "dunny lane" on the basis of the longevity of existence and essentiality of the "dunny lane".**
- **The old common law principle of custom and usage would seem to apply to this lane. If a right-of-way has been established by a lengthy period of custom and usage then any owner of any part of the right-of-way will be stopped from blocking or preventing or restricting in any way that right-of-way.**

Response; The portion of the former night cart lane that is the subject of this application is owned by the applicant and there is no evidence that adjoining properties have right of way or any legal access over the land, therefore the proposal is considered to be suitably sited; any access over the subject land for servicing of adjoining properties and as an alternative access is at the discretion of the owner of that land.

- **The erecting of the proposed fence will render the right of way adjoining located on the eastern side of no. 5 Dudley Street non trafficable to pedestrians.**

Response; The adjoining right of way located on the eastern side of no. 5 Dudley Street is not the subject of this assessment. The size of the easement for access located at no. 5 Dudley Street was a matter of consideration at the time it was created.

- **Development consent granted by Council for No 5 Dudley Street (which has recently been completed), included a requirement for 1 metre wide footpath for access to a side door to the property (that is, the side door is located along the same path that the DA is subject to). Accordingly, if the Council were to give approval to permit No 7 to construct and maintain a fence that interferes with this access, again both the owner of No 7 Dudley and the Council would be open to civil proceedings taken by the owner of No 5 seeking to preserve this condition of its development consent.**

Response; No condition of consent in relation to DA 331 of 2007 for No 5 Dudley Street Paddington included a requirement for 1 metre wide footpath for access to a side door to that property. The approval of the proposed lapped and capped fence with gate will not affect access to the front entrance (located on eastern side) of No. 5 Dudley Street.

18. CONCLUSION - THE PUBLIC INTEREST

The proposal is acceptable against the relevant considerations under s79C and would/would not be in the public interest.

19. RECOMMENDATION: Pursuant to Section 80(1) of the Environmental Planning and Assessment Act, 1979

THAT the Council, as the consent authority, grant development consent to Development Application No. 311/2007 for new side boundary fence on land at 7 Dudley Street Paddington, subject to the following conditions:

A. General Conditions

A.1 Conditions

Consent is granted subject to the following conditions imposed pursuant to section 80 of the Environmental Planning & Assessment Act 1979 (“the *Act*”) and the provisions of the Environmental Planning and Assessment Regulation 2000 (“the *Regulation*”) such conditions being reasonable and relevant to the development as assessed pursuant to section 79C of the Act.

Standard Condition: A1

A.2 Definitions

Unless specified otherwise words have the same meaning as defined by the *Act*, the *Regulation* and the *Interpretation Act 1987* as in force at the date of consent.

Applicant means the applicant for this Consent.

Approved Plans mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

AS or *AS/NZS* means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

BCA means the Building Code of Australia as published by the Australian Building Codes Board as in force at the date of issue of any *Construction Certificate*.

Council means Woollahra Municipal Council

Court means the Land and Environment Court

Local native plants means species of native plant endemic to Sydney's eastern suburbs (see the brochure titled "Local Native Plants for Sydney's Eastern Suburbs published by the Southern Sydney Regional Organisation of Councils).

Stormwater Drainage System means all works, facilities and documentation relating to:

- a. The collection of stormwater,
- b. The retention of stormwater,
- c. The reuse of stormwater,
- d. The detention of stormwater,
- e. The controlled release of stormwater; and
- f. Connections to easements and public stormwater systems.

Owner means the owner of the *site* and successors in title to the *site*.

Owner Builder has the same meaning as in the *Home Building Act 1989*.

PCA means the *Principal Certifying Authority* under the *Act*.

Principal Contractor has the same meaning as in the *Act* or where a *principal contractor* has not been appointed by the *owner* of the land being developed *Principal Contractor* means the *owner* of the land being developed.

Professional Engineer has the same meaning as in the *BCA*.

Public Place has the same meaning as in the *Local Government Act 1993*.

Road has the same mean as in the *Roads Act 1993*.

SEE means the final version of the Statement of Environmental Effects lodged by the *Applicant*.

Site means the land being developed subject to this consent.

WLEP 1995 means *Woollahra Local Environmental Plan 1995*

Work for the purposes of this consent means:

- a. the use of land in connection with development,
- b. the subdivision of land,
- c. the erection of a building,
- d. the carrying out of any work,
- e. the use of any site crane, machine, article, material, or thing,
- f. the storage of waste, materials, site crane, machine, article, material, or thing,
- g. the demolition of a building,
- h. the piling, piling, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- i. the delivery to or removal from the *site* of any machine, article, material, or thing, or
- j. the occupation of the *site* by any person unless authorised by an *occupation certificate*.

Note: Interpretation of Conditions - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.
Standard Condition: A2

A.3 Approved Plans and supporting documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with the plans and supporting documents listed below as submitted by the Applicant and to which is affixed a Council stamp "Approved DA Plans" **unless modified by any following condition**. Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn
New Timber Boundary fence At; & Dudley Street Paddington	Fence location over existing Survey Plan	Beuthien de Net Land Surveyors and CSA Architects Pty Ltd

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

Note: These plans and supporting documentation may be subject to conditions imposed under section 80A(1)(g) of the *Act* modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)
Standard Condition: A5

A.4 Prescribed Conditions

Prescribed conditions in force under the *Act* and *Regulation* must be complied with.

Note: It is the responsibility of those acting with the benefit of this consent to comply with all prescribed conditions under the *Act* and the *Regulation*. Free access can be obtained to all NSW legislation at www.legislation.nsw.gov.au
Standard Condition: A30

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

C. Conditions which must be satisfied prior to the issue of any construction certificate

C.1 Payment of Security, Levies and Fees (S80A(6) & S94 of the Act, Section 608 of the Local Government Act 1993)

The person(s) with the benefit of this consent must pay the following long service levy, security, development levy, and fees prior to the issue of any *construction certificate*, *subdivision certificate* or *occupation certificate*, as will apply.

The *certifying authority* must not issue any *Part 4A Certificate* until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees. Specifically

- a. prior to the issue of a *construction certificate*, where a construction certificate is required; or
- b. prior to the issue of a *subdivision certificate*, where only a subdivision certificate is required; or
- c. prior to the issue of an *occupation certificate* in any other instance.

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy Use Calculator: http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation or use their online calculator	No	
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit - Making good any damage caused to any property of the <i>Council</i> as a consequence of the doing of anything to which the consent relates.	\$2000	No	T600
INSPECTION FEES under section 608 of the Local Government Act 1993			
Security Administration Fee	\$163	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES		\$ ₂₁₆₃ Plus any relevant indexed amounts and long service levy	

Building & Construction Industry Long Service Payment

The Long Service Levy under Section 34 of the *Building & Construction Industry Long Service Payment Act*, 1986, must be paid and proof of payment provided to the *Certifying Authority* prior to the issue of any *Construction Certificate*.

Note: The Levy can be paid directly to the Long Services Payments Corporation or to Council. Further information can be obtained from the Long Service Payments Corporation's website <http://www.lspc.nsw.gov.au/> or by telephoning the Long Service Payments Corporation on 13 14 41.

How must the payments be made?

Payments must be made by:

- a. Cash deposit with Council,
- b. Credit card payment with Council, or
- c. Bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:

- a. the guarantee is by an Australian bank for the amount of the total outstanding contribution;
- b. the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first;
- c. the bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent; and
- d. the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

Standard Condition: C5

C.2 Professional Engineering Details

The *Construction Certificate* plans and specifications, required by clause 139 of the Regulation, must include detailed *professional engineering* plans and specifications for all structural, electrical, hydraulic, hydro-geological, geotechnical, mechanical and civil work complying with this consent, approved plans, the statement of environmental effects and supporting documentation.

Detailed professional engineering plans and specifications must be submitted to the *Certifying Authority* with the application for any *Construction Certificate*. Standard Condition: C36

D. Conditions which must be satisfied prior to the commencement of any development work

D.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

For the purposes of section 80A (11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:

- a. that the work must be carried out in accordance with the requirements of the Building Code of Australia,
- b. in the case of residential building work for which *the Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

- a. to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4),
- or
- b. to the erection of a temporary building.

In this condition, a reference to the *BCA* is a reference to that code as in force on the date the application for the relevant construction certificate is made.

Note: This condition must be satisfied prior to commencement of any work in relation to the contract of insurance under the Home Building Act 1989. This condition also has effect during the carrying out of all building work with respect to compliance with the Building Code of Australia.
Standard Condition: D1

D.2 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

The erection of the building in accordance with this development consent must not be commenced until:

- a. a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited Certifier, and
- b. the person having the benefit of the development consent has:
 - i. appointed a principal certifying authority for the building work, and
 - ii. notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- b1. the principal certifying authority has, no later than 2 days before the building work commences:
 - i. notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - ii. notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- b2. the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - i. appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - ii. notified the principal certifying authority of any such appointment, and
 - iii. unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - iv. given at least 2 days' notice to the council of the person's intention to commence the erection of the building.

Note: *Building* has the same meaning as in section 4 of the *Act* and includes part of a building and any structure or part of a structure.

Note: *New building* has the same meaning as in section 109H of the *Act* and includes an altered portion of, or an extension to, an existing building.

Note: The commencement of demolition works associated with an altered portion of, or an extension to, an existing building is considered to be the commencement of building work requiring compliance with section 82A(2) of the *Act* (including the need for a *Construction Certificate*) prior to any demolition work. See: *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.

Note: *Construction Certificate* Application, *PCA Service Agreement* and *Notice of Commencement* forms can be downloaded from Council's website www.woollahra.nsw.gov.au .

Note: It is an offence for any person to carry out the erection of a *building* in breach of this condition and in breach of section 81A(2) of the Act.
Standard Condition: D15

D.3 Notification of Home Building Act 1989 requirements

- a. For the purposes of section 80A (11) of the Act, the requirements of this condition are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the Home Building Act 1989.
- b. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - i. in the case of work for which a *principal contractor* is required to be appointed:
 - the name and licence number of the principal contractor, and
 - the name of the insurer by which the work is insured under Part 6 of that Act,
 - ii. in the case of work to be done by an owner-builder:
 - the name of the owner-builder, and
 - if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- c. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.
- d. This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.
Standard Condition: D17

E. Conditions which must be satisfied during any development work

E.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

For the purposes of section 80A (11) of the Act, the following condition is prescribed in relation to a development consent for development that involves any building work:

- a. that the work must be carried out in accordance with the requirements of the Building Code of Australia,

- b. in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

- a. to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4) of the Regulation, or
- b. to the erection of a temporary building.

In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant construction certificate is made.

Standard Condition: E1

E.2 Critical Stage Inspections

Critical stage inspections must be called for by the *principal contractor* or *owner builder* as required by the PCA, any PCA service agreement, the *Act* and the *Regulation*.

Work must not proceed beyond each critical stage until the PCA is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the *Act*. *critical stage inspections* means the inspections prescribed by the *Regulations* for the purposes of section 109E(3)(d) of the *Act* or as required by the PCA and any PCA Service Agreement.

Note: The PCA may require inspections beyond mandatory critical stage inspections in order that the PCA be satisfied that work is proceeding in accordance with this consent.

Note: The PCA may, in addition to inspections, require the submission of *Compliance Certificates*, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.

Standard Condition: E5

E.3 Hours of Work –Amenity of the neighbourhood

- a. No *work* must take place on any Sunday or public holiday,
- b. No *work* must take place before 7am or after 5pm any weekday,
- c. No *work* must take place before 7am or after 1pm any Saturday, and
- d. No piling, piling, cutting, boring, drilling, rock breaking, rock sawing, jack hammering or bulk excavation of land or loading of material to or from trucks must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday.
- e. No rock excavation being cutting, boring, drilling, breaking, sawing, jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

This condition has been imposed to mitigate the impact of work upon the amenity of the neighbourhood. Impact of work includes, but is not limited to, noise, vibration, dust, odour, traffic and parking impacts.

Note: The use of noise and vibration generating plant and equipment and vehicular traffic, including trucks in particular, significantly degrade the amenity of neighbourhoods and more onerous restrictions apply to these activities. This more invasive work generally occurs during the foundation and bulk excavation stages of development. If you are in doubt as to whether or not a particular activity is considered to be subject to the more onerous requirement (9am to 4pm weekdays and 9am to 1pm Saturdays) please consult with Council.

Note: Each and every breach of this condition by any person may be subject to separate penalty infringement notice or prosecution.

Note: The delivery and removal of plant, equipment and machinery associated with wide loads subject to RTA and Police restrictions on their movement out side the approved hours of work will be considered on a case by case basis.

Note: Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the *Protection of the Environment Operations Act 1997*, the *Protection of the Environment Operations (Noise Control) Regulation 2000*.

Note: EPA Guidelines can be down loaded from <http://www.epa.nsw.gov.au/noise/nlg.htm> .

Note: See http://www.epa.nsw.gov.au/resources/ci_build_sheet7.pdf
Standard Condition: E6

E.4 Maintenance of Environmental Controls

The *principal contractor* or *owner builder* must ensure that the following monitoring, measures and controls are maintained:

- a. Erosion and sediment controls,
- b. Dust controls,
- c. Dewatering discharges,
- d. Noise controls;
- e. Vibration monitoring and controls and
- f. Ablutions

Note 1: See http://www.epa.nsw.gov.au/small_business/builders.htm for additional information.
Standard Condition: E11

F. Conditions which must be satisfied prior to any occupation or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)

F.1 Occupation Certificate (section 109M of the Act)

A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 109H (4) of the *Act*) unless an occupation certificate has been issued in relation to the building or part.

Note: New building includes an altered portion of, or an extension to, an existing building.
Standard Condition: F1

G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate

No relevant conditions

H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (s109C(1)(c))

No relevant conditions

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

No relevant conditions

J. Miscellaneous Conditions

No relevant conditions

K. Advising

K.1 Criminal Offences – Breach of Development Consent & Environmental laws

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

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

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

Warnings as to potential maximum penalties

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

Warning as to enforcement and legal costs

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

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

Note: The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of the *Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. You can obtain further information from the following web sites:

<http://www.theshopfront.org/documents/ConvictionsCriminalRecords.pdf> and the Attorney General's www.agd.nsw.gov.au.

Standard Advising: K1

K.2 Building Standards - Guide to Standards and Tolerances

The PCA does not undertake detailed quality control inspections and the role of the PCA is primarily to ensure that the development proceeds in accordance with this consent, Construction Certificates and that the development is fit for occupation in accordance with its classification under the Building Code of Australia. Critical Stage Inspections do not provide the level of supervision required to ensure that the minimum standards and tolerances specified by the "Guide to Standards and Tolerances©" ISBN 0 7347 6010 8 are achieved.

The quality of any development is a function of the quality of the *principal contractor's* or *owner builder's* supervision of individual contractors and trades on a daily basis during the development. The PCA does not undertake this role.

The NSW Office of Fair Trading have published a "Guide to Standards and Tolerances©" ISBN 0 7347 6010 8. The guide can be obtained from the Office of Fair Trading by calling 13 32 20 or by Fax: 9619 8618 or by post to: Marketing Branch, PO Box 972, Parramatta NSW 2124.

The Guide can be down loaded from:

<http://www.fairtrading.nsw.gov.au/pdfs/corporate/publications/dft242.pdf>

Council, as the PCA or otherwise, does not adjudicate building contract disputes between the *principal contractor*, contractors and the owner.

Standard Condition: K6

K.3 Workcover requirements

The *Occupational Health and Safety Act 2000 No 40* and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

Note: Further information can be obtained from Workcover NSW's website:

<http://www.workcover.nsw.gov.au/Industry/Construction/default.htm> or through their head office:

Location: Workcover NSW, 92-100 Donnison Street, GOSFORD 2250 Postal address: WorkCover NSW, Locked Bag 2906, LISAROW 2252, Phone (02) 4321 5000, Fax (02) 4325 4145.

Standard Condition: K7

K.4 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact:

Mr G Fotis, Team Leader on (02) 9391 7089

However, if you wish to pursue your rights of appeal in the Land & Environment Court you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, site hearings and the use of Court Appointed Experts, instead of a full Court hearing.

This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the Section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed commissioner having the full authority to completely determine the matter at the conference. Standard Condition: K14

K.5 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 80A of the *Act*.

The securities will not be released until a *Final Occupation Certificate* has lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council's requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council's requirements.

Council will only release the security upon being satisfied that all damage or all works, the purpose for which the security has been held have been remedied or completed to Council's satisfaction as the case may be.

Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed.

Upon completion of each section of road, drainage and landscape work to Council's satisfaction, 90% of the Bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.

Note: The Application for Refund of Security form can be downloaded from
<http://www.woollahra.nsw.gov.au/pdf/Forms/Planning/RefundofSecurity.pdf>
Standard Condition: K15

Mr M D'Alessio
ASSESSMENT OFFICER

Mr George Fotis
TEAM LEADER

ANNEXURES

1. Plans
2. Department of Lands, Land and Property Information New South Wales – title Searches for No. 7 Dudley Street Paddington.
3. Department of Lands, Land and Property Information New South Wales – title Searches for No. 5 Dudley Street Paddington.
4. Department of Lands, Land and Property Information New South Wales – title Searches for No. 93 Underwood Street Paddington.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D4
FILE No.	DA 386/2007/1
PROPERTY DETAILS	292 Glenmore Road PADDINGTON 2021
	Lot & DP No.: LOT: 1 DP: 224701
	Side of Street: Western
	Site Area (m²): 117.212
	Zoning: Residential 2(a)
PROPOSAL	Alterations and additions including balcony and doors.
TYPE OF CONSENT:	Local Development
APPLICANT:	Mrs A B Gibson & Mr T Gibson
OWNER:	Mr T P & Mrs A B Gibson
DATE LODGED:	14/06/2007
AUTHOR:	Mr A Gilderdale

1. RECOMMENDATION

The application is recommended for conditional approval because it:

1. complies with the relevant development standards, aims and objectives of the Woollahra LEP 1995;
2. accords with the relevant objectives of the Paddington DCP 1999;
3. is considered an appropriate development for the site; and
5. will not adversely affect the amenity of adjoining properties such that refusal would be justified.

2. PROPOSAL

The proposal seeks development consent for the following works:

Lower level:

- Remove existing timber bi-folding doors and replace with new multi-panel aluminium framed bi-folding doors with full height opening;
- New metal roofing cantilevered trusses bolted to wall; and
- Boxed enclosure of sewer pipe.

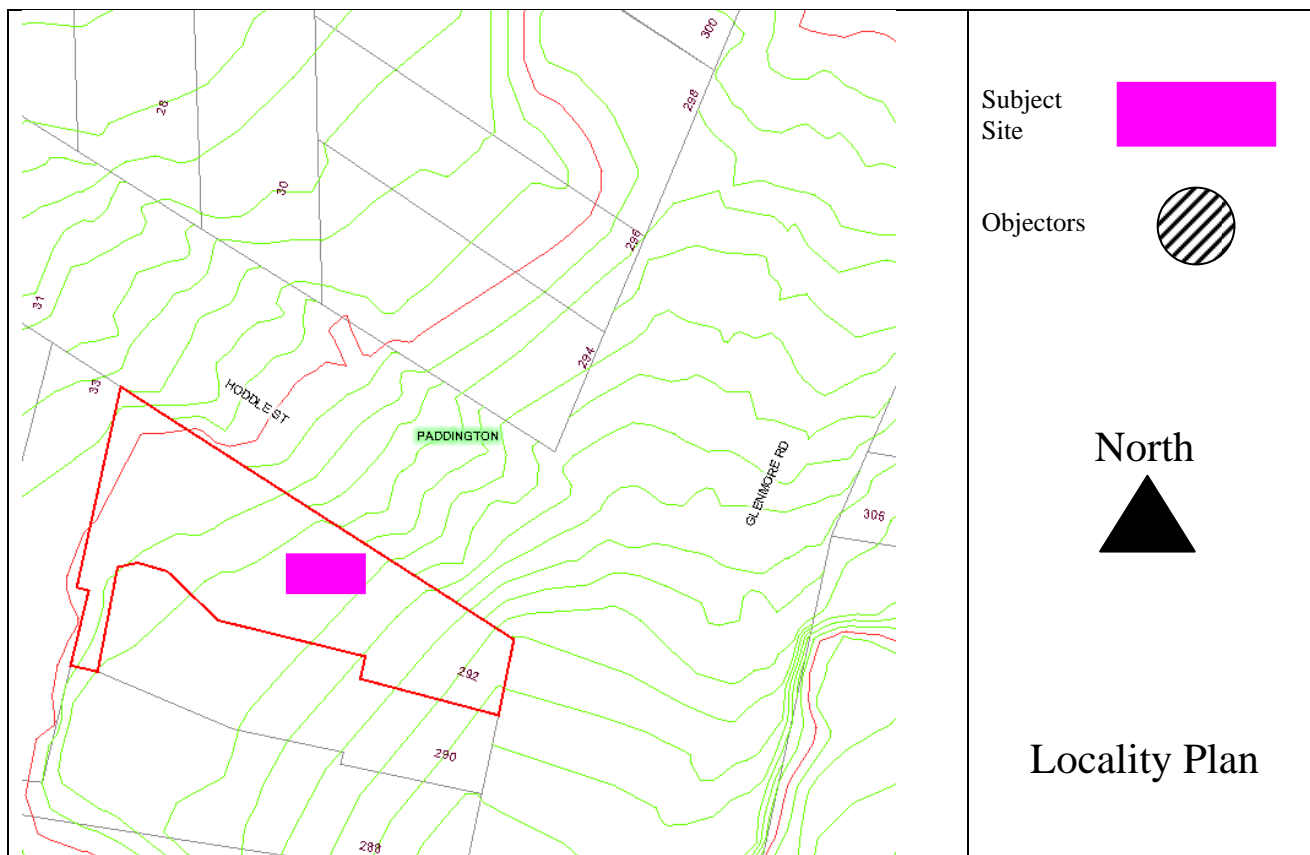
Mid level:


- Addition of suspended metal roofing over balcony enclosure;
- Existing balcony floor to be levelled to match internal floor;
- Enclosure of existing balcony and addition of a 'Juliet' balcony with metal balustrade;
- Timber stud infill to existing window;
- Plasterboard lining applied to brickwork internally;
- Lined storage cupboard above bathroom ceiling;
- New robe; and
- New bathroom.

Revised Plans:

It was noted on plan DA-3-C that the proposal included a roof with an uncharacteristically large roof pitch. To correct this, the applicant was contacted and asked to amend the plans accordingly. On 24 July 2007 the applicant submitted amended plans [refer to plan marked DA-3-D] showing a revised roof pitch 8 degrees lower than what had original been proposed. The amended roof pitch now conforms to the pitch of the main roof form and is considered to be acceptable.

3. LOCALITY PLAN



 = The Paddington Society Inc.

4. DESCRIPTION OF PROPOSAL

The application is for alterations and additions to an existing terrace house located at 292 Glenmore Road, Paddington. For further information refer to planning comments.

5. SUMMARY

Reasons for report	Issues	Submissions
<ul style="list-style-type: none"> ▪ The DA does not satisfy the criteria for determination under staff delegation given that 1 submission has been received and remains unresolved. 	<ul style="list-style-type: none"> ▪ <i>The terrace is one of a group and is visible from the public domain;</i> ▪ <i>The proposal does not comply with O1 of Part 5.1.3 of the PDCP having regard to retaining the form and character of traditional rear facades</i> ▪ <i>The proposal does not comply with O1 of Part 5.2.4 of the PDCP having regard to retaining original verandahs and balconies and their associated detailing; and</i> ▪ <i>The proposal does not comply with G1 of Part 5.2.4 of the PDCP having regard to original verandahs and balconies are not to be altered except for reinstatement of original detail.</i> 	1 submission was received.

6. ESTIMATED COST OF WORKS

The applicant's estimated cost for the proposed development is \$24,500. This has been checked using the adopted practice and is considered to be accurate.

7. DESCRIPTION OF SITE OF LOCALITY

THE SITE AND LOCALITY	
Physical features	The subject site is located on the corner of Glenmore Road and Hoddle Street in Paddington. The subject terrace forms one of a group of three. The subject site is wider at the rear due to the angle of the lot. The site is approximately 170m ² .
Topography	The site falls moderately between the eastern (front) boundary and the western (rear) boundary. There are no significant trees located within the site.
Existing buildings and structures	The subject terrace is late Victorian in style. The terrace forms one of a group of three that appear to have been constructed at the same time. The group is remarkably intact and makes a positive contribution to the streetscape and PHCA.
Environment	The site is surrounded by residential properties, mainly terrace buildings.

8. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	The subject site is currently use for residential purposes.
Previous relevant applications	There are no previous or relevant development applications.
Pre-DA	N/A
Requests for additional information	N/A
Amended plans/ Replacement Application	N/A
Land & Environment Court appeal	N/A

9. REFERRALS

9.1 The following table contains particulars of internal referrals.

INTERNAL REFERRALS		
Referral Officer	Comment	Annexure
Heritage Officer	The application is generally in compliance with the Paddington DCP controls. The application is recommended for approval.	2

9.2 The following table contains particulars of external referrals.

Not applicable.

ENVIRONMENTAL ASSESSMENT UNDER S.79C

The relevant matters for consideration under section 79C of the *Environmental Planning and Assessment Act 1979* are assessed under the following headings:

10. STATE/REGIONAL INSTRUMENTS AND LEGISLATION

10.1 SEPPs

State Environmental Planning Policy No.55

Under clause 7 (1) (a) of the State Environmental Planning Policy No. 55 – Remediation of Land, consideration has been given as to whether the land is contaminated. The land is currently used for residential purposes and there is no evidence before council to suggest that the land has been used for any other purpose since the 1800's. Therefore, the possibility of the land being contaminated is substantially reduced. It is considered that Council can be satisfied that the land is not contaminated such that remediation would be required. It is therefore considered acceptable with regard to SEPP 55.

10.2 REPs

The land is within the Sydney Harbour catchment but is outside the Foreshores and Waterways Area and therefore there are no specific matters for consideration in relation to this DA.

10.3 Section 94 contribution

In accordance with Councils S94 Plan which came into force on 31 March 2003 the subject development does not attract a S94 contributions fee.

10.4 Other legislation

There is no other relevant legislation.

11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

11.1 Aims and objectives of WLEP 1995 and zone

The proposal is permissible and is consistent with the aims and objectives of the LEP and the relevant objectives of the Residential 2(a) zone

11.2 Statutory compliance table

Site Area (170m ²)	Existing	Proposed	Control	Complies
Overall Height (metres)	10.5m	7.6m	9.5	No*

* Satisfactory – existing building height non compliance

11.4 Height

The existing terrace has a height of 10.5m which is non compliant with the statutory height limits as prescribed by the WLEP 1995. The height of the proposed alterations and additions is 7.6m. At the completion of the proposed works the existing height of the subject terrace will not be breached. In this regard, the proposal is considered to be acceptable.

11.7 Other special clauses/development standards

Clause 25 Water, wastewater and stormwater: The proposal is acceptable in terms of Clause 25(1) and (2).

Clause 25D Acid Sulfate Soils: The proposed works do not require the need for an assessment of acid sulfate soils under clause 25D of Woollahra LEP 1995.

Clauses 26-33 Heritage and conservation area provisions: The subject site is located within the PHCA. The proposed works are relatively minor and are considered to be in keeping with the character of the terrace. Council's Heritage Officer, Louise Thom has recommended approval of the proposal citing that the application generally complies with the Paddington DCP controls.

12. DRAFT AMENDMENTS TO STATUTORY CONTROLS

None relevant.

13. DEVELOPMENT CONTROL PLANS

13.1 Compliance table Paddington Development Control Plan

Site Area (170m ²)	Existing	Proposed	Control	Complies
Height of Existing Building at Street Frontage (metres)	10.5	10.5	Maintain Existing Height	Yes
Height of Rear Addition to Two Storey Building (metres)	7.6	7.6	Below Gutter Line of Main Roof Over Existing Building	Yes
Private Open Space (m ²)	46m ²	46m ²	1/6 of Site Area or 28.3m ²	Yes
Proportion of Private Open Space to be Porous and Semi-Porous (%) or (m ²)	0.0	0.0	50% or 14.15m ²	No*
Soft Landscaping at Ground Level (%) or (m ²)	0.0	0.0	50% of Required Private Open Space or 14.15m ²	No*
Solar Access to Habitable Rooms, Private Open Space and Public Domain (Hours in mid winter)	2 Hours Between 9am and 3pm in Midwinter	2 Hours Between 9am and 3pm in Midwinter	2 Hours Between 9am and 3pm in Midwinter	Yes

* Satisfactory – no work proposed to rear courtyard

Public domain

The proposal is considered to be acceptable with regard to the public domain. The proposed alterations and additions will not be highly visible from the public domain. No changes are proposed to the front façade and the proposed works are considered to be in keeping with the character of the PHCA. In this regard the proposal is considered to be acceptable.

Street frontages

The front facade of the building is not proposed to be altered. The contribution of the terrace to the street will not be adversely effected and the proposal is considered to satisfy the requirements of Part 5.1.1 of the PDCP.

Side elevations to streets and lanes

The subject terrace is located on the corner of Glenmore Road and Hoddle Street in Paddington. The proposal does not include any changes to the side elevation. In this regard, the proposal is considered to be acceptable having regard to Part 5.1.2 of the PDCP.

Rear elevations and yards

Council's Heritage Officer, Ms Louise Thom has made the following observations in relation to the proposed works to the rear elevation:

"The rear balconies of 292 and 290 have different lacework balustrades to each other. The lacework balustrade of 290 matches the front balcony lacework whereas the subject property is different and would therefore appear not to be original".

"The proposed lower level enclosure will replace an existing wall with bifold timber doors. There will be an awning roof over the doors extending beyond the building line by approximately 600mm. The mid level plan will enclose what is an existing original balcony with a timber wall and French doors and Juliette balcony. The mid level roof will extend the existing balcony roof forward by 1000mm. There will be a new bathroom in the sitting room. The works are generally minor and do not involve alterations to significant side or front elevations. The rear wing will be retained intact".

The proposed works respond well to the architectural character of the terrace and are sympathetic to the architectural character of the terrace and adjoining terrace forms. The proposed works will not adversely dominate or compete with the existing form, height, proportions or scale of the existing terrace. Furthermore, the proposed works will not be highly visible from the public domain. In this regard, the proposal is considered to be acceptable having regard to Part 5.1.3 of the PDCP.

Roofs

No changes are proposed to the roof form at the front of the terrace. The proposal includes the removal of the existing bull-nose metal roofing over the mid level bedroom at the rear of the subject terrace and replacement with new metal roofing of a similar form. The proposed new mid level roof will extend the existing balcony roof forward by 1000mm. In order to improve the appearance of the proposed new roof to the rear of the first floor the applicant was requested to lower the roof pitch. The applicant responded to this request by lowering the roof by 8 degrees to a 10 degree pitch as per drawing DA-3-D and DA-4-D. The reduction in the proposed roof pitch will improve the

appearance of the addition when viewed from the public domain. The proposed replacement of the existing roof is considered to be acceptable given that the proposed roof responds appropriately to the historical character of the subject terrace and surrounding terrace forms. The proposal is therefore considered to comply with Part 5.1.4 of the PDCP 1999.

Site coverage, setbacks and levels

The subject terrace forms part of a group of 3 terraces between No. 292-288 Glenmore Road. The proposed alterations and additions to the terrace respond appropriately to established alignments, setbacks and levels of surrounding terraces. The proposal does not alter the existing building footprint. The proposal maintains the existing amount of usable private open space at the rear of the site. In this regard the proposal is considered to be acceptable. The proposal is therefore considered to comply with Part 5.1.5 of the PDCP.

Landscaping and private open space

The proposal will have no impact on the existing amount of private open space. The landscaping controls of the DCP require the site to have a minimum of 28.3m² of private open space. The subject site presently has approximately 46m² of private open space; therefore the subject site complies with the private open space requirements as stipulated by the DCP. Notwithstanding this, the site is deficient in the provision of porous/ semi porous and soft landscaping. The site inspection revealed that the majority of the rear courtyard is paved providing virtually no porous landscaping, however it was noted that the courtyard contained several planted species. Given that no works are proposed to the rear courtyard, the landscaping non compliances are considered to be acceptable. In this regard, the extent of non compliance is acceptable and the proposal is considered to satisfy the requirements of Part 5.1.6 of the PDCP.

Building height, bulk and scale

The overall height of the terrace will not be increased by the proposal. The proposed development is in keeping with the scale of surrounding terrace forms. The proposed alterations and additions will not obstruct any significant views from the living areas of the adjoining terraces. The retention of the existing bulk and rear alignment will mean that the impact on solar access to adjoining properties will be negligible. As such the proposal will preserve solar access to adjoining properties in accordance with the current solar access arrangements. The proposal is therefore considered to satisfy the requirements of Part 5.1.7 of the PDCP.

Acoustic and visual privacy

The proposal includes the addition of bi-folding doors to the rear of the lower ground floor. The proposed addition of the bi-folding doors is unlikely to cause any adverse visual or acoustic privacy issues to surrounding residential properties given that panel doors presently open onto the subject courtyard.

The proposed enclosure of the existing mid level balcony to create a new bedroom and addition of a "Juliet" balcony will have a negligible impact on visual and acoustic privacy arrangements. The proposed "Juliet" balcony is significantly smaller than the existing balcony. Furthermore, the proposed "Juliet" balcony will not be capable of being used for entertaining purposes. The proposal is therefore considered to satisfy the requirements of Part 5.1.7 of the PDCP.

Stormwater management

The proposed new roof over the mid level bedroom is required to be connected to Council's stormwater network. In this regard, condition C.1 (a) shall be added to the recommendation and shall read as follows:

- C.1 (a)** the roof over the mid level bedroom shall be fitted with roof guttering [wholly contained within the site] and connected to the existing storm water drainage system. All such work shall comply with the BCA.

The proposal is therefore considered to satisfy the requirements of Part 5.1.7 of the PDCP.

Water conservation

The DCP requires that household design incorporate low-flow water regulators on bathroom taps and dual flushing toilet systems. In this regard, condition C.1 (b) shall be added to the recommendation and shall read as follows:

- C.1 (b)** in accordance with G1 of Part 5.1.11 of the Paddington Development Control Plan 1999, the mid level bathroom shall incorporate low-flow regulators on bathroom taps and a dual flushing toilet system.

The proposal is therefore considered to satisfy Part 5.1.11 of the PDCP.

Windows, doors and shutters

The proposal includes the enclosure of an existing south facing window on the mid level which presently looks onto the rear balcony. The enclosure of the subject window is considered to be acceptable given that the proposed balcony is to be enclosed to form a bedroom.

The proposal includes the addition bi-folding doors to the rear of the lower ground floor and the proposed Juliet balcony to the rear of the mid level. The proposed doors are considered to be acceptable; however, the application does not stipulate weather timber or aluminium materials will be used for the proposed "Juliet" balcony doors. In this regard, condition C.1 (c) shall be added to the recommendation and shall read as follows:

- C.1 (c)** in accordance with Part 5.2.3 of the Paddington Development Control Plan 1999, the French doors to the Juliet balcony shall be timber framed.

The proposal is therefore considered to satisfy Part 5.2.3 of the PDCP.

Materials and details

The proposed alterations and additions are to be constructed from various materials. The materials and details respond appropriately to the historical character of the terrace. The proposal is therefore considered to satisfy Part 5.2.8 of the PDCP.

Exterior colours

The exterior colours have been specified with the application. The proposed colours are considered to be acceptable. Notwithstanding this, condition C.1 (d) and C.2 shall be added to the recommendation and shall read as follows:

- C.1 (d)** In accordance with Part 5.2.9 of the DCP the metal roof over the mid level bedroom shall be painted so as to match the colour of the of the main roof.
- C.2** In accordance with Part 5.2.9 of the DCP the development shall be finished in colours that do not detract from the architectural character of the terrace, the surrounding locality or the amenity of the Paddington Heritage Conservation Area.

The proposal is therefore considered to satisfy Part 5.2.9 of the PDCP.

Gardens and significant trees

The site does not contain any significant trees and the landscaping proposed is considered to conform to the character of the terrace and the surrounding area. The proposal is therefore considered to satisfy the requirements of Part 5.2.11 of the PDCP.

13.3 Woollahra Access DCP

Access to the subject terrace will not be compromised as a result of the proposed works. In this regard the proposal is considered to be acceptable.

13.4 Other DCPs, codes and policies

None applicable.

14. APPLICABLE REGULATIONS

Clause 98 requires us to consider compliance with the Building Code of Australia. Council's standard advising for the proposal to comply with the following parts will be included:

Part 3.7 Fire Safety

Part 3.8 Health and Amenity

Part 3.9 Safe Movement and Access

15. THE LIKELY IMPACTS OF THE PROPOSAL

All the likely impacts of the proposed development have been addressed in the body of this report.

16. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

Acid Sulfate Soil Area

The site is within a Class 5 Acid Sulphate Soil area identified in the Planning NSW Acid Sulphate Soil Risk Map. Classification 5 prescribes that preliminary testing is required if the soil is within 500m of an adjacent Class 1, 2, 3 or 4 soils or if the development will result in a change to the groundwater table on those adjacent soils. The subject property is not within 500m of an adjacent soil Class, thus further testing is not necessary.

17. SUBMISSIONS

In accordance with clause 4.5 of Woollahra Municipal Council's development Control Plan for Advertising and Notification of Development Applications and Applications to Modify Development Consents, the applicant has completed the statutory declaration [see correspondence on file dated 19 July 2007] declaring that the site notice for DA 2007/386 at 292 Glenmore Road, Paddington was erected and maintained during the notification period in accordance with the requirements of the DCP.

The A4 plans which formed part of the notification material [undated with no reference] showed bi-fold doors with four glass panels opening onto the mid level "Juliet" balcony, however the full sized plans showed otherwise proposing bi-fold doors with two glass panels opening onto the mid level "Juliet" balcony. Amended A4 plans [undated and marked issue 2] were submitted to Council on the 24 July 2007 showing bi-fold doors with two glass panels therefore correcting the discrepancy between the subject plans.

It was noted on plan DA-3-C that the proposal included a roof with an uncharacteristically large roof pitch. To correct this, the applicant was contacted and asked to amend the plans accordingly. On 24 July 2007 the applicant submitted amended plans [refer to plan marked DA-3-D] showing a revised roof pitch 8 degrees lower than what had originally been proposed. The amended roof pitch now conforms to the pitch of the main roof form and is considered to be acceptable.

The replacement application (as defined by Clause 90 of the *Environmental Planning and Assessment Regulation 2000*) was not renotified under clause 5.1 of the DCP because, having considered clause 9 of the DCP, the replacement application is substantially the same development as the original proposal and considered to have no greater environmental impact upon neighbours.

The proposal was advertised and notified in accordance with Council's Advertising and Notifications DCP. 1 submission was received from the community:

The objections raised the following issues:

The Paddington Society Inc.
Juniper Hall
PO Box 99
PADDINGTON NSW
2021

- **5.1.3 Rear Elevations and Yards – O1** *"To retain the forms and character of traditional rear facades particularly where they existing in unaltered groups"*

Comment: No objections have been raised by Council's Heritage Officer Ms Louise Thom. Furthermore, it is considered that the proposed alterations and additions respond appropriately to the character of the subject terrace and surrounding terrace forms. In discussions with the applicant, it was agreed that the pitch of the proposed rear roof form was excessive. Amended plans have since been submitted which substantially improve the appearance of the rear roof form over the first floor bedroom. In this regard, the proposal is considered to be acceptable.

- **5.2.4 Verandahs and Balconies – O1** *"To retain original verandahs and balconies and their associated detailing and components" & G1* *"Original verandahs and balconies are not to be altered except for the reinstatement of original detail, and the reversal of unsympathetic alterations"*

Comment: No objections have been raised by Council's Heritage Officer Ms Louise Thom. It is understood that the subject rear balcony to the mid level appears not to be original. It is also acknowledged that the proposed alterations and additions will not be highly visible from the public domain and do not involve alterations to the significant front or side elevations of the subject terrace. The proposal will retain the rear wing of the terrace which will allow the subject balcony to be reinstated at a later date if desired.

18. CONCLUSION - THE PUBLIC INTEREST

The proposal is acceptable against the relevant considerations under s79C and would be in the public interest.

19. RECOMMENDATION: Pursuant to Section 80(1) of the Environmental Planning and Assessment Act, 1979

THAT the Council, as the consent authority, grant development consent to Development Application No. 386/2007 for alterations and additions including balcony and doors on land at 292 Glenmore Road Paddington, subject to the following conditions:

A. General Conditions

A.1 Conditions

Consent is granted subject to the following conditions imposed pursuant to section 80 of the Environmental Planning & Assessment Act 1979 ("the *Act*") and the provisions of the Environmental Planning and Assessment Regulation 2000 ("the *Regulation*") such conditions being reasonable and relevant to the development as assessed pursuant to section 79C of the Act.

Standard Condition: A1

A.2 Definitions

Unless specified otherwise words have the same meaning as defined by the *Act*, the *Regulation* and the *Interpretation Act* 1987 as in force at the date of consent.

Applicant means the applicant for this Consent.

Approved Plans mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

AS or *AS/NZS* means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

BCA means the Building Code of Australia as published by the Australian Building Codes Board as in force at the date of issue of any *Construction Certificate*.

Council means Woollahra Municipal Council

Court means the Land and Environment Court

Local native plants means species of native plant endemic to Sydney's eastern suburbs (see the brochure titled "Local Native Plants for Sydney's Eastern Suburbs published by the Southern Sydney Regional Organisation of Councils).

Stormwater Drainage System means all works, facilities and documentation relating to:

- a. The collection of stormwater,
- b. The retention of stormwater,
- c. The reuse of stormwater,
- d. The detention of stormwater,
- e. The controlled release of stormwater; and
- f. Connections to easements and public stormwater systems.

Owner means the owner of the *site* and successors in title to the *site*.

Owner Builder has the same meaning as in the *Home Building Act 1989*.

PCA means the *Principal Certifying Authority* under the *Act*.

Principal Contractor has the same meaning as in the *Act* or where a *principal contractor* has not been appointed by the *owner* of the land being developed *Principal Contractor* means the *owner* of the land being developed.

Professional Engineer has the same meaning as in the *BCA*.

Public Place has the same meaning as in the *Local Government Act 1993*.

Road has the same mean as in the *Roads Act 1993*.

SEE means the final version of the Statement of Environmental Effects lodged by the *Applicant*.

Site means the land being developed subject to this consent.

WLEP 1995 means *Woollahra Local Environmental Plan 1995*

Work for the purposes of this consent means:

- a. the use of land in connection with development,
- b. the subdivision of land,
- c. the erection of a building,
- d. the carrying out of any work,
- e. the use of any site crane, machine, article, material, or thing,
- f. the storage of waste, materials, site crane, machine, article, material, or thing,
- g. the demolition of a building,
- h. the piling, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- i. the delivery to or removal from the *site* of any machine, article, material, or thing, or
- j. the occupation of the *site* by any person unless authorised by an *occupation certificate*.

Note: Interpretation of Conditions - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.
Standard Condition: A2

A.3 Approved Plans and supporting documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with the plans and supporting documents listed below as submitted by the Applicant and to which is affixed a Council stamp "Approved DA Plans" **unless modified by any following condition**. Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
DA1C	Architectural Plans: Lower Level Floor Plans	Darryl Blythe Pty Ltd	July 2006
DA2C	Mid Level Floor Plans	Darryl Blythe Pty Ltd	July 2006
DA3D	Elevation	Darryl Blythe Pty Ltd	23 July 2007
DA4D	Section	Darryl Blythe Pty Ltd	July 2006
DA5C	Site Plan – Site Analysis Plan	Darryl Blythe Pty Ltd	July 2006

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

Note: These plans and supporting documentation may be subject to conditions imposed under section 80A(1)(g) of the *Act* modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)
Standard Condition: A5

A.4 Prescribed Conditions

Prescribed conditions in force under the *Act* and *Regulation* must be complied with.

Note: It is the responsibility of those acting with the benefit of this consent to comply with all prescribed conditions under the *Act* and the *Regulation*. Free access can be obtained to all NSW legislation at www.legislation.nsw.gov.au
Standard Condition: A30

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

B.1 Construction Certificate required prior to any demolition

Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is "commencement of erection of building" pursuant to section 81A(2) of the *Act*. In such circumstance all conditions in Part C and Part D of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the issue of a Construction Certificate, appointment of a PCA and Notice of Commencement under the *Act*.

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

C. Conditions which must be satisfied prior to the issue of any construction certificate

C.1 Modification of details of the development (s80A(1)(g) of the Act)

The *approved plans* must be amended and the *Construction Certificate* plans and specification, required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation*, must detail:

- a. the roof over the mid level bedroom shall be fitted with roof guttering [wholly contained within the site] and connected to the existing storm water drainage system. All such work shall comply with the BCA;
- b. in accordance with G1 of Part 5.1.11 of the Paddington Development Control Plan 1999, the mid level bathroom shall incorporate low-flow regulators on bathroom taps and a dual flushing toilet system;
- c. in accordance with Part 5.2.3 of the Paddington Development Control Plan 1999, the French doors to the Juliet balcony shall be timber framed; and
- d. in accordance with Part 5.2.9 of the DCP the metal roof over the mid level bedroom shall be painted so as to match the colour of the main roof.

Note: The effect of this condition is that it requires design changes and/or further information to be provided with the *Construction Certificate* drawings and specifications to address specific issues identified during assessment under section 79C of the *Act*.

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

Note: Clause 145 of the *Regulation* prohibits the issue of any *Construction Certificate* that is inconsistent with this consent.
Standard Condition: C4

C.2 Exterior colours

In accordance with Part 5.2.9 of the DCP the development shall be finished in colours that do not detract from the architectural character of the terrace, the surrounding locality or the amenity of the Paddington Heritage Conservation Area.

C.3 Payment of Security, Levies and Fees (S80A(6) & S94 of the Act, Section 608 of the Local Government Act 1993)

The person(s) with the benefit of this consent must pay the following long service levy, security, development levy, and fees prior to the issue of any *construction certificate*, *subdivision certificate* or *occupation certificate*, as will apply.

The *certifying authority* must not issue any *Part 4A Certificate* until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees. Specifically

- a. prior to the issue of a *construction certificate*, where a construction certificate is required; or
- b. prior to the issue of a *subdivision certificate*, where only a subdivision certificate is required; or
- c. prior to the issue of an *occupation certificate* in any other instance.

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy Use Calculator: http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation or use their online calculator	No	
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit - Making good any damage caused to any property of the <i>Council</i> as a consequence of the doing of anything to which the consent relates.	\$2000	No	T600
INSPECTION FEES under section 608 of the Local Government Act 1993			
Security Administration Fee	\$163	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$2163 Plus any relevant indexed amounts and long service levy		

Building & Construction Industry Long Service Payment

The Long Service Levy under Section 34 of the *Building & Construction Industry Long Service Payment Act, 1986*, must be paid and proof of payment provided to the *Certifying Authority* prior to the issue of any *Construction Certificate*.

Note: The Levy can be paid directly to the Long Services Payments Corporation or to Council. Further information can be obtained from the Long Service Payments Corporation's website <http://www.lspc.nsw.gov.au/> or by telephoning the Long Service Payments Corporation on 13 14 41.

How must the payments be made?

Payments must be made by:

- a. Cash deposit with Council,
- b. Credit card payment with Council, or
- c. Bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:

- a. the guarantee is by an Australian bank for the amount of the total outstanding contribution;
 - b. the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first;
 - c. the bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent; and
 - d. the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.
- Standard Condition: C5

C.4 Stormwater discharge to existing *Stormwater Drainage System* (Clause 25(2) WLEP 1995)

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

- a. the location of the existing *Stormwater Drainage System* including all pipes, inspection openings, surface drains, pits and their discharge location,
- b. the state of repair of the existing *Stormwater Drainage System*,
- c. any remedial works required to upgrade the existing *Stormwater Drainage System* to comply with the BCA,
- d. any remedial works required to upgrade the existing *Stormwater Drainage System* crossing the footpath and any new kerb outlets,
- e. any new *Stormwater Drainage System* complying with the BCA,
- f. interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath,
- g. any rainwater tank required by BASIX commitments including their overflow connection to the *Stormwater Drainage System*, and
- h. general compliance with the Council's draft Development Control Plan Stormwater Drainage Management (draft version 1, public exhibition copy dated 23 August 2004)

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

All *Stormwater Drainage System* work within any road or public place must comply with Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* dated January 2003.

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

Note: Stormwater Drainage Systems must not discharge to any Sewer System. It is illegal to connect stormwater pipes and drains to the sewerage system as this can overload the system and cause sewage overflows. See:
<http://www.sydneywater.com.au/Publications/Factsheets/SewerfixLookingAfterYourSewerPipes.pdf>

Note: Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* dated January 2003 and Council's draft Development Control Plan Stormwater Drainage Management (draft version 1, public exhibition copy dated 23 August 2004) can be downloaded from Council's website:
www.woollahra.nsw.gov.au
Standard Condition: C49

D. Conditions which must be satisfied prior to the commencement of any development work

D.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

For the purposes of section 80A (11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:

- a. that the work must be carried out in accordance with the requirements of the Building Code of Australia,

- b. in the case of residential building work for which *the Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

- a. to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4),
- or
- b. to the erection of a temporary building.

In this condition, a reference to the *BCA* is a reference to that code as in force on the date the application for the relevant construction certificate is made.

Note: This condition must be satisfied prior to commencement of any work in relation to the contract of insurance under the Home Building Act 1989. This condition also has effect during the carrying out of all building work with respect to compliance with the Building Code of Australia.
Standard Condition: D1

D.2 Site Signs

The *Principal Contractor* or *owner builder* must ensure that the sign required by clauses 98A and 227A of the *Regulation* is erected and maintained at all times.

“Erection of signs

1. For the purposes of section 80A (11) of the *Act*, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
2. A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - a. showing the name, address and telephone number of the principal certifying authority for the work, and
 - b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - c. stating that unauthorised entry to the work site is prohibited.
3. Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
4. This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
5. This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the *Act*, to comply with the technical provisions of the State’s building laws.”

Note: *PCA* and *principal contractors* must also ensure that signs required by this clause are erected and maintained (see clause 227A which imposes a penalty exceeding \$1,000).

Note: If *Council* is appointed as the *PCA* it will provide the sign to the *principal contractor* or *owner builder* who must ensure that the sign is erected and maintained as required by Clause 98A of the *Regulation*.
Standard Condition: D12

D.3 Toilet Facilities

Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided:

- a. must be a standard flushing toilet, and
- b. must be connected to a public sewer, or
- c. if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the council, or
- d. if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the council.

The provision of toilet facilities in accordance with this condition must be completed before any other work is commenced.

In this condition:

accredited sewage management facility means a sewage management facility to which Division 4A of Part 3 of the *Local Government (Approvals) Regulation 1993* applies, being a sewage management facility that is installed or constructed to a design or plan the subject of a certificate of accreditation referred to in clause 95B of the *Local Government (Approvals) Regulation 1993*.

approved by the council means the subject of an approval in force under Division 1 of Part 3 of the *Local Government (Approvals) Regulation 1993*.

public sewer has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

sewage management facility has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

Note: This condition does not set aside the requirement to comply with Workcover NSW requirements.
Standard Condition: D13

D.4 Erosion and Sediment Controls – Installation

The *principal contractor* or *owner builder* must install and maintain water pollution, erosion and sedimentation controls in accordance with:

- a. The *Soil and Water Management Plan* if required under this consent;
- b. “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and
- c. “*Managing Urban Stormwater - Soils and Construction*” published by the NSW Department of Housing 4th Edition” (‘The Blue Book’).

Where there is any conflict The Blue Book takes precedence.

- Note:** The International Erosion Control Association – Australasia (<http://www.austieca.com.au/>) lists consultant experts who can assist in ensuring compliance with this condition. Where Soil and Water Management Plan is required for larger projects it is recommended that this be produced by a member of the International Erosion Control Association – Australasia.
- Note:** The “Do it Right On Site, Soil and Water Management for the Construction Industry” publications can be down loaded free of charge from www.woollahra.nsw.gov.au.
- Note:** A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the *Protection of the Environment Operations Act 1997* **without any further warning**. It is a criminal offence to cause, permit or allow pollution.
- Note:** Section 257 of the *Protection of the Environment Operations Act 1997* provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution” **Warning**, irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.
Standard Condition: D14

D.5 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

The erection of the building in accordance with this development consent must not be commenced until:

- a. a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited Certifier, and
- b. the person having the benefit of the development consent has:
 - i. appointed a principal certifying authority for the building work, and
 - ii. notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- b1. the principal certifying authority has, no later than 2 days before the building work commences:
 - i. notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - ii. notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- b2. the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - i. appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - ii. notified the principal certifying authority of any such appointment, and
 - iii. unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - iv. given at least 2 days’ notice to the council of the person’s intention to commence the erection of the building.

Note: *Building* has the same meaning as in section 4 of the *Act* and includes part of a building and any structure or part of a structure.

Note: *New building* has the same meaning as in section 109H of the *Act* and includes an altered portion of, or an extension to, an existing building.

Note: The commencement of demolition works associated with an altered portion of, or an extension to, an existing building is considered to be the commencement of building work requiring compliance with section 82A(2) of the *Act* (including the need for a *Construction Certificate*) prior to any demolition work. See: *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.

Note: *Construction Certificate* Application, *PCA Service Agreement* and *Notice of Commencement* forms can be downloaded from Council's website www.woollahra.nsw.gov.au.

Note: It is an offence for any person to carry out the erection of a *building* in breach of this condition and in breach of section 81A(2) of the *Act*.
Standard Condition: D15

D.6 Notification of Home Building Act 1989 requirements

- a. For the purposes of section 80A (11) of the *Act*, the requirements of this condition are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the Home Building Act 1989.
- b. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - i. in the case of work for which a *principal contractor* is required to be appointed:
 - the name and licence number of the principal contractor, and
 - the name of the insurer by which the work is insured under Part 6 of that *Act*,
 - ii. in the case of work to be done by an owner-builder:
 - the name of the owner-builder, and
 - if the owner-builder is required to hold an owner-builder permit under that *Act*, the number of the owner-builder permit.
- c. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.
- d. This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the *Act*, to comply with the technical provisions of the State's building laws.
Standard Condition: D17

E. Conditions which must be satisfied during any development work

E.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

For the purposes of section 80A (11) of the Act, the following condition is prescribed in relation to a development consent for development that involves any building work:

- a. that the work must be carried out in accordance with the requirements of the Building Code of Australia,
- b. in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

- a. to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4) of the Regulation, or
- b. to the erection of a temporary building.

In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant construction certificate is made.

Standard Condition: E1

E.2 Compliance with Australian Standard for Demolition

Demolition of buildings and structures must comply with Australian Standard AS 2601—1991: The Demolition of Structures, published by Standards Australia, and as in force at 1 July 1993.

Standard Condition: E2

E.3 Critical Stage Inspections

Critical stage inspections must be called for by the *principal contractor* or *owner builder* as required by the PCA, any PCA service agreement, the *Act* and the *Regulation*.

Work must not proceed beyond each critical stage until the PCA is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the *Act*. *critical stage inspections* means the inspections prescribed by the *Regulations* for the purposes of section 109E(3)(d) of the *Act* or as required by the PCA and any PCA Service Agreement.

Note: The PCA may require inspections beyond mandatory critical stage inspections in order that the PCA be satisfied that work is proceeding in accordance with this consent.

Note: The PCA may, in addition to inspections, require the submission of *Compliance Certificates*, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.

Standard Condition: E5

E.4 Hours of Work –Amenity of the neighbourhood

- a. No *work* must take place on any Sunday or public holiday,
- b. No *work* must take place before 7am or after 5pm any weekday,
- c. No *work* must take place before 7am or after 1pm any Saturday, and
- d. No piling, piercing, cutting, boring, drilling, rock breaking, rock sawing, jack hammering or bulk excavation of land or loading of material to or from trucks must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday.
- e. No rock excavation being cutting, boring, drilling, breaking, sawing, jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

This condition has been imposed to mitigate the impact of work upon the amenity of the neighbourhood. Impact of work includes, but is not limited to, noise, vibration, dust, odour, traffic and parking impacts.

Note: The use of noise and vibration generating plant and equipment and vehicular traffic, including trucks in particular, significantly degrade the amenity of neighbourhoods and more onerous restrictions apply to these activities. This more invasive work generally occurs during the foundation and bulk excavation stages of development. If you are in doubt as to whether or not a particular activity is considered to be subject to the more onerous requirement (9am to 4pm weekdays and 9am to 1pm Saturdays) please consult with Council.

Note: Each and every breach of this condition by any person may be subject to separate penalty infringement notice or prosecution.

Note: The delivery and removal of plant, equipment and machinery associated with wide loads subject to RTA and Police restrictions on their movement out side the approved hours of work will be considered on a case by case basis.

Note: Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the *Protection of the Environment Operations Act 1997*, the *Protection of the Environment Operations (Noise Control) Regulation 2000*.

Note: EPA Guidelines can be down loaded from <http://www.epa.nsw.gov.au/noise/nglg.htm> .

Note: See http://www.epa.nsw.gov.au/resources/ci_build_sheet7.pdf
Standard Condition: E6

E.5 Maintenance of Vehicular and Pedestrian Safety and Access

The *principal contractor* or *owner builder* and any other person acting with the benefit of this consent must:

- a. Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.
- b. Not use the road or footway for the storage of any article, material, matter, waste or thing.
- c. Not use the road or footway for any *work*.
- d. Keep the road and footway in good repair free of any trip hazard or obstruction.
- e. Not stand any plant and equipment upon the road or footway.

This condition does not apply to the extent that a permit or approval exists under the section 73 of the *Road Transport (Safety and Traffic Management) Act 1999*, section 138 of the *Roads Act 1993* or section 94 of the *Local Government Act 1993* except that at all time compliance is required with:

- a. Australian Standard AS 1742 (Set) Manual of uniform traffic control devices and all relevant parts of this set of standards.
- b. Australian Road Rules to the extent they are adopted under the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*.

Note: Section 73 of the *Road Transport (Safety and Traffic Management) Act 1999* allows the Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose. Any road closure requires Police approval.

Note: Section 138 of the *Roads Act 1993* provides that a person must not:

- (a) erect a structure or carry out a work in, on or over a public road, or
- (b) dig up or disturb the surface of a public road, or
- (c) remove or interfere with a structure, work or tree on a public road, or
- (d) pump water into a public road from any land adjoining the road, or
- (e) connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.

Note: Section 68 of the *Local Government Act 1993* provides that a person may carry out certain activities only with the prior approval of the council including:

Part C Management of Waste:

- “1. For fee or reward, transport waste over or under a public place
2. Place waste in a public place
3. Place a waste storage container in a public place.”

Part E Public roads:

- “1. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
2. Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.”

Any work in, on or over the Road or Footway requires *Council* Approval and in the case of classified roads the NSW Roads and Traffic Authority. Road includes that portion of the road uses as a footway.
Standard Condition: E7

E.6 Maintenance of Environmental Controls

The *principal contractor* or *owner builder* must ensure that the following monitoring, measures and controls are maintained:

- a. Erosion and sediment controls,
- b. Dust controls,
- c. Dewatering discharges,
- d. Noise controls;
- e. Vibration monitoring and controls; and
- f. Ablutions.

Note 1: See http://www.epa.nsw.gov.au/small_business/builders.htm for additional information.
Standard Condition: E11

E.7 Erosion and Sediment Controls – Maintenance

The *principal contractor* or *owner builder* must maintain water pollution, erosion and sedimentation controls in accordance with:

- a. The Soil and Water Management Plan required under this consent;

- b. “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and
- c. “*Managing Urban Stormwater - Soils and Construction*” published by the NSW Department of Housing 4th Edition (“*The Blue Book*”).

Where there is any conflict *The Blue Book* takes precedence.



Note 1: A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act 1997 without any further warning. It is a criminal offence to cause, permit or allow pollution.

Note 2: Section 257 of the Protection of the Environment Operations Act 1997 provides that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”. **Warning,** irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of the occupation of the land being developed whether or not they actually cause the pollution.
Standard Condition: E15

E.8 Placement and use of Skip Bins

The *principal contractor* or *owner builder* must ensure that all waste storage containers, including but not limited to skip bins, must be stored within the site unless:

- a. Activity Approval has been issued by Council under section 94 of the *Local Government Act 1993* to place the waste storage container in a public place, and
- b. Where located on the road it is located only in a positions where a vehicle may lawfully park in accordance with the Australian Road Rules to the extent they are adopted under the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*.

Note: Waste storage containers must not be located on the footpath without a site specific activity approval. Where such site specific activity approval is granted a 1.5m wide clear path of travel is maintained free of any trip hazards.
Standard Condition: E21

E.9 Placement and use of Skip Bins

The *principal contractor* or *owner builder* must ensure that all waste storage containers, including but not limited to skip bins, must be stored within the site unless:

- a. Activity Approval has been issued by Council under section 94 of the *Local Government Act 1993* to place the waste storage container in a public place, and
- b. Where located on the road it is located only in a positions where a vehicle may lawfully park in accordance with the Australian Road Rules to the extent they are adopted under the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*.

Note: Waste storage containers must not be located on the footpath without a site specific activity approval. Where such site specific activity approval is granted a 1.5m wide clear path of travel is maintained free of any trip hazards.
Standard Condition: E21

E.10 Prohibition of burning

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

Note: Pursuant to the *Protection of the Environment Operations (Control of Burning) Regulation 2000* all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.
Standard Condition: E22

F. Conditions which must be satisfied prior to any occupation or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)

F.1 Occupation Certificate (section 109M of the Act)

A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 109H (4) of the *Act*) unless an occupation certificate has been issued in relation to the building or part.

Note: New building includes an altered portion of, or an extension to, an existing building.
Standard Condition: F1

G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate

No relevant conditions.

H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (s109C(1)(c))

No relevant conditions.

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

I.1 Outdoor lighting – Residential

Outdoor lighting must comply with AS 4282-1997: Control of the obtrusive effects of outdoor lighting. The maximum luminous intensity from each luminaire must not exceed the level 1 control relevant under table 2.2 of AS 4282. The maximum illuminance and the threshold limits must be in accordance with table 2.1 of AS 4282.

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

Note: This condition has been imposed to control the obtrusive effects of outdoor lighting.
Standard Condition: I42

I.2 Noise Control

The use of the premises must not give rise to the transmission of *offensive noise* to any place of different occupancy. *Offensive noise* is defined in the *Protection of the Environment Operations Act 1997*.

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

Note: Council will generally enforce this condition in accordance with the *Noise Guide for Local Government* (<http://www.environment.nsw.gov.au/noise/nlg.htm>) and the *Industrial Noise Guidelines* (<http://www.environment.nsw.gov.au/noise/industrial.htm>) published by the Department of Environment and Conservation. Other state government authorities also regulate the *Protection of the Environment Operations Act 1997*.

Useful links:

Community Justice Centres—free mediation service provided by the NSW Government (www.cjc.nsw.gov.au).

Department of Environment and Conservation NSW, Noise Policy Section web page (www.environment.nsw.gov.au/noise).

New South Wales Government Legislation home page for access to all NSW legislation, including the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Noise Control Regulation 2000* (www.legislation.nsw.gov.au).

Australian Acoustical Society—professional society of noise-related professionals (www.acoustics.asn.au/index.php).

Association of Australian Acoustical Consultants—professional society of noise related professionals (www.aaac.org.au).

Department of Gaming and Racing - (www.dgr.nsw.gov.au).
Standard Condition: I50

J. Miscellaneous Conditions

No relevant conditions.

K. Advisings

K.1 Criminal Offences – Breach of Development Consent & Environmental laws

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

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

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

Warnings as to potential maximum penalties

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

Warning as to enforcement and legal costs

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

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

Note: The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of the *Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. You can obtain further information from the following web sites:

<http://www.theshopfront.org/documents/ConvictionsCriminalRecords.pdf> and the Attorney General's www.agd.nsw.gov.au.

Standard Advising: K1

K.2 Dial before you dig



The *principal contractor*, *owner builder* or any person digging may be held financially responsible by the asset owner should they damage underground pipe or cable networks. Minimise your risk and Dial 1100 Before You Dig or visit www.dialbeforeyoudig.com.au.

When you contact Dial Before You Dig, you will be sent details of all Dial Before You Dig members who have underground assets in the vicinity of your proposed excavation.

Standard Advising: K2

K.3 Builders Licences and Owner Builders Permits

Section 81A of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an **owner-builder**, must appointed a *principal contractor* for residential building work who must be the holder of a contractor licence.

Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder):

<http://www.dft.nsw.gov.au/building.html> .

The Owner(s) must appoint the PCA. The PCA must check that Home Building Act insurance is in place before the commencement of building work. The Principal Contractor (Builder) must provide the Owners with a certificate of insurance evidencing the contract of insurance under the Home Building Act 1989 for the residential building work.

Standard Condition: K5

K.4 Building Standards - Guide to Standards and Tolerances

The PCA does not undertake detailed quality control inspections and the role of the PCA is primarily to ensure that the development proceeds in accordance with this consent, Construction Certificates and that the development is fit for occupation in accordance with its classification under the Building Code of Australia. Critical Stage Inspections do not provide the level of supervision required to ensure that the minimum standards and tolerances specified by the "Guide to Standards and Tolerances©" ISBN 0 7347 6010 8 are achieved.

The quality of any development is a function of the quality of the *principal contractor's* or *owner builder's* supervision of individual contractors and trades on a daily basis during the development. The PCA does not undertake this role.

The NSW Office of Fair Trading have published a "Guide to Standards and Tolerances©" ISBN 0 7347 6010 8. The guide can be obtained from the Office of Fair Trading by calling 13 32 20 or by Fax: 9619 8618 or by post to: Marketing Branch, PO Box 972, Parramatta NSW 2124.

The Guide can be down loaded from:

<http://www.fairtrading.nsw.gov.au/pdfs/corporate/publications/dft242.pdf>

Council, as the PCA or otherwise, does not adjudicate building contract disputes between the *principal contractor*, contractors and the owner.

Standard Condition: K6

K.5 Workcover requirements

The *Occupational Health and Safety Act 2000 No 40* and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

Note: Further information can be obtained from Workcover NSW's website:

<http://www.workcover.nsw.gov.au/Industry/Construction/default.htm> or through their head office:

Location: Workcover NSW, 92-100 Donnison Street, GOSFORD 2250 Postal address: WorkCover NSW, Locked Bag 2906, LISAROW 2252, Phone (02) 4321 5000, Fax (02) 4325 4145.

Standard Condition: K7

K.6 Asbestos Removal, Repair or Disturbance

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW.

Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence.

All removal, repair or disturbance of or to asbestos material must comply with:

- The Occupational Health and Safety Act 2000;
- The Occupational Health and Safety Regulation 2001;
- The Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (1998)];
- The Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)] <http://www.nohsc.gov.au/>]; and
- The Workcover NSW Guidelines for Licensed Asbestos Removal Contractors.

Note: The Code of Practice and Guide referred to above are known collectively as the Worksafe Code of Practice and Guidance Notes on Asbestos. They are specifically referenced in the Occupational Health and Safety Regulation 2001 under Clause 259. Under the Occupational Health and Safety Regulation 2001, the Worksafe Code of Practice and Guidance Notes on Asbestos are the minimum standards for asbestos removal work. Council does not control or regulate the Worksafe Code of Practice and Guidance Notes on Asbestos. You should make yourself aware of the requirements by visiting www.workcover.nsw.gov.au or one of Workcover NSW's offices for further advice.
Standard Advising: K8

K.7 Lead Paint

It is beyond the scope of this consent to provide detailed information about dealing with lead paint. Painters working in an area containing lead-based paint should refer to Australian Standard AS 4361.1–1995, Guide to Lead Paint Management—Industrial Applications, or AS 4361.2–1998, Guide to Lead Paint Management—Residential and Commercial Buildings.

Industrial paints may contain lead. Lead is used in some specialised sign-writing and artist paints, and road marking paints, and anti-corrosive paints. Lead was a major ingredient in commercial and residential paints from the late 1800s to 1970. Most Australian commercial buildings and residential homes built before 1970 contain lead paint. These paints were used both inside and outside buildings.

Lead hazards - Lead particles are released when old lead paint flakes and peels and collects as dust in ceiling, wall and floor voids. If dust is generated it must be contained. If runoff contains lead particles it must be contained. Lead is extremely hazardous, and stripping of lead-based paint and the disposal of contaminated waste must be carried out with all care. Lead is a cumulative poison and even small levels in the body can have severe effects.
Standard Advising: K9

K.8 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact:

Mr. G Fotis, Team Leader on (02) 9391 - 7089

However, if you wish to pursue your rights of appeal in the Land & Environment Court you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, site hearings and the use of Court Appointed Experts, instead of a full Court hearing.

This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the Section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed commissioner having the full authority to completely determine the matter at the conference.
Standard Condition: K14

K.9 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 80A of the *Act*.

The securities will not be released until a *Final Occupation Certificate* has lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council's requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council's requirements.

Council will only release the security upon being satisfied that all damage or all works, the purpose for which the security has been held have been remedied or completed to Council's satisfaction as the case may be.

Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed.

Upon completion of each section of road, drainage and landscape work to Council's satisfaction, 90% of the Bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.

Note: The Application for Refund of Security form can be downloaded from
<http://www.woollahra.nsw.gov.au/pdf/Forms/Planning/RefundofSecurity.pdf>
Standard Condition: K15

K.10 Recycling of Demolition and Building Material

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

Standard Condition: K17

K.11 Compliance with the Building Code of Australia

Preliminary assessment of the development application drawings indicates that the proposal may not comply with the following sections/parts of the *Building Code of Australia*:

Part 3.7 Fire Safety

Part 3.8 Health and Amenity

Part 3.9 Safe Movement and Access

Mr. A Gilderdale
ASSESSMENT OFFICER

Mr. G Fotis
TEAM LEADER

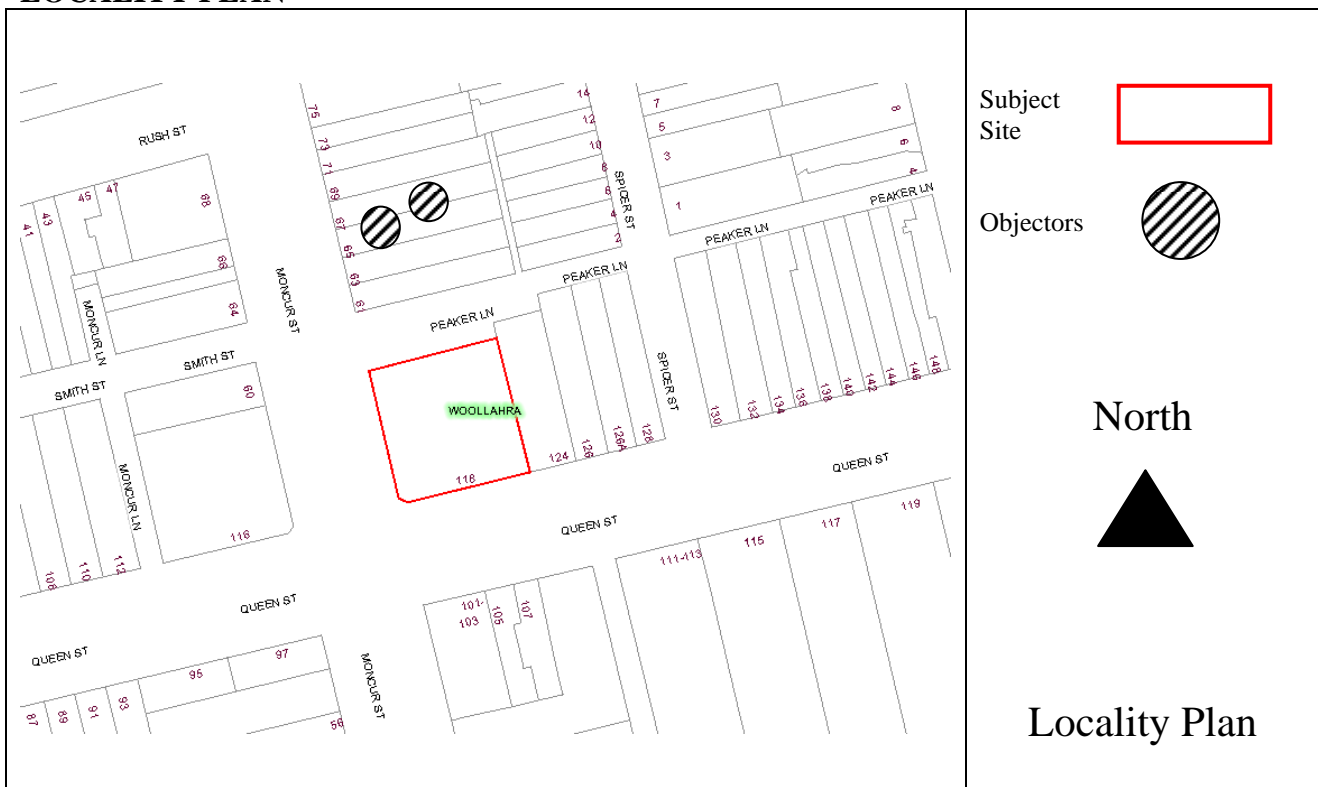
ANNEXURES

1. Plans and elevations
2. Referral response – Heritage

SECTION 96 APPLICATION ASSESSMENT REPORT

ITEM No.	D5
FILE No.	DA 157/1994/4
ADDRESS:	118 Queen Street WOOLLAHRA 2025
EXISTING CONSENT:	Amalgamation of two shops (5 and 6) into one shop and change of use to a cafe
TYPE OF CONSENT:	Local
DATE OF CONSENT:	22 September 1994
PROPOSED MODIFICATION:	Modify condition 2 (Hours of Trading) to alter the date of commencement of the trial period for extended trading hours on Friday and Saturdays
DATE S96 LODGED:	12/06/2007
CONSENT AUTHORITY	Council
APPLICANT:	BBC Consulting Planners
OWNER:	Queens Court Pty Ltd
AUTHOR:	Mr J Saszczak

LOCALITY PLAN



1. SUMMARY

Reason for report

The application seeks approval to modify a condition that was imposed by the Application Assessment Panel (AAP) and is the subject of an objection that cannot be comprehensively satisfied via conditions of consent. Accordingly, the matter is referred to the AAP for determination.

Issues

Noise.

Objections

Two objections were received.

Recommendation

Approval.

2. DESCRIPTION OF APPROVED PROPOSAL

The approved development permits the amalgamation of two shops (5 and 6) and a change of use to a café. **Condition No. 2** of the consent restricted the hours of operation to 8.00am to 10.00pm, 7 days a week.

A s.96 modification to the consent (DA 157/1994/2) was granted by Council's Application Assessment Panel on 26 October 2005, modifying the hours of operation set out in **Condition No. 2** as follows:

2. *Hours of Trading*

The hours of trading are limited to the following:

Sunday to Thursday: 7.00am – 10.30pm

Friday and Saturday: 7.00am – 11.30pm

The hours for Friday and Saturday shall operate for a trial period of six months from the date of the modified consent after which they shall revert to 7.00am – 10.30pm, unless a further application to modify the hours is lodged before the end of the trial period.

A further s.96 modification to the consent (DA157/1994/3) was granted by the Application Assessment Panel on 19 June 2006 for a further trial period of 12 months as the previously approved trial period was not acted upon. This modification to the consent has now expired.

3. DESCRIPTION OF PROPOSED MODIFICATION

The current s.96 modification (DA157/1994/4) submitted on 15 June 2007 seeks a further trial period of 12 months. The applicant's submission states the following:

“The development consent enables bills Woollahra to trade until 11.30pm on Fridays and Saturdays for a 12-month trial period. Although bills Woollahra is yet to introduce dinner settings, the trial period expires on 19 June 2007. Accordingly, Council is requested to modify the consent by permitting the 12-month trial period from the date the dinner sittings actually commence.”

Specifically Council is requested to modify Condition 2 as follows:-

“The hours of trading of the café are limited to the following:-

Sunday to Thursday: 7.00am – 10.30pm

Friday and Saturday: 7.00am – 11.30pm

The hours for Friday and Saturday shall operate for a trial period of 12 months from the date that dinner settings (other than special functions) commence, after which they shall revert to 7.00am – 10.30pm, unless a further application to modify the hours is lodged before the end of the trial period. The applicant shall inform Council no less than four weeks before dinner settings are to commence.”

4. DESCRIPTION OF SITE WITHIN WOOLLAHRA HCA

Description	Heritage Item or Contributory Item	Group Element	Precinct
Victorian corner shop	Contributory item	N/A	Queen Street

5. PROPERTY HISTORY

The original proposal for the use of the subject premises as a café was approved on 22 September 1994 subject to 19 conditions.

DA 157/1994/2 (dated 25 October 2005) provided for a trial period of 6 months from the date of the consent for the extended hours on Friday and Saturday and included the following additional conditions:

20. Patrons entering or leaving the premises after 10pm

A removable physical barrier shall be placed no later than 10pm everyday to avoid access via the Moncur Street passageway to and from Queens Court, except for emergency. All users entering or leaving the premises after 10pm are restricted to use the Queen Street passageway.

This condition is imposed for the amenity of the local residents of the area.

21. Noise control

The use of the premises must not give rise to the transmission of offensive noise to any place of different occupancy. Offensive noise is defined in the Protection of the Environment Operations Act 1997.

22. Lighting

Any lighting on the site must be designed so as not to cause nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill. All lighting must comply with the Australian Standard AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting.

DA 157/1994/3 (dated 19 June 2006) permitted a further trial period of 12 months from the date of the consent, as the previously approved trial period was not acted upon.

Liquor Licence

The premises was granted an on-licence (restaurant) on 3 November 2006 (Licence No. 24014552) despite Council raising concerns with the Court in June 2005 that development consent was granted in 1994 for a café and that the current definition of a café does not permit the premises to be licensed to serve alcoholic beverages with meals.

6. REFERRALS

6.1 Comments from external approval bodies

No external referrals required.

6.2 Heritage

The proposal was not referred to Council's Heritage Officer as there are no heritage issues arising from this application.

6.3 Parking and Traffic

Council's Traffic and Transport Planner, Lorna Oliver assessed the original application for an extension of trading hours and determined that the application was acceptable on traffic grounds. The issue of traffic and parking is assessed in detail in section 11.6 of this report.

6.3 Environmental Health

Council's Environmental Health Officer assessed the original application for modification of trading hours and recommended that several conditions of consent be applied. These conditions now form part of the approval.

ASSESSMENT UNDER S96

7.1 S96 (1) Correction of minor error, misdescription or miscalculation

Not applicable.

7.2 S96 (1A) Modification involving minimal environmental impact

Not applicable.

7.3 S96 (2) Other modifications

The proposed change to the trial period for a further 12 months for the hours of operation to the existing café would have some additional environmental impact which requires further assessment.

7.4 S96AA Modification of a consent granted by the Court

Not applicable.

7.5 Substantially the same development

Section 96(2) requires Council to be satisfied that the consent as proposed to be modified is substantially the same development as that for which consent was originally granted.

The proposed modifications are confined to the change of the trial period for the hours of operation of the approved café, which was the basis of the original application. As such, the consent as proposed to be modified would be substantially the same development.

7.6 S96 (2) (b) Consultation with Minister, public authority or approval body

Not applicable.

7.7 Threatened species

Not applicable.

ENVIRONMENTAL ASSESSMENT UNDER S.79C

8. STATE/REGIONAL INSTRUMENTS AND LEGISLATION

8.1 SEPPs

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The proposed development does not involve any physical works.

State Environmental Planning Policy No. 55

The proposed development does not involve any physical works.

8.2 REPs

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The proposed development will not change the sites relationship with the harbour.

8.3 Additional Section 94 Contribution

No contribution under Councils s.94 or s.94A plans is required.

8.4 Other legislation

None relevant.

9. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

9.1 Aims and objectives of WLEP 1995 and zone

The proposal is permissible and is consistent with the aims and objectives of the LEP and the relevant objectives of the Neighbourhood Business 3(c) zone.

Since the previous s.96 application the applicant has obtained a liquor licence. It has been questioned as to whether this licence changes the nature of the use, such that it is now operating outside of the terms of its approval. Council's compliance unit has investigated this matter and has determined that there is no benefit in pursuing this issue.

9.2 Statutory compliance table

A compliance table is not required as the proposed modifications are confined to the change of the trial period for the hours of operation of the approved café and there will be no change to the floor space and other planning parameters.

9.3 Other special clauses/development standards

Clause 25D Acid Sulfate Soils: The proposed works do not require the need for an assessment of acid sulfate soils under clause 25D of Woollahra LEP 1995.

Clauses 26-33 Heritage and conservation area provisions: The proposed modifications have no impact to the heritage significance within the heritage conservation area.

10. DRAFT AMENDMENTS TO STATUTORY CONTROLS

Draft Woollahra Local Environmental Plan – Amendment No. 60

Council resolved on 10 April 2006 to place a *Draft Woollahra Local Environmental Plan – Amendment No. 60* on public exhibition. This draft amendment proposes to make “restaurants” a permissible use within the neighbourhood business zone and to delete “cafes” from the definitions and land use tables. This modification to the controls would not create any additional issues for this application.

11. DEVELOPMENT CONTROL PLANS

11.1 Compliance table - Woollahra Heritage Conservation Area DCP 2003

A compliance table is not required as the proposed modifications are limited to the change to hours of operation and will have no change to the floor space and other planning parameters.

11.2 Precinct Controls

The proposal conserves the significant characteristics of the Queen Street Precinct and complies with the specific controls for the precinct.

11.3 Significant items and group significant buildings

The proposed modifications are limited to the change to the trial period for the hours of operation of the existing café and would have no impact on the heritage significance of the contributory item.

11.4 Building Type Controls

The subject property is identified as a Victorian corner shop.

The proposed modifications are only limited to the change of the trial period for the hours of operation of the existing café, it would have no impact to the building itself.

11.5 General controls for development

Buildings and elements adjoining heritage items

The development will not have any impact on any heritage item, its setting or its curtilage.

Subdivision and site amalgamation

Not applicable to the application.

Building location

No building works are proposed under the application.

Building height, form, bulk, scale and character

No building works are proposed under the application.

Materials, finishes and colours

No building works are proposed under the application.

Open space and landscaping

No building works are proposed under the application.

Parking and garages

This issue is discussed in detail in section 11.6 below.

Acoustic and visual privacy

The proposal does not provide any greater opportunity for overlooking of the neighbouring properties, and, as such there will not be any loss of visual privacy. The acoustic impacts of the proposal are discussed later in this report.

Stormwater management

Not applicable to the application.

Site facilities and aerial devices

Not applicable to the application.

Energy efficiency

Not applicable to the application.

11.6 DCP for off-street car parking provision and servicing facilities

The following comment and assessment was made in regards to Parking and Traffic in the previous application and is applicable to the current application.

“Section 5 of the Assessment of Traffic and Parking Implication Report prepared by Transport and Traffic Planning Associates states that:-

The cafe patronage surveys indicate that up to 18% of patrons travel by car at a car occupancy rate of 2.25 persons per car. This equates to drivers (number of cars) representing up to 8% of the patronage. The surveys of the Bills cafes indicate a potential generalised average patronage of 20 persons during the extended hours (with a potential peak Saturday late evening patronage of 40 persons).

Application of this parking data to the Bills Cafe in Woollahra indicates that the average early morning and late evening parking demand would be some 2 – 3 cars, while the Saturday late evening demand would be some 3 – 4 cars.

It is evident from the on-street parking surveys that there is more than sufficient availability parking to accommodate these vehicles within a distance of 250 metres of the Cafe. This parking availability is greatly increased if measured up to 400 metres from the Cafe, which is the reasonable walking distance adopted by DIPNR in relation to land-use and transport planning.

Section 6 of the same report also states that:-

The parking assessment has established that the proposed extension of trading hours may result in a parking demand of up to 4 vehicles during the peak Saturday evening period. However, in relation to traffic generation, it is not apparent that the extension of trading hours will necessarily result in a perceptible increase in traffic activity, merely that patrons will be able to occupy the cafe for an extended period.

However, if the extended hours involved a higher level of daily patronage, it would be unlikely that the additional seating would turnover more than once within the extended hours, therefore generating a maximum of 4 additional traffic movements.

This potential addition traffic activity will not be imperceptible and will have no impact on the operation of the road network, particularly as the already approved trading hours cover the normal peak period traffic periods.”

The proposal is considered to be satisfactory in this regard.

11.7 Woollahra Access DCP

The proposed modifications would not reduce the current level of accessibility to the café and is considered satisfactory in this regard.

11.8 Other DCPs, codes and policies

Not applicable.

12. APPLICABLE REGULATIONS

The proposed modifications would not reduce the current level of accessibility to the café and is considered satisfactory in this regard.

13. LIKELY IMPACTS OF THE MODIFIED DEVELOPMENT

Hours of Use

The proposed modification seeks to increase the hours of trade for the café. The proposed hours are consistent with a number of similar premises within the Queen Street Precinct, a sample of which is set out below:

- Gourmet Seafood (101-103 Queen Street) 10am-8pm Tuesday to Sunday
- Zigolinis Restaurant (107 Queen Street) 6:30am - 10pm Monday to Friday, 6:30am-11pm Saturday and Sunday
- Café (101-103 Queen Street) 7am-6pm 7 days a week
- Agostinis Café (Queens Court - 118 Queen Street) 8am-10pm Monday to Saturday, 8am-6pm Sunday
- Bistro Moncur (116 Queen Street) 12pm-3pm Tuesday to Sunday, 6pm-12pm 7 days
- Nostimo Café (113 Queen Street) 7am-12pm Monday to Saturday, 7am-11pm Sunday
- Big Mamas Restaurant (51 Moncur Street) Monday to Saturday, 7am to Midnight, Sunday 7am to 11pm
- Chargrill Charlies (134 Queen Street) 8am-6pm Friday -Wednesday, 8am-9pm Thursday

The subject site lies on the fringe of the Queen Street Precinct and any such any increase in hours has the potential to impact on the adjacent residences by way of noise, light spill, traffic and parking.

The physical attributes of the premises are such that it addresses an internal courtyard which contains the noise from patrons, when they are on site, to an acceptable level. The noise impact of patrons leaving the premises was assessed in the previous application and was addressed by the imposition of **Conditions 20 and 21** (refer to Section 5 of report). The kitchen windows face Peaker Lane and noise from these could potentially impact upon the adjacent residences. **Condition 14** was imposed on the original approval to address this issue. The condition is as follows:

14. *Council may require the windows in the café that open onto Peaker Lane to be fixed if a nuisance arises due to noise or odours emanating from these windows.*

Condition 22 was imposed on the previous section 96 application to control light spill from any windows.

The applicant has sought to have condition 2 modified so that the trial period commences from the date when the late trading commences rather than from the date of issue of the consent (please refer to the wording detailed in section 3 of this report). Councils Officers believe that this does not provide sufficient certainty to Council or residents in regards to the use and that a fixed trial period as previously issued is appropriate.

Traffic

Council's Traffic Engineer has previously assessed the Traffic and Parking impacts and is of the opinion they are acceptable.

14. SUBMISSIONS

The proposal was advertised and notified in accordance with Council's Advertising and Notifications DCP. Two submissions were received from:

- Serenella Tonello, 65 Moncur Street, Woollahra.
- Natalia Bradshaw, 67 Moncur Street, Woollahra

The objectors raised the following issues:

- *There will be a significantly adverse affect due to noise coming from kitchen and also patrons leaving the restaurant late in the evening.*

Condition No. 14 of the consent provides for the kitchen windows to Peaker Lane to be fixed if any adverse aural impacts arise as a consequence of the operation of the café. This is a matter for the Manager of Compliance and the objection will be referred to the appropriate compliance officer.

Condition 20 also seeks to minimise the acoustic impacts of the development by directing patrons leaving the premises away from the adjacent residences.

- *There are 10 separate restaurant/eateries within 500-800 metres of this location, so the social impact of further noise and the compounding lack of parking is not in "the public interest".*

Refer to S 11.6 (Parking) and S13 (Noise)

- *The premises is licensed to serve alcohol*

An application in relation to the premises was made to the Licensing Court in 2005 for an on-license (restaurant) based on existing use rights. A letter from Council's Compliance Division was forwarded to Lawyers acting for the applicant raising objection to the licence nevertheless the Court issued an on-license on the 3 November 2006.

- *Numerous complaints have been lodged against the premises*

Council's Property File for 118 Queen Street contains no formal complaints recorded against the premises Shops 5 & 6. Council's Customer Request Management System (CRMS) has no entries lodging complaints against the premises and only 4 entries since 2003.

The Licensing Police also register any complaints against licensed premises. Council has not received any complaints in this regard.

15. CONCLUSION - THE PUBLIC INTEREST

Extension or Intensification of Use.

In [Randall Pty Ltd v Leichhardt Council \[2004\] NSWLEC 277](#) the Land and Environment Court judgement sets out the principles in relation to impact of intensification.

At paragraph 25 it was held that:

“First, is the impact of the operation of the existing use on residential amenity acceptable?

If the answer is no, then an extension or intensification, would be unacceptable unless there is no overall increase in impact or there are measures proposed which would mitigate the existing impact.

Second, if the answer is yes, is the impact of the proposed extension or intensification still acceptable?”

In [Vinson v Randwick Council \[2005\] NSWLEC 142](#) the Land and Environment Court judgement sets out the principles in relation to extension of trading hours, increase in permitted patron numbers or additional attractions [POPE] in the context of licenced premises, by adding to *Randall* at paragraph 13 of that judgement.

We are not going to repeat the tests in *Vinson* because they are aimed at uses involving Places of Public Entertainment or the like which carry with them substantially higher risks of noise and anti-social behaviours not associated with the existing café use.

The adequate test in this circumstance is that at paragraph 25 of *Randall*.

Is the impact of the operation of the existing use on residential amenity acceptable?

Council's Property File for 118 Queen Street contains no formal complaints recorded against the premises Shops 5 & 6. Council's Customer Request Management System (CRMS) has no entries lodging complaints against the premises and only 4 entries since 2003. The issues of concerns in relation to residential amenity were addressed in 2005 by the imposition of conditions 14, 20 and 21

The Licensing Police register complaints against licensed premises. No complaints have been received since the licence was issued.

If the answer is yes above, is the impact of the proposed extension or intensification still acceptable?

Council has previously issued two modifications to the trading hours to allow for a trial period. The extended trading hours have not ever been commenced. The trial period provides residents with the opportunity to comment on the impacts of extended hours, prior to Council making a decision as to whether they should be accepted on a permanent basis.

16. RECOMMENDATION: Pursuant to Section 96 of the Environmental Planning and Assessment Act, 1979

THAT Council, as the consent authority, modify development consent to Development Application No. 157/1994 part 4 for Section 96 Modification on land at 118 Queen Street Woollahra, in the following manner:

Condition No. 2 is deleted and replaced with the following condition.

2. Hours of Trading

The hours of trading of the café are limited to the following:

Sunday to Thursday: 7.00am – 10.30pm

Friday and Saturday: 7.00am – 11.30pm

The hours for Friday and Saturday shall operate for a trial period of 12 months from the date of this modified consent after which they shall revert to 7.00am – 10.30pm, unless a further application to modify the hours is lodged before the end of the trial period. The use of the premises for “special functions” within the modified hours of trading shall be considered as being subject to this provision.

John Saszczak
ASSESSMENT OFFICER

Mark Schofield
TEAM LEADER

Advising

1. Use as a Restaurant

This consent does not permit the premises to be used as a “restaurant” as defined in the Woollahra Local Environmental Plan 1995. Restaurants are a prohibited use within the zone unless identified as being specifically excluded.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D6
FILE No.	DA 141/2007/1
PROPERTY DETAILS	158 Fletcher Street WOOLLAHRA
	Lot & DP No.: LOT: A DP: 107244
	Side of Street: Southern
	Site Area (m²): 204m ²
	Zoning: Residential 2(b)
PROPOSAL	Alterations and additions to rear of dwelling including new garage
TYPE OF CONSENT:	Local
APPLICANT:	Ms P J Young
OWNER:	Ms P J Young
DATE LODGED:	12/03/2007(Amended plans received: 24 July 2007)
AUTHOR:	Ms B Thomas

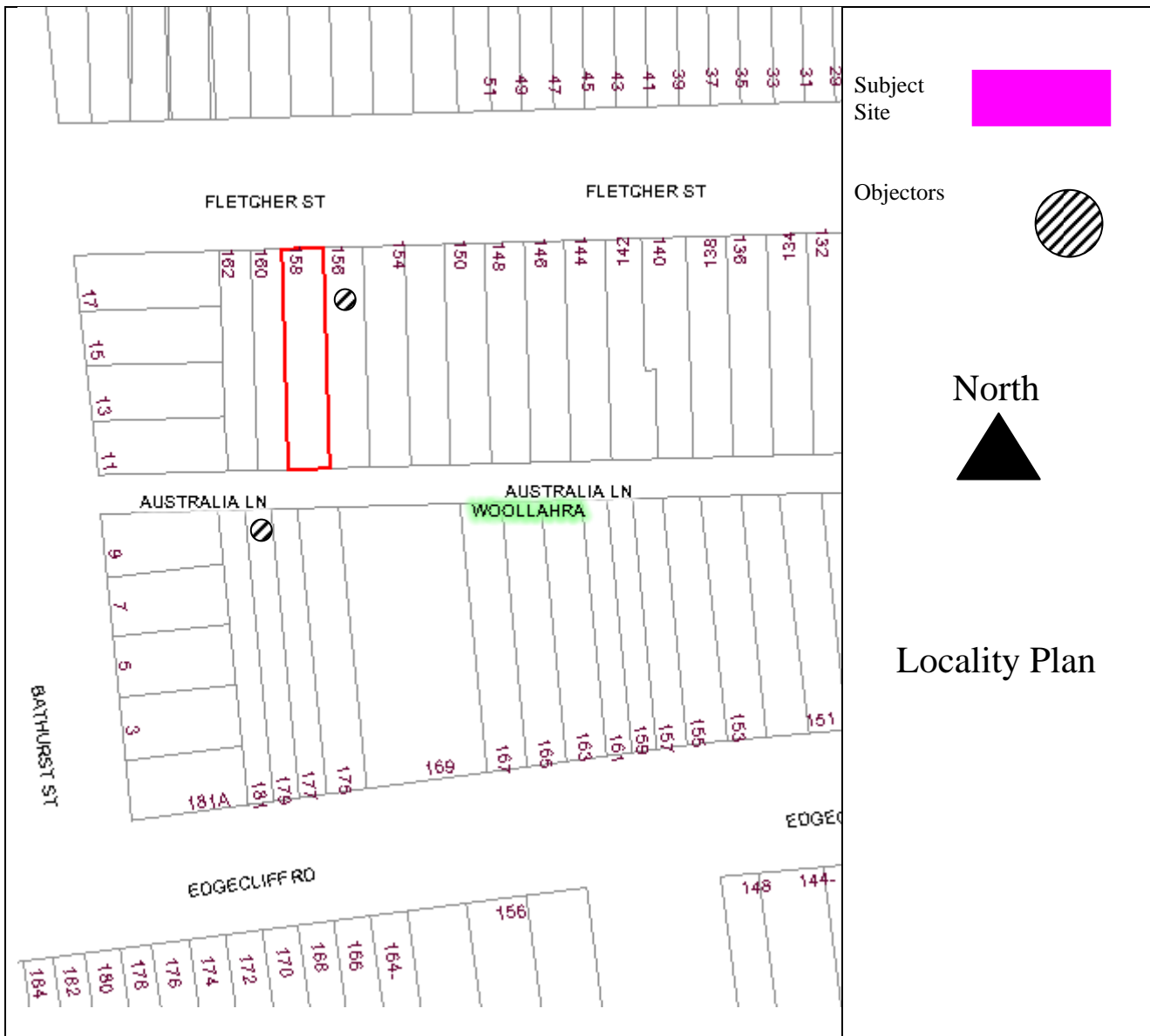
1. RECOMMENDATION PRECIS

It is recommended that development consent be approved in respect to the application.

2. PROPOSAL PRECIS

The proposal is for alterations and additions to rear of dwelling including new garage

3. LOCALITY PLAN



4. DESCRIPTION OF PROPOSAL

The proposed works involve:

Existing residence

- Demolition of internal living and dining room walls
- New fireplace to connect to existing flue
- New kitchen benches

Works at the rear

- Partial demolition of the existing garage and construction of new two level residential addition (connected to the existing residence) comprising of

Ground Floor

Garage
Bedroom and ensuite
Laundry and toilet

First floor

Two bedrooms
Bathroom
Landing

- An exterior courtyard, located between the existing residence and the new addition.

5. SUMMARY

Reasons for report	Issues	Submissions
▪ Objectors concerns cannot be met	Loss of Symmetry, Overshadowing, Visual Impact, Loss of Privacy	2 submissions were received.

6. ESTIMATED COST OF WORKS

Council adopted (DCC 6 June 2005) administrative changes for determining DA fees based on the estimated cost of work. Where the estimated cost of work is greater than \$750,000 or where the applicant's estimate is considered to be neither genuine or accurate, the applicant has to provide a Quantity Surveyor's report.

The applicant's estimated cost of the proposed development at \$300 000 (this figure must be \$750,000 or less) has been checked using our adopted practice and is considered to be accurate.

7. DESCRIPTION OF SITE OF LOCALITY

THE SITE AND LOCALITY	
Physical features	The site legally consists of Lot A in DP107244. It is located on the southern side of Fletcher Street and backs onto Australia Lane, Woollahra. The front boundary is 6m, the rear boundary is 6.1m, and the east and west side boundaries are 33.3m. The subject site has a total area of 202.4sqm.
Topography	The site slopes from the rear down towards Fletcher Street.
Existing buildings and structures	The site is currently occupied by a one storey brick semi-detached cottage with slate roof and brick garage fronting Australia Lane.
Environment	Adjoining to the east (No 156 Fletcher Street) is the other semi in the pair. A one storey brick semi-detached cottage is located to the west. The streetscape in the locality consists of one and two storey residential buildings of differing age and style.

8. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	Residential
Previous relevant applications	DA 689/2004/1-Alterations and additions to existing property was refused on 21 June 2005. 156 Fletcher Street-DA582/2006/1 was approved on 23rd January 2007 for alterations and additions including a new first floor level.
Pre-DA	Not applicable.
Requests for additional information	24 April 2007 requests for amended plans showing correct RL's. 9 July 2007 requests for a survey plan, amended plans showing correct RL's, new shadow diagrams, plans in accordance with Basix Certificate and modifications to the design.

Amended plans/ Replacement Application	Amended plans were received 7 May 2007 showing correct RL's. Amended Plans showing correct RL's and Basix requirements and a new survey plan was received 24 July 2007
Land & Environment Court appeal	Not applicable.

9. REFERRALS

9.1 The following table contains particulars of internal referrals.

INTERNAL REFERRALS		
Referral Officer	Comment	Annexure
Development Engineer	Council's Development Engineer was satisfied with the proposal and recommended standard conditions. Including conditions: A3, A4, C8, C3, C5, C6, C7, D3, E9, E10, E11, E12 and H2.	2
Heritage Officer	Council's Heritage Officer was satisfied with the proposal and recommended that the parapet to the garage shall be no higher than 3m to reduce the bulk and scale to Australia Lane. Conditions B2 and C1 (c) were recommended.	3

9.2 The following table contains particulars of external referrals.

No external referrals were required.

ENVIRONMENTAL ASSESSMENT UNDER S.79C

The relevant matters for consideration under section 79C of the *Environmental Planning and Assessment Act 1979* are assessed under the following headings:

10. STATE/REGIONAL INSTRUMENTS AND LEGISLATION

10.1 SEPPs

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The development application was accompanied by BASIX Certificate No. 125978S committing to environmental sustainability measures.

These requirements have been imposed by standard condition prescribed by clause 97A of the *Environmental Planning & Assessment Regulation 2000*.

State Environmental Planning Policy No. 55

Under clause 7(1) (a) of State Environmental Policy No. 55- Remediation of Land, consideration has been given as to whether the land is contaminated. The site has been used for residential purpose since the early twentieth century. This use is unlikely to have led to contamination of the site and as such no further consideration under Clause 7 (1) (b) and (c) of SEPP 55 is required.

10.2 REPs

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The proposal will not affect the urban landscape and will not have an adverse visual impact on the Harbour foreshore. The proposal is therefore consistent with the objectives of the SREP and would satisfy the relevant requirements of the SREP.

10.3 Section 94A contribution

A S94A contribution of 1% (\$3,000) of the estimated cost of the works (\$300,000) will be required to be paid under the provisions of Council's S94A Contributions Plan. **Refer to Condition C2.**

10.4 Other legislation

No other legislation is applicable to this application.

11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

11.1 Aims and objectives of WLEP 1995 and zone (Clause 8(5))

The proposal is permissible and is consistent with the aims and objectives of the LEP and the relevant objectives of the Residential 2(b) zone.

11.2 Statutory compliance table

Site Area (202.4m ²)	Existing	Proposed	Control	Complies
Overall Height (metres)	6.45m	6.5m	9.5m	Yes

11.3 Height

The proposal complies with the maximum building height and objectives prescribed by Clause 12 of WLEP 1995.

11.4 Other special clauses/development standards

Clause 18 Excavation: The proposed excavation is acceptable in terms of Clause 18.

Clause 19 HFSPA: The proposal is acceptable in terms of Clause 19(2).

Clause 24 Land adjoining public open space: The proposal is acceptable in terms of Clause 24(2).

Clause 25 Water, wastewater and stormwater: The proposal is acceptable in terms of Clause 25(1) and (2).

Clause 25D Acid Sulfate Soils: The proposed works do not require the need for an assessment of acid sulfate soils under clause 25D of Woollahra LEP 1995.

Clauses 26-33 Heritage and conservation area provisions: The subject site is a contributory item and is located within the Woollahra Heritage Conservation Area. The proposed works would be sufficiently setback from the original house and would not adversely impact upon the significance of the pair of federation houses. The proposed works would not adversely impact upon the Fletcher Street streetscape and conservation area and therefore the proposal is acceptable in terms of Clause 26-33.

12. DRAFT AMENDMENTS TO STATUTORY CONTROLS

Draft State Environmental Planning Policy (Application of Development Standards) 2004 does not apply.

Draft Woollahra Local Environmental Plan 1995 (Amendment No.60) does not apply.

13. DEVELOPMENT CONTROL PLANS

13.1 Compliance table - Woollahra Heritage Conservation Area DCP 2003

Site Area (202.4m ²)	Existing	Proposed	Control	Complies
Floor Space Ratio (m ²)	0.36:1 (74m ²)	0.81:1 (164.9m ²)	0.92:1 (186.2m ²)	Yes
Deep Soil Landscaped Area (m ²)	20% (40m ²)	7% (14.1 m ²)	8% (16m ²)	No
Excavation Piling & Subsurface Wall Setback (metres)	0m(East) 0.9m(West)	0m	1.5	No
Minimum Floor to Ceiling Height – Habitable Rooms (metres)	2.7	2.7	2.7	Yes
Solar Access to Ground Level Open Space of Adjacent Properties	<2hrs	<2hrs	50% Dimension – 2.5m 2 hours	No*
Private Open Space Per Dwelling	>16%	24% 49m ²	Area 16% (32m ²)	Yes
	> 12m ² > 3m	17.6m ² 4.1m	Principal Area –12m ² Dimension – 3m	Yes
Car Parking Spaces	2	2	2	Yes
Location of Car Parking Structures	Behind Front Building Line	Behind Front Building Line	Behind Front Building Line	Yes

*Existing Non Compliance

13.2 Precinct Controls

The proposal conserves the significant characteristics of the Fletcher Precinct and complies with the specific controls for the precinct.

13.3 Significant items and group significant buildings

The subject property is identified as a contributory item. The proposed works would not project forward of the original front building setback nor obscure the public view of the principal item in compliance with Criteria 2 of Section 3.2.3 of the DCP.

Criteria 3 in Section 3.2.3 outlines that alterations to significant items are to be located at the rear of the building. The proposed works would be located at the rear of the building and would match the rear setback of adjacent buildings.

Criteria 7 in Section 3.2.3 of the DCP stipulates that the bulk, height and scale of additions to significant items must be less than, and must not compromise or dominate the principal building form of the building.

The bulk, height and scale of the proposed additions would not compromise or dominate the principal building form as the works at the rear would be setback and be located below the roof line of the principal building form.

13.4 Building Type Controls

The subject property is identified as a Federation Semi-Detached House.

Criteria 1 in Section 3.3.3 requires alterations and additions to one house of a semi detached pair not to compromise the uniformity and geometry of the principal or street front elevation or dominate the other house in the pair.

The proposed works are separated from the principal original building and would be connected by a low link structure, separating the new from the old. The additions would only be partially visible from Fletcher Street.

The bulk of the development would be viewed from Australia Lane and would not compromise the uniformity of the principal or street front elevation and would not dominate the other house in the pair. The proposal is considered acceptable in this regard.

The proposed low level link structure would not exceed a height 300mm below the ridgeline of the principal building in accordance with C2 of Section 3.3.3.

The proposed addition would not dominate the original principal building form of the building due to its setback and would be in accordance with C5 of Section 3.3.3 of the DCP.

13.5 General controls for development

Building location

Control 5 of Section 3.4.3 stipulates that the proportion of site cover is to be no greater than that of adjoining properties. The site coverage for the proposed works is the approximate average between both adjoining sites.

The DCP sets out in Control 9 of Section 3.4.3 that the outer edge of excavation, piling and all sub-surface walls shall not be less than 1.5metres from a front or side or rear boundary. The proposed works would not meet these requirements on the rear or side boundary. Due to the limitations of the site construction to the boundary is considered acceptable.

Building height, form, bulk, scale and character

The height, bulk, scale, dominant roof forms, ridge lines and building envelope of new development must be consistent with the predominant height bulk and scale of significant items in the streetscape that are of a similar building type as identified in Control 1 of Section 3.4.4 of the DCP.

There have been various approaches taken in making alterations and additions to the rear of the properties on Fletcher Street. A development application 582/06 was recently approved for 156 Fletcher Street which maintains the courtyard/hard stand parking space at the rear. The rear of 160 Fletcher Street has been developed with a similar approach. The proposed works aim to build a second storey onto the garage at the rear and locate open space in the middle of the site, which results in the bulk of this development being located adjacent to the private open space of the neighbouring properties.

Adjoining 156 Fletcher Street to the east is a 2 storey level rear addition with a verandah located on top. The boundary wall adjoining 154 and 156 is not articulated. The proposed works at 158 Fletcher Street would effectively box in 156 Fletcher Street and would adversely impact in terms of bulk and scale, considering the existing surrounds.

To reduce the bulk and scale and minimise overshadowing to the open space of 156 Fletcher Street, the landing on the first floor at the rear should be setback 800mm from the eastern boundary for a distance of 1.8metres in length, to protect the adjoining neighbour's amenity. **Refer to Condition C1(b).**

To minimise the bulk and scale of the proposed works on the open space of 160 Fletcher Street, the bathroom on the first floor level should be setback from the western boundary to match the proposed setback of the remainder of the first floor level. A skylight could be inserted to allow for light into the bathroom. **Refer to condition C1(a).**

The bulk and scale of the proposed works at the rear have been minimised by being setback 700mm from the rear boundary at first floor level. The applicant submitted amended plans and reduced the parapet to the garage by 200mm in height which would further decrease bulk and scale.

The properties at addresses 92-162 Fletcher Street are contributory items. The proposed works would not adversely impact upon the principal building forms of the surrounding significant items as viewed from Fletcher Street in accordance with Control 2 of Section 3.4.4.

The character and the streetscape of Australia Lane are eclectic and feature a range of building styles. Due to the diversity of the Australia Lane streetscape, the proposed alterations and additions can be considered to be appropriate.

Control 3 of Section 3.4.4 requires that development should not be above two storeys; the proposal is compliant in this regard, whilst control 4 outlines that storey heights must conform to those of adjacent significant items. Two storeys have been approved at 156 Fletcher St in DA 582/2006.

The new habitable rooms should have a minimal floor to ceiling height of 2.7meters as detailed in Control 5 of Section 3.4.4, the proposed works would be compliant. The upstairs bathroom is not defined as a habitable room.

The Floor Space Ratio requirement for the subject site is 0.92:1(186.2m²) the proposed works would be 0.81:1 (164.9m²) and would be acceptable against Council's criteria.

Control 8 of Section 3.4.4 outlines that sunlight is provided to at least 50% of the main ground level private open spaces of the adjacent properties for a minimum of two hours between 9am and 3pm on June 21, where existing overshadowing is greater than this, sunlight is not further reduced.

21st June at 9am

The proposed works would not further reduce sunlight into the adjacent properties of private open space as the shadows would fall onto the existing buildings not onto the open space.

21st June at 12pm

The proposed works would not further reduce sunlight into the adjacent properties private open space as the shadows would fall onto the road.

21st June 3pm

No impact to the western property 160 Fletcher Street. The width of the shadow on the eastern property 156 Fletcher Street would increase the existing shadow to the rear which would fall over the open space.

For 156 Fletcher Street the existing shadows would not allow for 2 hours of sunlight to 50% of open space. The proposed works would further reduce sunlight to and therefore would not comply with Control 8 of Section 3.4.4.

The proposed works would create an impact in terms of overshadowing. This impact is not considered unreasonable in an inner city environment and the open space located in 156 Fletcher Street is south facing.

The proposed works can be considered acceptable as they would maintain Objective 9 and aim to minimise overshadowing or private and public open space by setting back the proposed works from the boundary at first floor level. All sunlight to the open space located in the front setback of the adjoining properties would be maintained.

The proposed works would retain the patterns of height bulk and scale distinctive to Fletcher Street in keeping with Objective 5 of Section 3.4.3.

The proposed works would not obstruct any significant views or vistas from the public domain and would be compliant with control 9 of Section 3.4.4 in the DCP.

The proposed works would not unreasonably obstruct existing principal views from the habitable rooms, balconies and private open space of neighbouring dwellings as outlined in Control 10 of Section 3.4.4 in the DCP.

Materials, finishes and colours

Part 3.4.5 of Woollahra HCA DCP sets out requirements in relation to materials, finishes and colours, which should be appropriate to the building type and style. New windows and doors are to be timber framed with walls to be rendered and painted with flat roof. The proposed materials are considered to be acceptable.

Open space and landscaping

The proposed works would ensure adequate open space is provided.

The site is currently deficient in deep soil landscaping. The application proposes to increase the deep soil landscaped area of the site. The additional deep soil landscaped area to the frontage would be beneficial to the streetscape.

Roofs and skylights

Control 1 of Section 3.4.8 requires roof form and cladding to be consistent with the significant building it adjoins. The proposed roof would be a flat roof and would not adversely impact on the significant item. The roof form would continue the style of roofing for rear additions within Australia Lane. The roof form can be considered acceptable.

Parking and garages

The existing garage at the rear is to be demolished and a new double garage constructed across the width of the property as an integral part of the new work. The garage is generally consistent with the requirements of Part 3.4.9 of the Woollahra HCA DCP.

Acoustic and visual privacy

The proposed works would include two windows located at the rear of the 1st floor facing Australia Lane. There would be a separation of 9metres from these windows to the rear boundary of 179 Edgecliff Road which would minimise the opportunity to overlook from the subject site into the private open space and habitable rooms of 179 Edgecliff Road.

To the south east of the site is a residential flat building located on 169 Edgecliff Road which is separated from the subject site by 9metres. It is off set to the south east from the subject site. There would be no unreasonable privacy impacts from the proposed works to this building.

The proposed rear windows would not comply with Council's controls as the bedroom windows would be located within 3metres of the street, but can be considered acceptable as they face onto Australia Lane not the predominant Fletcher Street.

The proposed balcony at the rear to the bedroom has been deleted in order to maintain privacy of the adjoining neighbours. **Refer to Condition C1(c).**

There would be no detrimental impact on the amenity of adjoining residents with regard to aural and visual privacy from the proposed windows.

Energy efficiency

The proposed works would meet the Basix Certificate Requirements complying with the Water, Thermal comfort and energy requirements.

13.6 Woollahra Access DCP

The proposal would satisfy the relevant requirements of the DCP.

13.7 Other DCPs, codes and policies

No other DCPs, codes and policies are applicable.

14. APPLICABLE REGULATIONS

Clause 92 of the EPA Regulation 2000 requires us to consider Australian Standard AS 2601-1991: The **demolition of structures**. The proposal would be covered by the original condition.

15. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts have been addressed elsewhere in this report.

16. THE SUITABILITY OF THE SITE

The subject site is suitable for the proposed development.

17. SUBMISSIONS

The proposal was advertised and notified in accordance with Council's Advertising and Notifications DCP. 2 submissions were received from:

Paul O'Sullivan & Federico Di Micoli
7/40 Smith Street
Surry Hills NSW 2010
(Owners:156 Fletcher Street, Woollahra)

Sheena Adamson
179 Edgecliff Road
Woollahra NSW 2025

The objectors raised the following issues:

- **Loss of Symmetry**-Proposed works would be visible from the front elevation.

The proposed works would only partially be seen from the front elevation and would not adversely impact on the symmetry of the pair.

- **Overshadowing**-reduction in sunlight into 156 Fletcher Street

There would be a minor loss of sunlight at the rear into 156 Fletcher Street. Refer to Building height, form, bulk, scale and character in Section 13.4

- **Visual Impact**-the proposed development will dominate and accentuate the negative impact on 156 Fletcher Street.

To reduce the visual impact from 156 Fletcher Street the landing on the first floor at the rear should be setback 800mm from the eastern boundary for a distance of 1.8metres in length, to protect the adjoining neighbour's amenity by creating building articulation. Refer to Condition C1 (a).

- **Loss of privacy**-proposed balcony at first floor bedroom would direct views into the rear garden of 156 Fletcher Street.

The proposed balcony has been conditioned to be non trafficable please refer to Condition C1 (d).

- **Loss of Privacy**-proposed rear window would create intrusion of privacy into rear window of 179 Edgecliff Road.

Refer to Acoustic and visual privacy in Section 13.4

The replacement application (as defined by Clause 90 of the *Environmental Planning and Assessment Regulation 2000*) was not renotified under clause 5.1 of the DCP because, having considered clause 9 of the DCP, the replacement application is substantially the same development as the original proposal and considered to have no greater environmental impact upon neighbours.

18. CONCLUSION - THE PUBLIC INTEREST

The proposal is acceptable against the relevant considerations under s79C and would be in the public interest.

19. RECOMMENDATION: Pursuant to Section 80(1) of the Environmental Planning and Assessment Act, 1979

THAT the Council, as the consent authority, grant development consent to Development Application No. 141/2007 for alterations and additions to rear of dwelling including new garage on land at 158 Fletcher Street Woollahra, subject to the following conditions:

A. General Conditions

A.1 Conditions

Consent is granted subject to the following conditions imposed pursuant to section 80 of the Environmental Planning & Assessment Act 1979 (“the *Act*”) and the provisions of the Environmental Planning and Assessment Regulation 2000 (“the *Regulation*”) such conditions being reasonable and relevant to the development as assessed pursuant to section 79C of the Act.

Standard Condition: A1

A.2 Definitions

Unless specified otherwise words have the same meaning as defined by the *Act*, the *Regulation* and the *Interpretation Act 1987* as in force at the date of consent.

Applicant means the applicant for this Consent.

Approved Plans mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

AS or *AS/NZS* means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

BCA means the Building Code of Australia as published by the Australian Building Codes Board as in force at the date of issue of any *Construction Certificate*.

Council means Woollahra Municipal Council

Court means the Land and Environment Court

Local native plants means species of native plant endemic to Sydney’s eastern suburbs (see the brochure titled “Local Native Plants for Sydney’s Eastern Suburbs published by the Southern Sydney Regional Organisation of Councils).

Stormwater Drainage System means all works, facilities and documentation relating to:

- a. The collection of stormwater,
- b. The retention of stormwater,
- c. The reuse of stormwater,
- d. The detention of stormwater,
- e. The controlled release of stormwater; and
- f. Connections to easements and public stormwater systems.

Owner means the owner of the *site* and successors in title to the *site*.

Owner Builder has the same meaning as in the *Home Building Act 1989*.

PCA means the *Principal Certifying Authority* under the *Act*.

Principal Contractor has the same meaning as in the *Act* or where a *principal contractor* has not been appointed by the *owner* of the land being developed *Principal Contractor* means the *owner* of the land being developed.

Professional Engineer has the same meaning as in the *BCA*.

Public Place has the same meaning as in the *Local Government Act 1993*.

Road has the same mean as in the *Roads Act 1993*.

SEE means the final version of the Statement of Environmental Effects lodged by the *Applicant*.

Site means the land being developed subject to this consent.

WLEP 1995 means *Woollahra Local Environmental Plan 1995*

Work for the purposes of this consent means:

- a. the use of land in connection with development,
- b. the subdivision of land,
- c. the erection of a building,
- d. the carrying out of any work,
- e. the use of any site crane, machine, article, material, or thing,
- f. the storage of waste, materials, site crane, machine, article, material, or thing,
- g. the demolition of a building,
- h. the piling, piling, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- i. the delivery to or removal from the *site* of any machine, article, material, or thing, or
- j. the occupation of the *site* by any person unless authorised by an *occupation certificate*.

Note: Interpretation of Conditions - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.

Standard Condition: A2

A.3 Approved Plans and supporting documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with the plans and supporting documents listed below as submitted by the Applicant and to which is affixed a Council stamp "Approved DA Plans" **unless modified by any following condition**. Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
A00B A01C A02B A03B A04B A05B A06B A07B A08B A09A A010B	Architectural Plans	Gordon and Valich	18 July 2007

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

Note: These plans and supporting documentation may be subject to conditions imposed under section 80A(1)(g) of the *Act* modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)
Standard Condition: A5

A.4 Ancillary Aspect of the Development (s80A(2) of the Act)

The owner must procure the repair, replacement or rebuilding of all road pavement, kerb, gutter, footway, footpaths adjoining the site or damaged as a result of work under this consent or as a consequence of work under this consent. Such work must be undertaken to Council's satisfaction in accordance with Council's "Specification for Roadworks, Drainage and Miscellaneous Works" dated January 2003 unless expressly provided otherwise by these conditions at the *owner's* expense.

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

A.5 Prescribed Conditions

Prescribed conditions in force under the *Act* and *Regulation* must be complied with.

Note: It is the responsibility of those acting with the benefit of this consent to comply with all prescribed conditions under the *Act* and the *Regulation*. Free access can be obtained to all NSW legislation at www.legislation.nsw.gov.au
Standard Condition: A30

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

B.1 Construction Certificate required prior to any demolition

Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is "commencement of erection of building" pursuant to section 81A(2) of the *Act*. In such circumstance all conditions in Part C and Part D of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the issue of a Construction Certificate, appointment of a PCA and Notice of Commencement under the *Act*.

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

B.2 Recording of significant or contributory buildings prior to any demolition

An archival record of the building and landscape elements to be demolished is to be submitted, to the satisfaction of Council's heritage officer, prior to the commencement of the demolition work and prior to the issue of a Construction certificate.

The archival record is to be completed by a heritage consultant listed by the NSW Heritage Office or by another suitably qualified consultant who must demonstrate a working knowledge of archival principles.

The archival record is to be bound in an A4 format, with drawings folded to suit and is to include the following:

- a. A copy of the final heritage report submitted with the development application,
- b. A site plan at a scale of 1:200 (or 1:500 if appropriate) of all structures and major landscape elements including their relationship to the street and adjoining properties; floor plans at scale of 1:100; postcard sized photographs of:
 - i. each elevation;
 - ii. each structure and landscape feature and significant parts of the property as defined in the submitted statement of significance;
 - iii. views to the subject property from each street and laneway or public space; and
 - iv. external and internal details as nominated in the assessment report by Council's heritage officer.
- c. Each photograph to be mounted, labelled and cross-referenced in accordance with recognised archival recording practice.
- d. The original, coloured, photographic set and one coloured photocopy are to be submitted to the satisfaction of Council's heritage officer prior to the commencement of demolition work and prior to the issue of a construction certificate. The original will be retained by Council and the coloured photocopy will be provided to the Woollahra Local History Library.

Standard Condition: B3

C. Conditions which must be satisfied prior to the issue of any construction certificate

C.1 Modification of details of the development (s80A(1)(g) of the Act)

The *approved plans* must be amended and the *Construction Certificate* plans and specification, required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation*, must detail:

- a. That the bathroom on the first floor level be setback from the western boundary the same distance as the adjoining bedrooms. A skylight may be inserted to allow for light into the bathroom.

- b. That the study on the first floor, be setback 800mm from the eastern boundary for a distance of 1.8metres measured from its southern end, to protect the adjoining neighbour's amenity.
- c. That the balcony (including its balustrade) to the southernmost first floor bedroom is deleted. The gravel garden over the garage is to be a non-trafficable roof. The parapet to the garage (along each of its sides) is to be no higher than 3000mm to reduce the bulk and scale.

Note: The effect of this condition is that it requires design changes and/or further information to be provided with the *Construction Certificate* drawings and specifications to address specific issues identified during assessment under section 79C of the *Act*.

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

Note: Clause 145 of the *Regulation* prohibits the issue of any *Construction Certificate* that is inconsistent with this consent.
Standard Condition: C4

C.2 Payment of Security, Levies and Fees (S80A(6) & S94 of the Act, Section 608 of the Local Government Act 1993)

The person(s) with the benefit of this consent must pay the following long service levy, security, development levy, and fees prior to the issue of any *construction certificate*, *subdivision certificate* or *occupation certificate*, as will apply.

The *certifying authority* must not issue any *Part 4A Certificate* until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees. Specifically

- a. prior to the issue of a *construction certificate*, where a construction certificate is required; or
- b. prior to the issue of a *subdivision certificate*, where only a subdivision certificate is required; or
- c. prior to the issue of an *occupation certificate* in any other instance.

Description	Amount	Indexed	Council Fee Code
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit - Making good any damage caused to any property of the <i>Council</i> as a consequence of the doing of anything to which the consent relates.	\$8000	No	T600
DEVELOPMENT LEVY under Woollahra Section 94A Development Contributions Plan 2005 This plan may be inspected at Woollahra Council or downloaded from our website www.woollahra.nsw.gov.au .			
Development Levy	\$3000 + Index Amount	Yes, quarterly	T94
Security Administration Fee	\$163	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$11163 Plus any relevant indexed amounts and long service levy		

Building & Construction Industry Long Service Payment

The Long Service Levy under Section 34 of the *Building & Construction Industry Long Service Payment Act, 1986*, must be paid and proof of payment provided to the *Certifying Authority* prior to the issue of any *Construction Certificate*.

Note: The Levy can be paid directly to the Long Services Payments Corporation or to Council. Further information can be obtained from the Long Service Payments Corporation's website <http://www.lspc.nsw.gov.au/> or by telephoning the Long Service Payments Corporation on 13 14 41.

How must the payments be made?

Payments must be made by:

- a. Cash deposit with Council,
- b. Credit card payment with Council, or
- c. Bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:

- a. the guarantee is by an Australian bank for the amount of the total outstanding contribution;
- b. the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first;
- c. the bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent; and
- d. the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

How will the section 94A levy be indexed?

To ensure that the value the development levy is not eroded over time by increases in costs, the proposed cost of carrying out development (from which the development levy is calculated) will be indexed either annually or quarterly (see table above). Clause 3.13 of the Woollahra Section 94A Development Contributions Plan 2005 sets out the formula and index to be used in adjusting the s.94A levy.

Do you need HELP indexing the levy?

Please contact our customer service officers. Failure to correctly calculate the adjusted the development levy will delay the issue of any Part 4A Certificate and could void any Part 4A Certificate (construction certificate, subdivision certificate, or occupation certificate).

Deferred periodic payment of section 94A levy under the Woollahra Section 94A Development Contributions Plan 2005

Where the applicant makes a written request supported by reasons for payment of the section 94A levy other than as required by clause 3.9, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:

- a. the reasons given;
- b. whether any prejudice will be caused to the community deriving benefit from the public facilities;
- c. whether any prejudice will be caused to the efficacy and operation of this plan; and
- d. whether the provision of public facilities in accordance with the adopted works schedule will be adversely affected.

Council may, as a condition of accepting deferred or periodic payment, require the provision of a bank guarantee where:

- a. the guarantee is by an Australian bank for the amount of the total outstanding contribution;

- b. the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first;
- c. the bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent; and
- d. the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

Any deferred or outstanding component of the section 94A levy will be adjusted in accordance with clause 3.13 of the plan. The applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.

Standard Condition: C5

C.3 Road and Public Domain Works – Council approval required

This development consent does NOT give approval to works or structures over, on or under public roads or footpaths excluding minor works subject to separate Road Opening Permit.

Detailed plans and specifications of all works (including but not limited to structures, road works, driveway crossings, footpaths and stormwater drainage) within existing roads, must be submitted to and approved by *Council* under the *Roads Act* 1993, before the issue of any *Construction Certificate*.

Specific works include:

- Full width vehicular crossings having a width of 5m in accordance with Council's standard drawing RF2.

Access levels and grades to and within the development must match access levels and grades within the road approved under the *Roads Act* 1993.

All public domain works must comply with Council's "*Specification for Roadworks, Drainage and Miscellaneous Works*" dated January 2003 unless expressly provided otherwise by these conditions. This specification can be downloaded from www.woollahra.nsw.gov.au.

Note: To ensure that this work is completed to Council's satisfaction, this consent by separate condition, may impose one or more Infrastructure Works Bonds.

Note: *Road* has the same meaning as in the *Roads Act* 1993.

Note: The intent of this condition is that the design of the road, footpaths, driveway crossings and public stormwater drainage works must be detailed and approved prior to the issue of any *Construction Certificate*. Changes in levels may arise from the detailed design of buildings, road, footpath, driveway crossing grades and stormwater. Changes required under *Road Act* 1993 approvals may necessitate design and levels changes under this consent. This may in turn require the applicant to seek to amend this consent.

Standard Condition: C13

C.4 Structural Adequacy of Existing Supporting Structures

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

Note: This condition is imposed to ensure that the existing structure structural is able to support the additional loads proposed.
Standard Condition: C35

C.5 Soil and Water Management Plan – Submission & Approval

The *principal contractor* or *owner builder* must submit to the *Certifying Authority* a soil and water management plan complying with:

- a. “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and
- b. “*Managing Urban Stormwater - Soils and Construction*” published by the NSW Department of Housing 4th Edition” (*The Blue Book*’).

Where there is any conflict *The Blue Book* takes precedence. The *Certifying Authority* must be satisfied that the soil and water management plan complies with the publications above prior to issuing any *Construction Certificate*.

Note: This condition has been imposed to eliminate potential water pollution and dust nuisance.

Note: The International Erosion Control Association – Australasia <http://www.austieca.com.au/> lists consultant experts who can assist in ensuring compliance with this condition. Where erosion and sedimentation plans are required for larger projects it is recommended that expert consultants produce these plans.

Note: The “*Do it Right On Site, Soil and Water Management for the Construction Industry*” publications can be down loaded free of charge from <http://www.woollahra.nsw.gov.au/> .

Note: Pursuant to clause 161(1)(a)(5) of the *Regulation* an *Accredited Certifier* may satisfied as to this matter.
Standard Condition: C25

C.6 Bicycle, Car and Commercial Parking Details

The *Construction Certificate* plans and specifications required by clause 139 of the *Regulation*, must include detailed plans and specifications for all bicycle, car and commercial vehicle parking in compliance with AS2890.3:1993 *Parking Facilities - Bicycle Parking Facilities*, AS/NZS 2890.1:2004 : *Parking Facilities - Off-Street Car Parking* and AS 2890.2:2002 – *Off-Street Parking: Commercial Vehicle Facilities* respectively.

Access levels and grades must comply with access levels and grade required by Council under the *Roads Act* 1993.

The *Certifying Authority* has no discretion to reduce or increase the number or area of car parking or commercial parking spaces required to be provided and maintained by this consent.
Standard Condition: C45

C.7 Stormwater discharge to existing *Stormwater Drainage System* (Clause 25(2) WLEP 1995)

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

- a. the location of the existing *Stormwater Drainage System* including all pipes, inspection openings, surface drains, pits and their discharge location,
- b. the state of repair of the existing *Stormwater Drainage System*,
- c. any remedial works required to upgrade the existing *Stormwater Drainage System* to comply with the BCA,

- d. any remedial works required to upgrade the existing *Stormwater Drainage System* crossing the footpath and any new kerb outlets,
- e. any new *Stormwater Drainage System* complying with the BCA,
- f. interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath,
- g. any rainwater tank required by BASIX commitments including their overflow connection to the *Stormwater Drainage System*, and
- h. general compliance with the Council's draft Development Control Plan Stormwater Drainage Management (draft version 1, public exhibition copy dated 23 August 2004)

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

All *Stormwater Drainage System* work within any road or public place must comply with Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* dated January 2003.

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

Note: Stormwater Drainage Systems must not discharge to any Sewer System. It is illegal to connect stormwater pipes and drains to the sewerage system as this can overload the system and cause sewage overflows. See:

<http://www.sydneywater.com.au/Publications/Factsheets/SewerfixLookingAfterYourSewerPipes.pdf>

Note: Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* dated January 2003 and Council's draft Development Control Plan Stormwater Drainage Management (draft version 1, public exhibition copy dated 23 August 2004) can be downloaded from Council's website:

www.woollahra.nsw.gov.au

Standard Condition: C49

C.8 BASIX commitments

The *applicant* must submit to the *Certifying Authority* *BASIX Certificate* No.125978S with any application for a *Construction Certificate*.

Note: Where there is any proposed change in the BASIX commitments the applicant must submit of a new *BASIX Certificate* to the *Certifying Authority* and Council. If any proposed change in the BASIX commitments are inconsistent with development consent (See: Clauses 145 and 146 of the *Regulation*) the applicant will be required to submit an amended development application to *Council* pursuant to section 96 of the Act.

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

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

Standard Condition: C7

D. Conditions which must be satisfied prior to the commencement of any development work

D.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

For the purposes of section 80A (11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:

- a. that the work must be carried out in accordance with the requirements of the Building Code of Australia,
- b. in the case of residential building work for which *the Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

- a. to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4),
- or
- b. to the erection of a temporary building.

In this condition, a reference to the *BCA* is a reference to that code as in force on the date the application for the relevant construction certificate is made.

Note: This condition must be satisfied prior to commencement of any work in relation to the contract of insurance under the Home Building Act 1989. This condition also has effect during the carrying out of all building work with respect to compliance with the Building Code of Australia.
Standard Condition: D1

D.2 Site Signs

The *Principal Contractor* or *owner builder* must ensure that the sign required by clauses 98A and 227A of the *Regulation* is erected and maintained at all times.

“Erection of signs

1. For the purposes of section 80A (11) of the *Act*, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
2. A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - a. showing the name, address and telephone number of the principal certifying authority for the work, and
 - b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - c. stating that unauthorised entry to the work site is prohibited.
3. Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
4. This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
5. This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State’s building laws.”

Note: *PCA* and *principal contractors* must also ensure that signs required by this clause are erected and maintained (see clause 227A which imposes a penalty exceeding \$1,000).

Note: If *Council* is appointed as the *PCA* it will provide the sign to the *principal contractor* or *owner builder* who must ensure that the sign is erected and maintained as required by Clause 98A of the *Regulation*.
Standard Condition: D12

D.3 Erosion and Sediment Controls – Installation

The *principal contractor* or *owner builder* must install and maintain water pollution, erosion and sedimentation controls in accordance with:

- a. The *Soil and Water Management Plan* if required under this consent;
- b. “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and
- c. “*Managing Urban Stormwater - Soils and Construction*” published by the NSW Department of Housing 4th Edition” (‘The Blue Book’).

Where there is any conflict The Blue Book takes precedence.

Note: The International Erosion Control Association – Australasia (<http://www.austieca.com.au/>) lists consultant experts who can assist in ensuring compliance with this condition. Where Soil and Water Management Plan is required for larger projects it is recommended that this be produced by a member of the International Erosion Control Association – Australasia.

Note: The “Do it Right On Site, Soil and Water Management for the Construction Industry” publications can be down loaded free of charge from www.woollahra.nsw.gov.au.

Note: A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the *Protection of the Environment Operations Act 1997* **without any further warning**. It is a criminal offence to cause, permit or allow pollution.

Note: Section 257 of the *Protection of the Environment Operations Act 1997* provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution” **Warning**, irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.
Standard Condition: D14

D.4 Toilet Facilities

Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided:

- a. must be a standard flushing toilet, and
- b. must be connected to a public sewer, or
- c. if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the council, or
- d. if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the council.

The provision of toilet facilities in accordance with this condition must be completed before any other work is commenced.

In this condition:

accredited sewage management facility means a sewage management facility to which Division 4A of Part 3 of the *Local Government (Approvals) Regulation 1993* applies, being a sewage management facility that is installed or constructed to a design or plan the subject of a certificate of accreditation referred to in clause 95B of the *Local Government (Approvals) Regulation 1993*.

approved by the council means the subject of an approval in force under Division 1 of Part 3 of the *Local Government (Approvals) Regulation 1993*.

public sewer has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

sewage management facility has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

Note: This condition does not set aside the requirement to comply with Workcover NSW requirements.
Standard Condition: D13

D.5 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

The erection of the building in accordance with this development consent must not be commenced until:

- a. a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited Certifier, and
- b. the person having the benefit of the development consent has:
 - i. appointed a principal certifying authority for the building work, and
 - ii. notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- b1. the principal certifying authority has, no later than 2 days before the building work commences:
 - i. notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - ii. notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- b2. the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - i. appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - ii. notified the principal certifying authority of any such appointment, and
 - iii. unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and

- iv. given at least 2 days' notice to the council of the person's intention to commence the erection of the building.

Note: *Building* has the same meaning as in section 4 of the *Act* and includes part of a building and any structure or part of a structure.

Note: *New building* has the same meaning as in section 109H of the *Act* and includes an altered portion of, or an extension to, an existing building.

Note: The commencement of demolition works associated with an altered portion of, or an extension to, an existing building is considered to be the commencement of building work requiring compliance with section 82A(2) of the *Act* (including the need for a *Construction Certificate*) prior to any demolition work. See: *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.

Note: *Construction Certificate* Application, *PCA Service Agreement* and *Notice of Commencement* forms can be downloaded from Council's website www.woollahra.nsw.gov.au.

Note: It is an offence for any person to carry out the erection of a *building* in breach of this condition and in breach of section 81A(2) of the *Act*.
Standard Condition: D15

D.6 Notification of Home Building Act 1989 requirements

- a. For the purposes of section 80A (11) of the *Act*, the requirements of this condition are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the Home Building Act 1989.
- b. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
- i. in the case of work for which a *principal contractor* is required to be appointed:
- the name and licence number of the principal contractor, and
 - the name of the insurer by which the work is insured under Part 6 of that *Act*,
- ii. in the case of work to be done by an owner-builder:
- the name of the owner-builder, and
 - if the owner-builder is required to hold an owner-builder permit under that *Act*, the number of the owner-builder permit.
- c. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.
- d. This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the *Act*, to comply with the technical provisions of the State's building laws.

Standard Condition: D17

D.7 Establishment of boundary location, building location and datum

Prior to the commencement of any work the principal contractor or owner builder must ensure that a surveyor registered under the *Surveying Act 2002* sets out:

- a. the boundaries of the *site* by permanent marks (including permanent recovery points);
- b. the location and level of foundation excavations, footings, walls and slabs by permanent marks, pegs or profiles relative to the boundaries of the land and relative to Australian Height Datum (“AHD”) in compliance with the approved plans;
- c. establishes a permanent datum point (bench mark) within the boundaries of the *site* relative to AHD; and
- d. provides a copy of a survey report by the registered surveyor detailing, the title boundaries, pegs/profiles, recovery points and bench mark locations as established pursuant to this condition to the PCA.

Note: Where the *principal contractor* or *owner builder* notes any discrepancy between the approved development consent and the *Construction Certificate*, especially in relation to the height, location or external configuration of the building (but not limited to these issues) the *principal contractor* or *owner builder* should not proceed until satisfied that the variations as shown are consistent with the consent. Failure to do so may result in a breach of development consent.

Note: On larger developments, or where boundary redefinition is required, the placement of new State Survey Marks as permanent marks should be considered by the registered surveyor.
Standard Condition: D18

E. Conditions which must be satisfied during any development work

E.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

For the purposes of section 80A (11) of the Act, the following condition is prescribed in relation to a development consent for development that involves any building work:

- a. that the work must be carried out in accordance with the requirements of the Building Code of Australia,
- b. in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

- a. to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4) of the Regulation, or
- b. to the erection of a temporary building.

In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant construction certificate is made.

Standard Condition: E1

E.2 Compliance with Australian Standard for Demolition

Demolition of buildings and structures must comply with Australian Standard AS 2601—1991: The Demolition of Structures, published by Standards Australia, and as in force at 1 July 1993.

Standard Condition: E2

E.3 Critical Stage Inspections

Critical stage inspections must be called for by the *principal contractor* or *owner builder* as required by the PCA, any PCA service agreement, the *Act* and the *Regulation*.

Work must not proceed beyond each critical stage until the PCA is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the *Act*. *critical stage inspections* means the inspections prescribed by the *Regulations* for the purposes of section 109E(3)(d) of the *Act* or as required by the *PCA* and any PCA Service Agreement.

Note: The PCA may require inspections beyond mandatory critical stage inspections in order that the PCA be satisfied that work is proceeding in accordance with this consent.

Note: The PCA may, in addition to inspections, require the submission of *Compliance Certificates*, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.

Standard Condition: E5

E.4 Hours of Work –Amenity of the neighbourhood

- a. No *work* must take place on any Sunday or public holiday,
- b. No *work* must take place before 7am or after 5pm any weekday,
- c. No *work* must take place before 7am or after 1pm any Saturday, and
- d. No piling, piercing, cutting, boring, drilling, rock breaking, rock sawing, jack hammering or bulk excavation of land or loading of material to or from trucks must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday.
- e. No rock excavation being cutting, boring, drilling, breaking, sawing, jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

This condition has been imposed to mitigate the impact of work upon the amenity of the neighbourhood. Impact of work includes, but is not limited to, noise, vibration, dust, odour, traffic and parking impacts.

Note: The use of noise and vibration generating plant and equipment and vehicular traffic, including trucks in particular, significantly degrade the amenity of neighbourhoods and more onerous restrictions apply to these activities. This more invasive work generally occurs during the foundation and bulk excavation stages of development. If you are in doubt as to whether or not a particular activity is considered to be subject to the more onerous requirement (9am to 4pm weekdays and 9am to 1pm Saturdays) please consult with Council.

Note: Each and every breach of this condition by any person may be subject to separate penalty infringement notice or prosecution.

Note: The delivery and removal of plant, equipment and machinery associated with wide loads subject to RTA and Police restrictions on their movement outside the approved hours of work will be considered on a case by case basis.

Note: Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the *Protection of the Environment Operations Act 1997*, the *Protection of the Environment Operations (Noise Control) Regulation 2000*.

Note: EPA Guidelines can be downloaded from <http://www.epa.nsw.gov.au/noise/nglg.htm>.

Note: See http://www.epa.nsw.gov.au/resources/ci_build_sheet7.pdf
Standard Condition: E6

E.5 Support of adjoining land and buildings

A person must not do anything on or in relation to the *site* (the supporting land) that removes the support provided by the supporting land to any other land (the supported land) or building (the supported building).

For the purposes of this condition, supporting land includes the natural surface of the site, the subsoil of the site, any water beneath the site, and any part of the site that has been reclaimed.

Note: This condition does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is considered necessary upon any adjoining or supported land by any person the *principal contractor* or *owner builder* must obtain:

- a) the consent of the owners of such adjoining or supported land to trespass or encroach, or
- b) an access order under the Access to Neighbouring Land Act 2000, or
- c) an easement under section 88K of the *Conveyancing Act 1919*, or
- d) an easement under section 40 of the *Land & Environment Court Act 1979* as appropriate.

Note: Section 177 of the *Conveyancing Act 1919* creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

Note: Clause 20 of the *Roads (General) Regulation 2000* prohibits excavation in the vicinity of roads as follows: “**Excavations adjacent to road** - A person must not excavate land in the vicinity of a road if the excavation is capable of causing damage to the road (such as by way of subsidence) or to any work or structure on the road.” Separate approval is required under the *Roads Act 1993* for any underpinning, shoring, soil anchoring (temporary) or the like within or under any road. Council will not give approval to permanent underpinning, shoring, soil anchoring within or under any road.

Note: The encroachment of work or the like is a civil matter of trespass or encroachment and Council does not adjudicate or regulate such trespasses or encroachments except in relation to encroachments upon any road, public place, crown land under Council’s care control or management, or any community or operational land as defined by the *Local Government Act 1993*.
Standard Condition: E13

E.6 Check Surveys - boundary location, building location, building height and stormwater drainage system relative to Australian Height Datum

The *Principal Contractor* or *Owner Builder* must ensure that a surveyor registered under the *Surveying Act 2002* carries out check surveys and provides survey certificates confirming the location of the building(s) and the stormwater drainage system relative to the boundaries of the *site* and that the height of buildings and the stormwater drainage system relative to Australian Height Datum complies with this consent at the following critical stages.

The *Principal Contractor* or *Owner Builder* must ensure that work must not proceed beyond each of the following critical stages until compliance has been demonstrated to the *PCA*’s satisfaction:

- a. Upon the completion of foundation walls prior to the laying of any floor or the pouring of any floor slab and generally at damp proof course level;

- b. Upon the completion of formwork for floor slabs prior to the laying of any floor or the pouring of any concrete and generally at each storey;
- c. Upon the completion of formwork or framework for the roof(s) prior to the laying of any roofing or the pouring of any concrete roof;
- d. Upon the completion of formwork and steel fixing prior to pouring of any concrete for any ancillary structures, swimming pool or spa pool or the like;
- e. Driveway transitions and crest thresholds prior to pavement of driveways;
- f. Stormwater Drainage Systems prior to or post construction confirming location, height and capacity of works.

Note: This condition has been imposed to ensure that development occurs in the location and at the height approved under this consent.
Standard Condition: E20

E.7 Placement and use of Skip Bins

The *principal contractor* or *owner builder* must ensure that all waste storage containers, including but not limited to skip bins, must be stored within the site unless:

- a. Activity Approval has been issued by Council under section 94 of the *Local Government Act 1993* to place the waste storage container in a public place, and
- b. Where located on the road it is located only in a positions where a vehicle may lawfully park in accordance with the Australian Road Rules to the extent they are adopted under the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*.

Note: Waste storage containers must not be located on the footpath without a site specific activity approval. Where such site specific activity approval is granted a 1.5m wide clear path of travel is maintained free of any trip hazards.
Standard Condition: E21

E.8 Dust Mitigation

Dust mitigation must be implemented in accordance with “*Dust Control - Do it right on site*” published by the Southern Sydney Regional Organisation of Councils.

This generally requires:

- a. Dust screens to all hoardings and site fences.
- b. All stockpiles or loose materials to be covered when not being used.
- c. All equipment, where capable, being fitted with dust catchers.
- d. All loose materials being placed bags before placing into waste or skip bins.
- e. All waste and skip bins being kept covered when not being filled or emptied.
- f. The surface of excavation work being kept wet to minimise dust.
- g. Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

Note 1: “*Dust Control - Do it right on site*” can be down loaded free of charge from Council’s web site www.woollahra.nsw.gov.au or obtained from Council’s office.

- Note 2:** Special precautions must be taken when removing asbestos or lead materials from development sites. Additional information can be obtained from www.workcover.nsw.gov.au and www.epa.nsw.gov.au. Other specific condition and advice may apply.
- Note 3:** Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution.
Standard Condition: E23

E.9 Maintenance of Vehicular and Pedestrian Safety and Access

The *principal contractor* or *owner builder* and any other person acting with the benefit of this consent must:

- a. Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.
- b. Not use the road or footway for the storage of any article, material, matter, waste or thing.
- c. Not use the road or footway for any *work*.
- d. Keep the road and footway in good repair free of any trip hazard or obstruction.
- e. Not stand any plant and equipment upon the road or footway.

This condition does not apply to the extent that a permit or approval exists under the section 73 of the Road Transport (Safety and Traffic Management) Act 1999, section 138 of the Roads Act 1993 or section 94 of the Local Government Act 1993 except that at all time compliance is required with:

- a. Australian Standard AS 1742 (Set) Manual of uniform traffic control devices and all relevant parts of this set of standards.
- b. Australian Road Rules to the extent they are adopted under the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*.

Note: Section 73 of the *Road Transport (Safety and Traffic Management) Act 1999* allows the Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose. Any road closure requires Police approval.

Note: Section 138 of the *Roads Act 1993* provides that a person must not:

- (a) erect a structure or carry out a work in, on or over a public road, or
- (b) dig up or disturb the surface of a public road, or
- (c) remove or interfere with a structure, work or tree on a public road, or
- (d) pump water into a public road from any land adjoining the road, or
- (e) connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.

Note: Section 68 of the *Local Government Act 1993* provides that a person may carry out certain activities only with the prior approval of the council including:

Part C Management of Waste:

- “1. For fee or reward, transport waste over or under a public place
2. Place waste in a public place
3. Place a waste storage container in a public place.”

Part E Public roads:

- “1. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
2. Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.”

Any work in, on or over the Road or Footway requires *Council* Approval and in the case of classified roads the NSW Roads and Traffic Authority. Road includes that portion of the road uses as a footway.
Standard Condition: E7

E.10 Maintenance of Environmental Controls

The *principal contractor* or *owner builder* must ensure that the following monitoring, measures and controls are maintained:

- a. Erosion and sediment controls,
- b. Dust controls,
- c. Dewatering discharges,
- d. Noise controls;
- e. Vibration monitoring and controls;
- f. Ablutions;

Note 1: See http://www.epa.nsw.gov.au/small_business/builders.htm for additional information.
Standard Condition: E11

E.11 Erosion and Sediment Controls – Maintenance

The *principal contractor* or *owner builder* must maintain water pollution, erosion and sedimentation controls in accordance with:

- a. The Soil and Water Management Plan required under this consent;
- b. “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and
- c. “*Managing Urban Stormwater - Soils and Construction*” published by the NSW Department of Housing 4th Edition (“*The Blue Book*”).

Where there is any conflict *The Blue Book* takes precedence.



Note 1: A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act 1997 without any further warning. It is a criminal offence to cause, permit or allow pollution.

Note 2: Section 257 of the Protection of the Environment Operations Act 1997 provides that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”. **Warning,** irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of the occupation of the land being developed whether or not they actually cause the pollution.
Standard Condition: E15

E.12 Compliance with Council’s Specification for Roadworks, Drainage and Miscellaneous Works Road works and work within the Road and Footway

All work carried out on assets which are under Council ownership or will revert to the ownership, care, control or management of Council in connection with the *development* to which this consent relates must comply with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* dated January 2003.

The *owner, principal contractor or owner builder* must meet all costs associated with such works.

This condition does not set aside the need to obtain relevant approvals under the *Roads Act 1993* or *Local Government Act 1993* for works within Roads and other public places.

Note: A copy of Council's "*Specification for Roadworks, Drainage and Miscellaneous Works*" can be downloaded free of charge from Council's website www.woollahra.nsw.gov.au
Standard Condition: E24

F. Conditions which must be satisfied prior to any occupation or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)

F.1 Occupation Certificate (section 109M of the Act)

A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 109H (4) of the *Act*) unless an occupation certificate has been issued in relation to the building or part.

Note: New building includes an altered portion of, or an extension to, an existing building.
Standard Condition: F1

G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate

No relevant conditions.

H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (s109C(1)(c))

H.1 Removal of Ancillary Works and Structures

The *principal contractor or owner* must remove from the land and any adjoining public place:

- a. The site sign;
- b. Ablutions;
- c. Hoarding;
- d. Scaffolding; and
- e. Waste materials, matter, article or thing.

Note: This condition has been imposed to ensure that all ancillary matter is removed prior to the issue of the *Final Occupation Certificate*.
Standard Condition: H12

H.2 Road Works (including footpaths)

The following works must be completed to the satisfaction of Council, in compliance with Council's "Specification for Roadworks, Drainage and Miscellaneous Works" dated January 2003 unless expressly provided otherwise by these conditions at the *principal contractor's* or *owner's* expense:

- a. stormwater pipes, pits and connections to public stormwater systems within the *road*;
- b. driveways and vehicular crossings within the *road*;
- c. removal of redundant driveways and vehicular crossings;
- d. new footpaths within the *road*;
- e. new or replacement street trees;
- f. new footway verges, where a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street.
- g. new or reinstated kerb and guttering within the *road*; and
- h. new or reinstated road surface pavement within the *road*.

Note: Security held by Council pursuant to section 80A(6) of the Act will not be release by Council until compliance has been achieved with this condition. An application for refund of security must be submitted with the *Final Occupation Certificate* to Council. This form can be downloaded from Council's website www.woollahra.nsw.gov.au or obtained from Council's customer service centre.
Standard Condition: H13

H.3 Fulfillment of BASIX commitments – Clause 154B of the Regulation

All BASIX commitments must be effected in accordance with the BASIX Certificate No. 125978S.

Note: Clause 154B(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A *certifying authority* must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."
Standard Condition: H7

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

I.1 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. 125978S.

Note: This condition affects successors in title with the intent that environmental sustainability measures must be maintained for the life of development under this consent.
Standard Condition: I7

J. Miscellaneous Conditions

No relevant conditions.

K. Advisings

K.1 Criminal Offences – Breach of Development Consent & Environmental laws

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

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

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

Warnings as to potential maximum penalties

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

Warning as to enforcement and legal costs

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

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

Note: The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of the *Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. You can obtain further information from the following web sites:

<http://www.theshopfront.org/documents/ConvictionsCriminalRecords.pdf> and the Attorney General's www.agd.nsw.gov.au.

Standard Advising: K1

K.2 Builders Licences and Owner Builders Permits

Section 81A of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an **owner-builder**, must appointed a *principal contractor* for residential building work who must be the holder of a contractor licence.

Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder):

<http://www.dft.nsw.gov.au/building.html> .

The Owner(s) must appoint the PCA. The PCA must check that Home Building Act insurance is in place before the commencement of building work. The Principal Contractor (Builder) must provide the Owners with a certificate of insurance evidencing the contract of insurance under the Home Building Act 1989 for the residential building work.

Standard Condition: K5

K.3 Workcover requirements

The *Occupational Health and Safety Act 2000 No 40* and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

Note: Further information can be obtained from Workcover NSW's website:

<http://www.workcover.nsw.gov.au/Industry/Construction/default.htm> or through their head office:

Location: Workcover NSW, 92-100 Donnison Street, GOSFORD 2250 Postal address: WorkCover NSW, Locked Bag 2906, LISAROW 2252, Phone (02) 4321 5000, Fax (02) 4325 4145.

Standard Condition: K7

K.4 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact:

Mark Schofield, Team Central Leader on (02) 9391 7145

However, if you wish to pursue your rights of appeal in the Land & Environment Court you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, site hearings and the use of Court Appointed Experts, instead of a full Court hearing.

This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the Section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed commissioner having the full authority to completely determine the matter at the conference.

Standard Condition: K14

K.5 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 80A of the *Act*.

The securities will not be released until a *Final Occupation Certificate* has lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council's requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council's requirements.

Council will only release the security upon being satisfied that all damage or all works, the purpose for which the security has been held have been remedied or completed to Council's satisfaction as the case may be.

Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed.

Upon completion of each section of road, drainage and landscape work to Council's satisfaction, 90% of the Bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.

Note: The Application for Refund of Security form can be downloaded from

<http://www.woollahra.nsw.gov.au/pdf/Forms/Planning/RefundofSecurity.pdf>

Standard Condition: K15

K.6 Owner Builders

Under the *Home Building Act 1989* any property owner who intends undertaking construction work to a dwelling house or dual occupancy to the value of \$12,000 or over must complete an approved education course and obtain an owner-builder permit from the Office of Fair Trading. See www.fairtrading.nsw.gov.au.

Standard Condition: K18

Ms B Thomas
ASSESSMENT OFFICER

Mark Schofield
TEAM LEADER

ANNEXURES

1. Plans and elevation
2. Development Engineer Referral Comments
3. Heritage Officer Referral Comments

APPLICATION ASSESSMENT PANEL SITE INSPECTION REPORT

ITEM No.	D7
FILE No.	DA 190/2002/3
ADDRESS:	550 New South Head Road, Rose Bay
PROPOSAL:	Internal and external modifications
TYPE OF CONSENT:	Local Development
APPLICANT:	Mr J G Curtis
OWNER:	Commonwealth of Australia
DATE LODGED:	22 September 2006
AUTHOR:	Mr S Taylor

Site Inspection

The subject Development Application was considered by the Application Assessment Panel on Tuesday 12 June 2007. The panel resolved:

“THAT Development Application No. 190/2002 Part 3 for a Section 96 Application - Proposed Modification - Internal & external modifications on land at No. 550 New South Head Road, Rose Bay, be deferred to a future meeting of the Application Assessment Panel to allow: -

- 1. The Panel to carry out a site inspection*
- 2. The applicant to supply full details of the shade structure (including width, length and height)*
- 3. The applicant to provide information on the need to increase the floor height*
- 4. The extent of unauthorised works to be documented.”*

A site inspection in relation to this Development Application was conducted on Monday 6 August, 2007 with the following staff present:

Present: Application Assessment Panel
 T Tuxford (Manager – Customer Services & Marketing) (Chair)
 A Coker (Director – Planning & Development)
 C Bluett (Manager – Strategic Planing)

Staff: S Taylor (Assessment Officer)

Apologies: None.

Consideration

The Panel inspected the Tennis Centre building at 550 New South Head Road, Rose Bay (subject premises) and the objectors property located opposite the subject site (3/669 New South Head Road, Rose Bay).

A view assessment was undertaken from the outdoor terrace and kitchen and dining rooms on the first floor of the building (Unit 3). The Panel indicated that the proposed modifications would have a negligible impact upon view loss from the objectors' property when compared with the approved plans and would not warrant refusal of the Section 96 application.

Recommendation

THAT Council, as the consent authority, modify development consent to DA 190/2002/3 for the renovation of the existing club house and construction of a café within the complex on land at 550 New South Head Road, Rose Bay, in the following manner: -

- A. THAT Council, as the consent authority, modify development consent to DA 190/2002/3 for the renovation of the existing club house and construction of a café within the complex on land at 550 New South Head Road, Rose Bay, in the following manner: -

The modification of Condition No. 1: -

1. Approved Section 96 Plans

This consent relates to the work, shown in colour, on plans numbered LP-DA-07 to LP-DA-20 (issue A) inclusive, dated 25 January 2002 and drawn by Alex Schumack, all of which carry a Council stamp "**Approved DA Plans**" and the signature of a Council officer, and as amended by the works, shown in colour, on plans numbered ASB-001 (Issue A and dated 15 November 2005, and plans numbered LPS96-002, LPS96-003, LPS96-004, LPS96-005, LPS96-007, LPS96-008 and LPS96-009 and dated 9 September 2006, and the plan numbered LPS96-006 and dated 7 May 2007, all of which are drawn by Alex Shumack Architect and carry a Council stamp "**Approved Section 96 Plans**" and the signature of a Council officer, except where amended by the following conditions.

The addition of Condition Nos. 57, 58, 59 and 60: -

57. Pram Ramp

To ensure a suitable level of accessibility, a pram ramp is installed at the intersection of the pathway from the development to the car park road (as indicated on plan numbered LPS96-002). Details are to be included in the application for a Construction Certificate.

58. Paving

The infill paving is to match the existing paving and is undertaken to remove the 90° directional changes in the existing pathway in the pathway area adjacent to the 'new service yard'. Details are to be included in the application for a Construction Certificate.

59. Height of building

The height of the tennis building is not to exceed RL 9.407 as measured to the top of the sail structure and RL 6.366 as measured to the FFL of the roof terrace.

60. Other structures

No other shade structures, including umbrellas, are to be installed on the roof top terrace.

B. THAT, as the unauthorised works are considered to be satisfactory with regard to the relevant objectives and controls of Woollahra LEP 1995 and Woollahra RDCP 2003, Council take no action to require these works to be removed subject to the owners making an application for, and Council issuing, a building certificate under Section 149A-149G of Environmental Planning and Assessment Act 1979 for the works. The required building certificate application is to be submitted to Council within twenty (28) days of this determination and is to be accompanied by the following;

- full works as executed plans, duly coloured showing all works that have been undertaken without prior Council consent
- a certificate from a practising structural engineer certifying the structural adequacy of the works that have been undertaken without prior Council consent. Such certificate should also certify the impact of the works that have been undertaken on the structural adequacy of the existing building
- a survey report prepared by a registered surveyor, showing the location of all structures on the subject property relative to the boundaries of the site.

C. THAT this matter be referred to the Manager – Compliance to take appropriate action under Part 6 of the Environmental Planning and Assessment Act 1979 in accordance with Council's Policy on Unauthorised Uses, Buildings and Works for failure to obtain Council's consent prior to carrying out the unauthorised works.

Annexure

Supplementary Assessment Report containing the following additional following additional annexed items: -

1. Additional plan showing RLs and deletion of kitchen exhaust
2. Original assessment report
3. Supplementary assessment report
4. Photographs depicting the need to increase the FFL of the roof
5. Plans and elevations