

# Application Assessment Panel

**Agenda:** *Application Assessment Panel*

**Date:** *Tuesday 9 September 2008*

**Time:** *3.00pm*

**Part:** *One of One Part*

**Item:** *D1 to D4*

## **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

1 September 2008

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

CC: The Mayor  
All Councillors

### **Application Assessment Panel Meeting – 9 September 2008**

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 9 September 2008 at 3.00pm.**

Gary James  
General Manager

# Meeting Agenda

## Part One of One Part

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 2 September 2008	1
D2	DA926/2001 Part 4 – 62 Drumalbyn Road, Bellevue Hill – Section 96 Application Proposed external modifications – 2/5/2008 <b>*See Recommendation Page 3</b>	2-23
D3	DA263/2007 Part 3 – 62 Wunulla Road, Point Piper – Section 96 Application – Proposed modification to basement carpark, swimming pool & the building – 22/4/2008 <b>*See Recommendation Page 41</b>	24-53
D4	DA519/2007 – 3 Lennox Street, Bellevue Hill – Section 82A Review of Refusal – 28/5/2008 <b>*See Recommendation Page 65</b>	54-88

**Item No:** D1 Delegated to Committee  
**Subject:** **Confirmation of Minutes of Meeting held on 2 September 2008**  
**Author:** Les Windle, Manager - Governance  
**File No:** See Application Assessment Panel Minutes  
**Reason for Report:** The Minutes of the Meeting of Tuesday 2 September 2008 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 2 September 2008 be taken as read and confirmed.

Les Windle  
Manager - Governance

## SECTION 96 APPLICATION ASSESSMENT REPORT

<b>ITEM No.</b>	D2
<b>FILE No.</b>	DA 926/2001/4
<b>ADDRESS:</b>	62 Drumalbyn Road, Bellevue Hill
<b>EXISTING CONSENT:</b>	Substantial alterations and additions to a 3 unit RFB
<b>DATE OF CONSENT:</b>	2 September 2002
<b>PROPOSED MODIFICATIONS:</b>	External modifications
<b>DATE S96 LODGED:</b>	02/05/2008 (original submission) 15/08/2008 (amended submission)
<b>CONSENT AUTHORITY:</b>	Council
<b>APPLICANT/OWNER:</b>	Mr J & Mrs M & Mr J C Caridad
<b>AUTHOR:</b>	Mr D Booth

### 1. PREAMBLE

On 26 August 2008, Council's Application Assessment Panel resolved as follows:

*THAT Development Application No. 926/2001 Part 4 for Section 96 Application proposed external modifications, on land at No 62 Drumalbyn Road, Bellevue Hill, be deferred and resubmitted to a future meeting of the Application Assessment Panel to allow the panel to carry out a site inspection.*

A copy of the original Section 96 Application Assessment report is attached as **Annexure 1**.

### 2. SITE INSPECTION REPORT

A site inspection was carried out on 28 August 2008. The officers present were as follows:

Timothy Tuxford (Manager – Compliance)  
Christopher Bluett (Manager – Strategic Planning)  
Warrick Hatton (Director – Technical Services)  
David Booth (Senior Assessment Officer)

The Application Assessment Panel inspected the rear section of the subject site from Thornton Reserve to consider the visual impact of the unauthorised works on the reserve and upon adjoining properties. The Application Assessment Panel were of the collective opinion that the unauthorised works do not have any significant adverse visual impact upon adjoining private properties and 66 Drumalbyn Rd but that the rear sections of the eastern side palisade fencing and the rear boundary fence do have significant adverse visual impacts upon the reserve. The Application Assessment Panel recommended the following amendments to the original recommendation:

- i) That the 2.7 m high palisade fence to the rear boundary and the rear section of the eastern side boundary be lowered to a height of 2.1 m above ground level.
- ii) That the upper half of the rear panel (between the northernmost post and the second northernmost post) of palisade fencing to the top of the masonry wall above the stair located within the north-eastern corner of the site be removed.
- iii) That the above requirements be made conditions of development consent and Part B of the previous recommendation be deleted.
- iv) That a survey be obtained in relation to the siting of the eastern boundary wall. In the event that the wall encroaches upon 64 Drumalbyn Rd, that landowners consent be obtained.

A survey was submitted to Council on 29 August 2008 demonstrating that the eastern boundary wall/fencing has been constructed wholly within the subject site. A copy of the survey is attached as **Annexure 2**.

**3. RECOMMENDATION: Pursuant to Section 96 of the Environmental Planning and Assessment Act, 1979**

- A. THAT Council, as the consent authority, modify development consent to Development Application No. 926/2001 for substantial alterations and additions to a 3 unit residential flat building on land at 62 Drumalbyn Road Bellevue Hill, as follows:

**The modification of the following condition:**

**A.1 Approved Amended (s96) Plans and supporting documents**

Those acting upon or under this amended consent must carry out all work and maintain the use and works in accordance with the approved plans and supporting documents listed in the original consent, as amended by the amended approved plans and supporting documents as submitted by the Applicant and to which is affixed a Council stamp "Approved Plans" listed below otherwise than modified by further condition(s). Where the plans relate to amendments, alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
433-A01F, 02G, 03G, 04F-07F, 08G, 09G & 10F as amended by the work shown in colour on the plans 433-A01H, 06H, 07H & 09H and as further as amended by the work shown in colour on the plans 433-A01I & A06I-A09I inclusive.	Architectural Plans	Andre and Porebski and Associates	Sep 06 (F series) Feb 07 (G series) Aug 07 (H series) April 08 (I series)

**The addition of the following conditions:**

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

**G.1 Reduction to the height of the fencing to the rear boundary and the rear section of the eastern side boundary**

In order to address the adverse visual impact upon Thornton Reserve, the 2.7 m high palisade fence to the rear boundary and the rear section of the eastern side boundary be lowered to a height of 2.1 m above ground level.

## **G.2 Reduction to the height of the palisade fencing to the top of the eastern boundary wall**

In order to address the adverse visual impact upon Thornton Reserve, the upper half of the rear panel of palisade fencing to the top of the masonry wall above the stair located within the north-eastern corner of the site be removed.

- B. THAT, as the remainder of the unauthorised works are considered to be satisfactory with regard to all relevant considerations, 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:
- i) Full works as executed plans, duly coloured showing all works that have been undertaken without prior Council consent.
  - ii) 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 integrity of the existing building.
  - iii) 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.

Mr D Booth  
**SENIOR ASSESSMENT OFFICER**

Mr N Economou  
**TEAM LEADER**

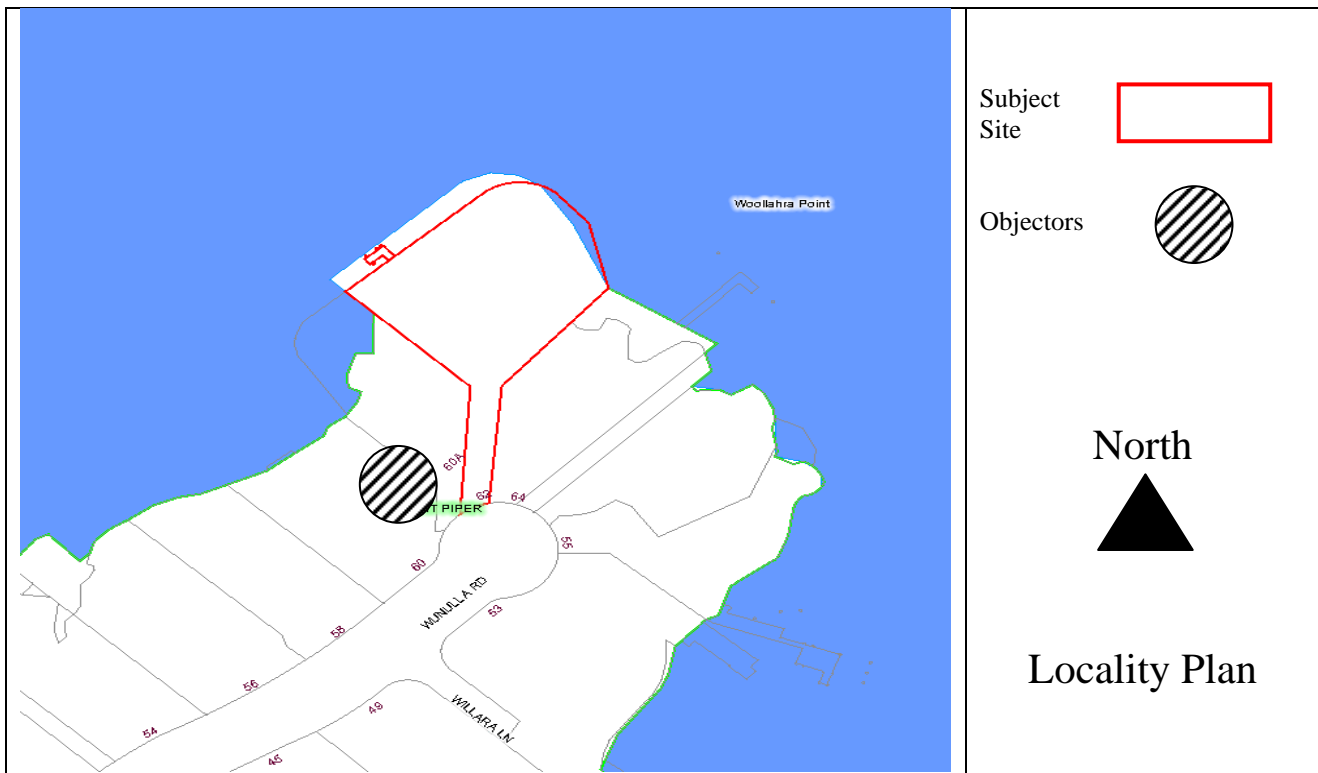
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## **ANNEXURES**

1. The original Section 96 Application Assessment Report, including the plans and elevations.
2. Survey of eastern boundary wall.

## SECTION 96 APPLICATION ASSESSMENT REPORT

<b>ITEM No.</b>	D3
<b>FILE No.</b>	DA 263/2007/3
<b>ADDRESS:</b>	62 Wunulla Road POINT PIPER
<b>EXISTING CONSENT:</b>	Alterations and additions including new basement carpark, creation of an additional unit, new swimming pool and sandstone cladding to sea wall
<b>TYPE OF CONSENT:</b>	Integrated
<b>DATE OF CONSENT:</b>	19 November 2007
<b>PROPOSED MODIFICATION:</b>	Modification to basement carpark, swimming pool and the building
<b>DATE S96 LODGED:</b>	Original Submission 22/04/2008 Amended Submission 14/08/08
<b>CONSENT AUTHORITY:</b>	Council
<b>APPLICANT:</b>	Structured Project Management (AUST) P/L
<b>OWNER:</b>	Owners Strata Plan 11655
<b>AUTHOR:</b>	Mr Chris King



## 1. SUMMARY

### Reason for report

This Section 96 Application does not satisfy the criteria for determination under staff delegation as the application proposes variation of conditions originally imposed to protect the neighbouring amenity.

### Issues

- Enlargement of Existing Use development
- Privacy
- Excavation

### Objections

There was 1 submission received.

### Recommendation

The application is recommended for Approval as it creates relatively minor changes to the approved built form which creates minimal amenity concerns which can be resolved conditionally.

## 2. DESCRIPTION OF APPROVED PROPOSAL

The approved proposal is for alterations and additions to an existing residential flat building consisting of the creation of an additional ground floor unit within the existing building envelope currently occupied by a garage, a new basement garage for 19 vehicles, new lift access, replace the existing swimming pool with a new swimming pool in generally the same location and configuration and partial extension and re-cladding of existing sea wall.

The balance of the approved works included a new landscape scheme for the site as well as a photovoltaic system to the roof of the existing building.

## 3. DESCRIPTION OF PROPOSED MODIFICATION

The modification originally comprised a revised basement carpark layout, reduction in the depth of excavation, increasing the setback from the seawall and increasing the overall floorspace to accommodate an increased stairwell area and associated unit alignments. The modification also entails revised layout to the new building, including new fenestration, increase to boundary fence height along the driveway, new weatherproof canopy hood over driveway entry and change to swimming pool layout.

Following consideration of issues raised by the objector and discussions with Council Officers the Applicant amended the Section 96 Application on 7 August, 2008, to :

- \* delete the canopy hood over the driveway;
- \* agreed to the restriction of the boundary wall height to that proposed by the neighbours; and
- \* deleted the proposed frosted low level glazing panels over unit windows.

#### 4. DESCRIPTION OF SITE AND LOCALITY



**THE SITE AND LOCALITY**

<b>Physical features</b>	The site is located at the northern end of Wunulla Road, Point Piper. The site has a frontage of 5m on the cul-de-sac to Wunulla Road and has a 30metre long access handle that opens up onto a relatively square shaped site. The site has frontages to its eastern and western end to Felix Bay, with a combined frontage of approximately 94m to Sydney Harbour.
<b>Topography</b>	The site falls approximately 5m down from Wunulla Road to its northern end towards the harbour. There is a communal open space grassed area to the north of the existing building that is relatively level and sits approximately 1metre above AHD.
<b>Existing buildings and structures</b>	On the site is an existing 4 storey art-deco style residential flat building containing 7 apartments that has undergone various modifications including the addition of balconies to its eastern and western ends. There is a garage with limited off-street parking spaces provided within the existing building as well as an open hard car stand parking area visible from the harbour to the southwest end of the site. There is an in-ground swimming pool located at the northern end of the site obscured from view from the Harbour by a part concrete part sandstone sea retaining wall.
<b>Environment</b>	The area is characterized by large scale dwelling houses on large sites with harbour frontages. Garages and high fences present to the street with an occasional vista of the harbour.

#### 5. PROPERTY HISTORY

The original application was approved by the Development Control Committee on 19 November 2007.

A Section 96(1) Application (*DA No.263/2007/1*) was submitted to modify the wording to Condition No.C1 (Modification of details of the development) and the reference to drawing numbers in Condition A3 (Approved plans and supporting documents). The application was approved under delegation on 11 February 2008.

There is no other relevant history pertaining to this application.

## 6. REFERRALS

### 6.1 Comments from external approval bodies

The Section 96 Modification was referred to NSW Maritime, for comments by the Foreshores and Waterways, Planning and Development Advisory Committee, and the Department of Water & Energy for comment under the Water Management Act, 2000. To date no response has been forwarded and it is assumed that no objections are raised to the Modifications.

### 6.2 Technical Services

Council's Development Engineers comments are:

#### ***“Site Drainage Comments***

*There are no objections to the proposed Stormwater Drainage Plans by Steve Paul & Partners Dwg No SW-100 DA to SW-106 Issue A dated 18.04.08. However under no circumstances is the basement pump system to be used to collect ground water/water table water. The system is only to collect and pump surface water. The basement carpark is to be “tanked” to prevent the ingress of groundwater into the basement as previously conditioned.*

#### ***Flooding & Overland Flow comments***

*Flooding impacts on the carpark and Unit 8 will be lessened considerably as the structures are to be raised. However the comments in relation to the flood protection are still valid and are to remain.*

#### ***Vehicle Access & Accommodation comments***

*Carpark design is an improvement due to the layout and considerable less depth of excavation.*

*The new carpark layout is changed sufficiently to make the condition for “Carparking spaces 2 and 3 are to be amalgamated into a single space...” redundant and can be deleted.*

*However, spaces 1 and 11(Disabled) will require additional manoeuvring as they are adjoining the entrance. As there is no permanent “Blind Aisle” width this will be achieved when the gate is opened. To assist the entry and exit into space 1, spaces 1 and 2 are to be assigned to the same unit.*

#### ***Geotechnical, Hydrogeological and/or Structural comments***

*No changes in the conditions required.*

#### **RECOMMENDATION**

*Council's Development Engineer has determined that the proposal satisfies Technical Services concerns, subject to conditions.”*

The comments are supported and the conditions form part of the recommendation.

## 7. ASSESSMENT UNDER S96

## 7.1 S96 (2) Other modifications

The proposed modification would have some form of impact on the amenity of adjoining property owners and the environment. The degree and the merits of the impact will be discussed under the relevant heads of consideration below. Accordingly, the proposal falls under the ambit of Section 96(2).

## 7.2 Substantially the same development

The proposed modification relates to aspects of the approval for alterations and additions to an existing residential flat building comprising new basement garage, creation of an additional dwelling within, upgrade of the entry foyer and stairs, replacement of existing swimming pool and new landscape works. The essence of the development in terms of the extent of work proposed, dwelling numbers, layout, built form and setback from the boundaries remain largely unchanged. Some associated increase in floor area to the central stairwell and adjoining units at each level is proposed but is considered to be relatively minor when assessed against the overall scale of the approved building. As such, the proposed modification is relative to the scope of the approved works.

The proposal would therefore be substantially the same development to that which was originally approved, thus satisfying the relevant criteria prescribed by the Act.

## 8. EXISTING USE RIGHTS

### Existing Use

The existing residential flat building use of the subject land is prohibited under Woollahra Local Environmental Plan 1995 - Residential 2(a) zone.

The permissibility of the proposed alterations to the existing residential flat building is dependant upon the site benefiting from existing use rights as regulated under Sections 107 and 108 & Clauses 40-46 of the Environmental Planning & Assessment Act 1979.

The existing use rights of the site as a residential flat building have been established and continue to apply to this development.

Regulation 41(1) of the Environmental Planning and Assessment Regulations 2000 states that:

*An existing use may, subject to this Division:*

*a) be enlarged, expanded or intensified; or*

*b) be altered or extended; or*

*c) be rebuilt; or*

*d) be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act; or*

The Section 96 modification proposal involves the alteration and enlargement of the existing residential flat building, which is facilitated under Regulation 41 (1).

The Applicant contends that the proposal seeks a floor space area increase of approximately 58m<sup>2</sup>. Scaling of the plans indicate that, where the stairwell levels are included with the unit floor increases, the proposal will result in an approximate increase of floor space of 150m<sup>2</sup>, equivalent to an 8% increase in the existing approved floorspace. This increase is spread over the four levels of the building and is not considered to be a significant modification to the operational floorspace of the building. In response to these increased floor areas the Applicants consultant, Ingham Planning Pty Ltd, has advised :

*There will be no perception of this increased floor area from the public domain (including Sydney Harbour). The impact on the views of the building from adjoining properties will not be affected as it is considered that the slight increase in building bulk is more than offset by the improved design. It is also noted that the lowest accommodation level will not be visible from the property to the south-west as it is lower than the entry driveway and the large intervening planter boxes provided.*

*It is considered that the additional building bulk does not adversely impact on privacy as there is already overlooking of the neighbouring property from the stairwell subject of Council's original consent and from the south-west facing windows in the eastern wing of the building. The new windows for Units 2, 4 and 6 (as well as the windows proposed for Units 3, 5 and 7 in the approved scheme and the present scheme) are well in excess of 9m away from the neighbour's kitchen window in accordance with Section 5.8.5m of the RDCP.....*

*As indicated in the submitted Statement of Environmental Effects it is considered that there are no adverse consequences of the proposed additional floor space.....*

On the basis of this argument it is considered that the proposed additional floorspace is acceptable in this instance due to the limited impacts arising, as stated by the Applicant.

Clause 108 (3) states that the provisions of any environmental planning instrument that derogate (detract) from the existing use rights provisions have no force or effect whilst existing use rights remain. Established case law has held that the provisions of environmental planning instruments do not apply to the assessment of applications on sites with existing use rights. Therefore planning objectives and controls that limit the size of a proposal such as height, setbacks, building footprint, number of storeys, minimum allotment size, minimum site frontage and floor space ratio cannot be applied to the proposal.

The recent Land and Environment Court judgment in the Stromness P/L v Woollahra Municipal Council handed down on 26 October 2006 underscores this position. The environmental assessment of the proposal under the provisions of Section 79C of the Environmental Planning and Assessment Act 1979 does not refer to statutory and/or policy building envelope controls and objectives which derogate from the existing use rights provisions.

### **Existing Use Rights Planning Principles**

The following planning principles, in relation to the environmental assessment of proposals on land with existing use rights, were established in the Fodor Investments v Hornsby Shire Council Land & Environment Court case. These principles are applied to the subject development in light of the recent Land and Environment Court judgment in the Stromness P/L v Woollahra Municipal Council handed down on 26 October 2006 which fundamentally prohibits any consideration of any statutory and policy planning provisions, including building envelope controls and objectives, which derogate from the existing use rights provisions.

The consideration of the impact of a proposed development benefiting from existing use rights upon the amenity of the public domain and adjoining properties was central to the judgment.

**1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?**

***While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessment.***

There would be no increase to the visible scale and bulk of the existing building as seen from the public domain as the majority of work, apart from architectural treatments to the entry stairwell, would be located within the existing building envelope or located below existing ground level.

The proposed extension to the central portion of the building on its southern side to facilitate construction of the lift, and access thereto, would only be visible from the adjoining property. However, these works would be setback from the nearest development by over 9m and would match the height of the existing building. The scale and bulk of this extended area is relatively minor in relation to the envelope of the existing building and its articulated design would further reduce its perceived scale and bulk.

The additions to the building in terms of visibility are relatively minor and would be contextually compatible with the existing and approved built environment.

The proposed modifications to the units would be well articulated and contains an appropriate use of glazing to minimise reflectivity.

The approved development provides additional planting that would enhance the landscape character of the area as viewed from Sydney Harbour. The works will be contextually compatible with the existing built form of development in the area.

The proposed variation to the new swimming pool would have limited visual impact from the harbour.

**2. What is the relevance of the building in which the existing use takes place?**

***Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.***

The proposal involves alterations and additions to the existing building. The existing non-conforming use would be maintained. Though the existing use would be intensified by the creation of the additional unit and marginal increase in unit floor areas, the building envelope as perceived from the public and private domain and its contextual relationship would be retained.

The minor intensification of use is partly offset by a substantial increase in off-street parking.

### 3. *What are the impacts on adjoining land?*

***The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.***

A detailed assessment of the physical impacts associated with the excavation and construction works is provided below. The conclusion of the assessment associated with these works is that there would be no residual detrimental impact on the amenity of adjoining residents.

The potential impacts associated with the modifications to the development are assessed as follows:

#### ***Visual Privacy***

The projection of the stairwell and portions of the adjoining units over each level to the south would provide some potential for overlooking the kitchen and family room at No.60A Wunulla Road.

The owner of No.60A Wunulla Road has objected to the modification application on the basis of overlooking. The south-western walls of the objectors premises accommodate windows at ground level to a kitchen/family room and TV room whilst first floor has windows for the toilets and secondary rooms only, the majority of which would normally include translucent glazing. The primary issue relates to overlooking to the kitchen/family room.

It is noted that the orientation of the dining and lounge rooms and placement of corridor walls at No.60A Wunulla Road would ensure that the primary living rooms are unaffected by the proposed modification works.

The approved, and constructed, kitchen includes a support beam/cupboards at head height across the window, as illustrated by photographs submitted by the Applicant. This would constrain the ability for persons at No.62 Wunulla Road to observe activities in the kitchen/family room.

The development plans originally approved for this development approved the placement of master bedroom windows along the south-western wall servicing Units 2, 4 & 6 and also picture windows along the south-western walls of Units 3, 5 & 7, all of which would currently provide an existing opportunity for overlooking of the kitchen window at 60A Wunulla Road.

Analysis of the amended proposal identifies that only the units on the top two floors, and the associated stairwell landing levels would provide reasonable opportunity to overlook considering the finished height levels, boundary wall positioning, building separation distances (9m-14m), and the angles of viewing. These views would then be further constrained by the placement of the bulkhead in the kitchen, the angle of viewing from higher levels and sightlines.

Considering the constrained overlooking potential to the objector's secondary living area, it is considered that the amenity issues are minor in nature and do not warrant further action by Council to protect the neighbours privacy as the outcome is reasonable for developments of this nature.

#### ***Acoustic Impacts***

The existing driveway would be retained but lowered below the existing fence height and existing ground level. The walls surrounding the driveway would be acoustically treated to mitigate any noise associated with the use of the driveway. The proposed use of the driveway would increase with additional vehicles being provided on site, associated with the approved 8<sup>th</sup> dwelling.

On the existing site is an open parking area immediately adjacent to the southern boundary that requires multiple vehicular turns and movements with constant traffic conflict. There is a steep section of driveway adjacent to the most south-western part of the existing building that is open and results in noise from vehicle acceleration to exit the site.

The proposed basement parking, being enclosed, and the driveway, being below ground level and a higher proposed boundary fence height, as well as being acoustically treated, would ensure vehicular movements on the driveway would have a lesser impact on the acoustic privacy of the adjoining resident than that currently existing.

### ***Overshadowing***

There is essentially no change to the extent of existing overshadowing.

The extensions to the external envelope of the building are relatively minor in comparison to the existing built form. Likewise, the extent of additional overshadowing created by the proposed additions are minor and would not detrimentally impact on the exterior open space areas or the internal living areas of the immediate adjoining properties.

#### **4. *What is the internal amenity?***

***Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.***

The internal amenity of the proposed unit would be very high with excellent views, adequate private open space, adequate solar access and adequate natural ventilation.

The alterations to the existing building would also improve the amenity of the other occupants of the building by providing better natural lighting and lift access from the basement car park to each level of the building.

On the basis of the above discussion Council should be satisfied that the proposed works are reasonable and of a scale that is acceptable to Woollahra Municipal Council and compliant with the requirements of the Environmental Planning & Assessment Act, 1979.

## **9. 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:

### **9.1 RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION**

#### **State Environmental Planning Policies**

- ***SEPP 65 - Design Quality of Residential Flat Development***

The design quality for alterations and additions to an existing residential flat building do not apply to this development.

▪ **SEPP No. 55**

Under clause 7 (1) (a) of State Environmental Planning Policy No. 55 – Remediation of Land, consideration has been given as to whether the land is contaminated. An assessment of the *initial site evaluation* provided by the applicant indicated the land does not require further consideration under clause 7(1) (b) and (c) of SEPP 55.

**Regional Environmental Plans**

▪ **SREP (Sydney Harbour Catchment) 2005**

The subject site is within the area to which the SREP applies. The modification proposal was referred to NSW Maritime for the comments of the Foreshores & Waterways, Planning & Development Advisory Committee. No formal advice has been received on the matter although it is noted that the works are predominantly in accordance with the conditions of consent and the external works associated with the Section 96 Modification are located to the south of the building and would not be visible from the waterway.

The original application required the sea wall to be upgraded by providing 100mm sandstone cladding as well as being punctuated and extended up to 750mm above the lawn level.

The proposed upgrade of the existing sea wall would enhance the appearance of this existing structure whilst minimising impact on the watercourse and wetlands.

The removal of the hard car stand spaces to the north-west end of the site and the proposed landscape scheme would enhance the appearance of the development and improve the land/water interface appearance.

Access to Sydney Harbour cannot be improved in this locality. Hence, the proposal will not have any significant adverse visual impact upon Sydney Harbour and adjoining foreshore.

**Relevant Acts**

▪ **Water Management Act 2000, Section 91**

In accordance with the requirements of the Water Management Act, 2000 the application was referred to the Department of Water & Energy for comments. No formal response to the correspondence has been received and it is assumed that no additional issues arise for the Department from those expressed as part of the original application.

**10. LOCAL ENVIRONMENTAL PLANS**

**10.1 Woollahra Local Environmental Plan 1995**

▪ **Clause 2 Aims and objectives of this plan**

The proposal would be consistent with the aims and objectives of this plan.

▪ **Clause 8(5) Objectives of the zone**

The proposal would be consistent with the objectives of the zone.

▪ **Clause 18 Excavation**

The approved development involved substantial excavation around and partially beneath the existing building, the most significant of which was proposed as follows:

- 450m<sup>3</sup> of excavation for piling system
- 2850m<sup>3</sup> of excavation for the basement garage

The total volume of excavation as approved was for 3300m<sup>3</sup>(approx) and the modification would involve approximately 5,022m<sup>3</sup>, an increase of 1,922m<sup>3</sup> or 58% of excavated material. The original application sought excavation to a greater depth, resulting in more rock excavation, whereas the Modification is for a shallow level of excavation, requiring less rock excavation than that originally proposed.

The depth of excavation would reach a maximum of 0.8m below ground level which is a result of the topography of the site which falls between Wunulla Road and the northern boundary fronting Sydney Harbour.

The excavation would be within and outside the building footprint as it is structurally and practically impossible to provide off-street parking under the existing building footprint.

The preferred method of excavation is by use of Penetrating Cone Fracture (PCF) which is breakage of rock using high pressure gas pulse at the base of a short drill hole, however, the extent of such works is reduced due to the reduction in depth proposed for the basement works. The gas penetrates into small microfractures created from the percussive drilling process, which are forced to expand and propagate into tensile cracks causing the rock to fail.

Around the perimeter of the site adjacent to the footings of No.60A Wunulla Road would be cut off using a saw slot and provided with vibration monitors.

Conventional methodology would be used to remove the rock mass which includes rock hammers and bucket excavators.

Cl.18 requires Council to have regard to how that excavation may temporarily or permanently affect:

- (a) *the amenity of the neighbourhood by way of noise, vibration, dust or other similar circumstances related to the excavation process, and*
- (b) *public safety, and*
- (c) *vehicle and pedestrian movements, and*
- (d) *the heritage significance of any heritage item that may be affected by the proposed excavation and its setting; and*
- (e) *natural landforms and vegetation, and*
- (f) *natural water runoff patterns.*

***The provisions of Cl.18 in relation to the temporary amenity impacts are assessed as follows:***

**Noise:** The excavation process will cause some noise impacts both from rock breaking, rock sawing, drilling equipment, earth moving equipment and truck movements.

Noise associated with rock breaking by the PCF system is low. Noise associated with overpressure or air blasts caused by air transmitted vibrations or compressional waves (similar to ground vibration waves) produced by the PCF are also low when compared to conventional explosives or other rock breaking devices.

A standard condition of the development consent limits the hours when excavation may occur and the duration of the excavation period.

Noise from any generator or pumping system that may result from any temporary flooding should be located in a suitable enclosure to protect the amenity of adjoining residents. Appropriate conditions have been imposed to address this issue.

Vibrations: The geotechnical and hydrogeological investigation report considers the impact of vibrations and nominates a level of vibration below that permitted by the Australian Standard. Relevant conditions have been imposed in relation to a vibration monitoring program and for certification to be given to ensure that the program has been implemented.

Dust: A condition has been imposed to implement appropriate measures to control dust not only to adjoining residents but also to the Harbour. It should also be noted that the proposed excavation process, being PCF, would result in larger fragments of rock breakage and thus reducing the finer particles and dust.

Flyrock: Is the process associated with the PCF technique where fragments of rock are displaced by the charge. A general safety clearance area of 20m is recommended but can vary based on the nature of the site.

To avoid flyrock onto adjoining property when in use close to the boundary, the charge for the PCF would be reduced. In addition, blast mats would be placed over the charge that prevent flyrock and dampen the noise associated with the charge.

Erosion: Conditions have been imposed to implement best practice techniques to control erosion from the site. In addition to these conditions which are requirements of Council, the applicant is required under the General Terms of Approval received from NSW Maritime to prepare an erosion and sediment control plan for submission prior to receipt of the Part 3A permit, to minimise the potential for impacts on the Harbour.

Support to existing land and building both with the site and neighbouring site: The geotechnical and hydrogeological investigation identifies shoring techniques and buttresses to the sea wall that would enable construction of a tanked basement that will support footings of the adjacent buildings as well as the existing sea wall.

Ground Water: The geotechnical and hydrogeological investigation report specifies that it is expected that there will be on-going intermittent water seepage from stormwater and ground water. Appropriate pumping and grouting techniques are proposed to cater for these issues and specified in the specialist reports. The anticipated volume is expected to be minor.

On-site processing of excavated materials: It is not proposed to process excavated material on-site.

Vehicle movements: It was originally anticipated that excavated material would be removed by barge from the Harbour. However, this proved to be impractical due to associated impacts with tides, marine ecologies, pollution, weather conditions and turnaround times. Accordingly, the application proposes the use of trucks to remove excavated material from Wunulla Road.

The Construction Management Plan, 21 April 2008, makes the following comments in regards to the excavation process:

*“An estimated 200m<sup>3</sup> of fill excavated during the sea wall stabilisation phase will be removed over an estimated 5 weeks by approximately 13, 12-16m<sup>3</sup> capacity rigid dump trucks. The subsequent 5022m<sup>3</sup> of fill and rock removed during the excavation phase will require an estimated 250 truck loads assuming 18-24m<sup>3</sup> capacity dump trucks with dog trailers and allowing for the additional bulk of excavated sandstone. The rate of excavation is not likely to exceed of 110m<sup>3</sup> per day, with average rate significantly lower due to the requirement to install piers and beams to stabilise the existing apartment building structure. It is estimated that the bulk excavation and excavation under the existing apartment building structure will take 3 months. This is an estimate and may vary due to unforeseen technical issues.*

.....  
*The quantity of concrete necessary to complete this phase of the project is estimated at 1150m<sup>3</sup>..... Concrete delivery will be by rigid 6-8m<sup>3</sup> trucks reversing down the drive. Based on these figures, the estimated number of concrete trucks delivering loads during construction is between 143 truck loads.”*

The modification to the original consent would thus increase the truck movements associated with the projected 3 month period for excavation/concreting works from 264 originally (catering for 2,850m<sup>3</sup> of excavated fill and 850m<sup>3</sup> of concrete) to 393 under the modification. The modification was referred to Council’s Technical Services department whom have raised no objection to the modified proposal.

It is noted that the CMP indicates that upon completion of the excavation works for the basement, parking will become available on site for tradesman.

There would be limited conflict between existing residents and workers for on-street parking as it would be reasonable to assume that the residents of the building, and adjoining buildings, would be away from the site during the construction period, coinciding with normal business hours, and return in the evenings when excavation/construction works are complete for the day and on-street spaces taken up by tradespeople are available.

Having regard to the anticipated period of excavation works and concreting (3 months), the temporary impact is not unreasonable for the long term benefit of providing the necessary parking on site and providing increased on-street parking in the locality.

***The provisions of Cl.18 in relation to the permanent amenity impacts are assessed as follows:***

**Bulk & Scale:** The proposed modifications to the building are minor and provide for better natural lighting to units/stairwell whilst also providing roomier access to the common stairwell/lift/landings. These works are principally located on the southern side of the building and would result in minimal impacts on neighbouring amenity.

The height of the proposed retaining walls and fence that bound the driveway or are constructed along the south-west boundary would be either below or match the height of the boundary fence proposed for the immediate adjoining property at 60A Wunulla Road.

**Landform:** The proposal would ensure the existing landform as seen from the public domain, being the foreshore/waterway is not visible from road level due to fall in grade, would be retained. Landscaping would be provided along the foreshore to replace the existing hard car stand parking spaces to the west and enhance the landscaping of the site as viewed from adjoining property and the harbour.

Support to existing land and building both with the site and neighbouring site: It is anticipated that when completed the development will result in a high level of geotechnical stability across the site.

Ground water levels: The Geotechnical Engineers Report submitted indicates that the ground water levels encountered on site directly relate to the tides. The original conditions would be retained and the fully tanked basement would not have any adverse impacts on ground water levels.

Water Seepage and treatment: The advice provided by the Geotechnical and Structural Engineers is that the basement will be a water tight structure. However, it is anticipated that there may be some resultant seepage from the proposed basement from stormwater flow from the open areas of the basement. Provision for drains and pumps are provided within the basement that can adequately cater for these circumstances.

A stormwater runoff filtration system would remove and retain all solid pollutants, free oils, grease and fine sediment from the stormwater runoff prior to discharge into the harbour. The use of these mechanisms would be infrequent and it is not anticipated to cause any environmental issues.

Flooding: It is anticipated that there would be wave inundation from Sydney Harbour that may cause flooding of the basement. To prevent flooding of the basement, the original approval required that both stair access entries to the basement be provided with either a threshold or bunding to a minimum height of RL2.15AHD in accordance with the provisions of Council's current Flood Risk Management DCP (Council's Development Engineer has provided further comments on this issue – refer annexure). The original approval also recommended that the new dwelling at ground floor be provided with either a threshold or bunding to a minimum height of RL2.30AHD, being higher for habitable floor levels than the non-habitable basement garage, in accordance with the provisions of Council's current Flood Risk Management DCP.

These conditions have been complied with as part of the proposed modification.

Vehicle and pedestrian movements: There would be no adverse impacts in terms of public safety or vehicular or pedestrian movements from the altered ground and driveway levels.

Hydrostatic Uplift Pressures: The proposal would be subject to hydrostatic uplift pressures. The proposed tanked basement level has been designed to cater for uplift pressure with appropriate anchoring and drainage options provided.

▪ **Clause 19 HFSPA**

Clause 19 of Woollahra LEP 1995 requires Council to take into consideration the impact of a development upon Sydney Harbour and adjoining foreshore areas. The proposal will not have any significant adverse visual impact upon Sydney Harbour and adjoining foreshore areas.

▪ **Clause 25 Water, wastewater and stormwater**

The proposed stormwater and wastewater of the modified building would be linked to the existing drainage systems. The proposal is considered to be satisfactory in terms of the provision of adequate stormwater drainage and the provision of adequate water and sewerage service.

- **Clause 25D Acid Sulfate Soils**  
The subject site is within the Class 5 Acid Sulphate Soil area identified in the Planning NSW Acid Sulphate Soil Risk Map. The subject modified works, resulting in shallower excavation, are not likely to lower the water table below 1m AHD on any land within 500 m with a 1, 2, 3 or 4 land classification and therefore, there is no issue of acid sulphate affectation in this instance.
- **Clauses 27 Development in the vicinity of heritage items, heritage item group, heritage conservation areas, archaeological sites or potential archaeological sites**  
The proposed alterations would not impact unduly on nearby heritage items or affect the setting of these items.
- **Clause 36A Inter-war flat buildings**  
The proposed alterations to the existing building would be suitable and compatible with the form, detailing and finish of the existing building.

## **11. DEVELOPMENT CONTROL PLANS**

### **11.1 Sydney Harbour Foreshores and Waterways Area – Development Control Plan**

The modified proposal would not result in the loss of mature trees or rock outcrops within the foreshore as it involves basement works and actions not visible from waterway. As the only works to the foreshore would be to upgrade the existing sea wall as part of the original application, there would be no detrimental impacts on aquatic ecological communities.

The natural features of the foreshore on this site have been removed. The proposed landscape scheme would provide some additional landscaping to what appears as a barren site that would enhance its appearance from the harbour.

The proposal would be consistent with the aims and objectives of the DCP.

### **11.2 Woollahra Residential Development Control Plan 2003**

The modified proposal would be consistent with the aims and objectives of the WRDCP 2003 as the works proposed would not result in any additional non-compliances with numerical standards under the DCP.

### **11.3 DCP for off-street car parking provision and servicing facilities**

Having regard to the size of the residential apartments within the building, the existing building was deficient in providing adequate off-street parking spaces to cater for the density of the building.

The proposal would provide 19 car parking spaces for 8 units with 1 space being for disabled parking within the basement. In addition to this, there would also be an emergency vehicle stand at the end of the access handle of the site adjacent to the building main entry and accessed from Wunulla Road next to the driveway.

Car spaces 1 & 2 are recommended to be allocated to one apartment only to assist in manoeuvring when the grill entry is closed and this requirement can be imposed conditionally. Alternatively the Applicant has recommended that spaces 1 & 2 be allocated as Visitor Spaces. The extent of parking spaces is generous with each unit provided with more than 2 parking spaces. On the basis of this modification no objection is raised to the removal of the condition requiring the amalgamation of spaces 2 & 3.

Subject to the conditions expressed above, the proposal would be consistent with the aims and objectives of the DCP.

#### **11.4 Woollahra Access DCP**

Council's Access DCP requires the provision of adequate access to the development by all people in the community including people with disabilities. The existing building is currently deficient in this area.

The proposal includes one disabled space complying with AS2890.1 for parking requirements and lift access from the basement car park.

The proposal is considered to be satisfactory with regard to the provisions of this DCP.

#### **11.5 Woollahra Section 94 & 94A Development Contributions Plan 2005**

No further contribution applicable.

### **12. APPLICABLE REGULATIONS**

The proposal would comply with Australian Standard AS 2601-1991: *The demolition of structures*. The proposal would also comply with the relevant criteria prescribed by the Building Code of Australia.

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

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

### **14. THE SUITABILITY OF THE SITE**

In relation to Acid Sulphate Soils, the proposal is suitable for the proposed development.

### **15. SUBMISSIONS**

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

- *Design Collaborative Pty Ltd (on behalf of Mrs B R Solomon – 60A Wunulla Road)*

The following issues were raised:

- *Legitimacy of application – not substantially the same and increase in FSR contrary to existing use rights provisions*
- *Adverse impact on privacy by overlooking*
- *The entry structure and boundary fence would be a visual intrusion*

With regard to the first matter the Objector argued that the use of the Section 96 modifications procedure, as is proposed, was not legally permissible for developments relying on Existing Use Rights and warranted the lodging of a new application. This issue was referred to Council's Solicitors who have advised :

*Section 96(4) is not intended to operate in a manner to limit clause 42 of the Regulations.....  
.....it is clear that the reference to "development consent" in Clause 42(1) of the Regulations will include by reference to s.96(4) a development consent modified under s.96. Accordingly, a s.96 application is valid to modify a consent which had involved existing use rights entitlements.*

The remaining issues raised have been addressed in this report. With regard to the last matter it is noted that the Hooded Entry Structure has been removed and the boundary fencing is proposed to be comparable in height to the objectors fencing.

The Applicant lodged revised plans detailing the proposed changes discussed above on the 14 August, 2008. The replacement plans (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 plans are substantially the same development as the original proposal and considered to have no greater environmental impact upon neighbours.

## **15. CONCLUSION - THE PUBLIC INTEREST**

The proposal is acceptable against the relevant considerations under s96 & s79C and would be in the public interest.

## **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. 263/2007 part 3 for alterations and additions including new basement carpark, creation of an additional unit, new swimming pool and sandstone cladding to sea wall on land at 62 Wunulla Road Point Piper, in the following manner:

### **The following condition being added to the development consent:**

#### **A.3 (a) Approved Amended (s96) Plans and supporting documents**

Those acting upon or under this amended consent must carry out all work and maintain the use and works in accordance with the approved plans and supporting documents listed in the original consent, as amended by the amended approved plans and supporting documents as submitted by the Applicant and to which is affixed a Council stamp "Approved Plans" listed below otherwise than modified by further condition(s). Where the plans relate to amendments, alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
DA1.01 to 1.02, DA2.01, DA3.01 DA1.03 to DA1.08 inclusive, 2.02 and 3.02	Architectural Plans	Hames Sharley	07.08.08
Revision C	Architectural Plans	Hames Sharley	Apr 08
	Construction Management Plan	SKM (Sinclair Knight Merz)	21.04.08
RKL:pc Project 45173	Geotechnical Report	Douglas Partners Pty Ltd	08.04.08
DA – 000 and 100 to 106 inclusive, all Issue A	Hydraulic Services	Steve Paul & Partners	18.04.08

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

Standard Condition: A6

### Condition No. C1 is modified as follows:

#### C1. 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:

- The pedestrian entries located on the northern side of Unit 8 must incorporate either a raised threshold or the entry is to be fully bunded having a crest RL of 2.30m AHD to prevent wave inundation from Sydney Harbour
- The full height window located on the west face of unit 8 must be structurally adequate to withstand impact from wave action and potential floating debris OR incorporate a solid structure to at least RL 2.3m AHD
- All entries to the basement garage exposed to the Harbour frontage (stair to landing steps and stair to garden) must incorporate a raised threshold or bunding to a minimum RL of 2.15m AHD such to prevent wave inundation from Sydney Harbour
- The traffic light control system is to be programmed to give priority to vehicles entering from Wunulla Road
- The garbage storage area shall be limited to a maximum height of 1.8m measured from existing ground level and should not extend any higher than the existing northern boundary fence.
- The walls of the driveway ramp must be acoustically treated in order to be non-reflective and to absorb as much noise as possible in accordance with the recommendation of Mr Challis that treatment be applied to all vertical wall surfaces above 1.5 metres using sound absorptive lining providing an NRC value of not less than 0.75.
- The section of the seawall which extends around the northern perimeter of the swimming pool is to be a dry block wall with the blocks arranged in an irregular fashion and having a minimum size of 1m<sup>3</sup>.
- The landscape plan is to be amended to include plantings around the waterfront perimeter of the site. The selected plants are to be of a hardy indigenous species to a mature height of 1.2metres.
- Car parking spaces 1 and 2 are to be assigned to a single unit or identified as Visitor Spaces to ensure appropriate access/egress to the parking spaces.
- The basement pump system is to only be used to collect and pump surface water and is not to be used, under any circumstances, to collect ground water or water table water.

**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

Mr C King  
**CONSULTANT ASSESSMENT OFFICER**

Mr D Waghorn  
**ACTING TEAM LEADER**

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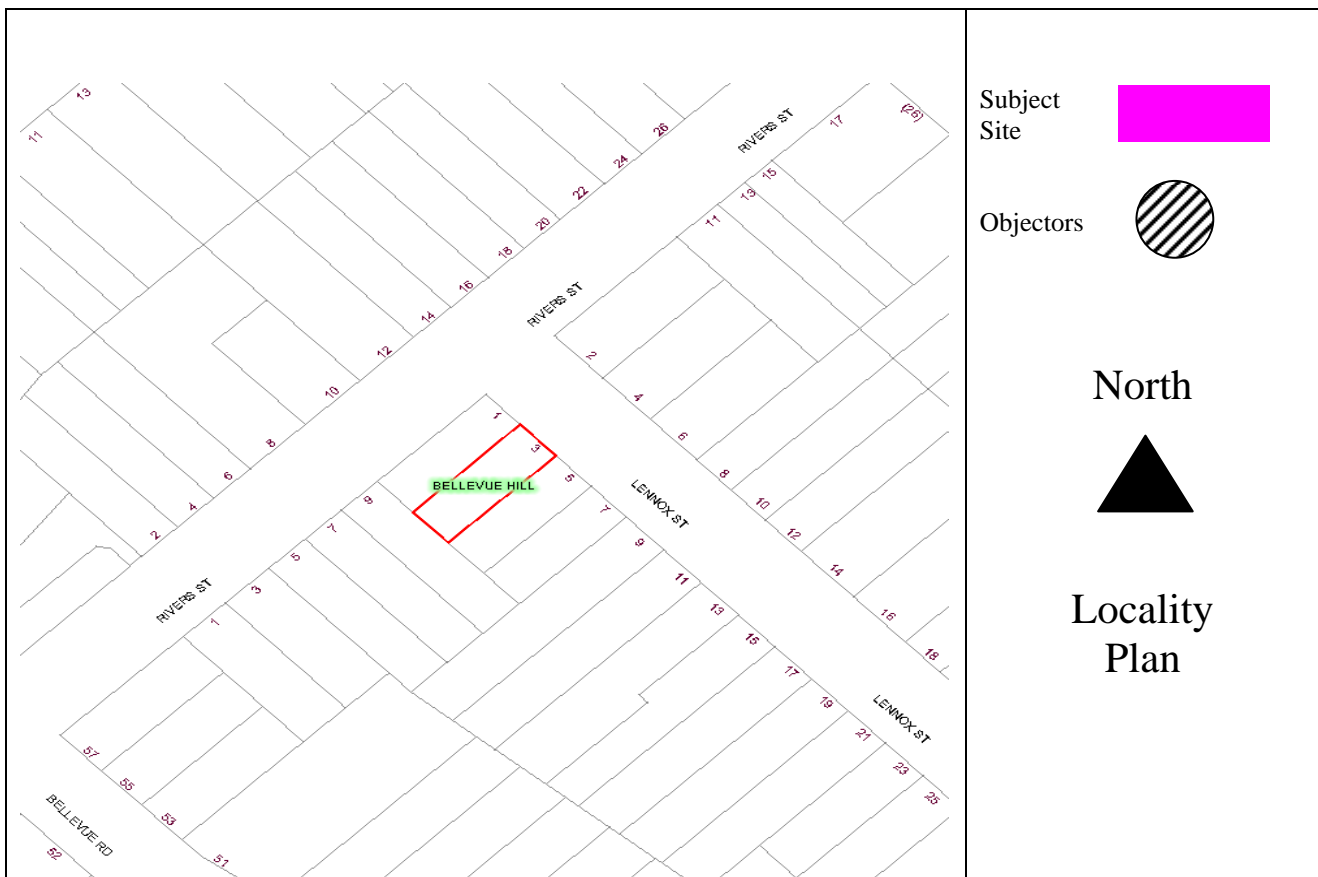
## **ANNEXURES**

- A. Plans and elevation
- B. Technical Services

## SECTION 82A REVIEW OF DETERMINATION REPORT

<b>ITEM No.</b>	D4
<b>FILE No.</b>	DA 519/2007
<b>ADDRESS:</b>	3 Lennox Street, Bellevue Hill
<b>PROPOSAL:</b>	Conversion of carport into single lock-up garage and associated work
<b>DATE DA DETERMINED:</b>	13 September 2007
<b>SUBJECT OF REVIEW:</b>	Refusal
<b>DATE S82A REVIEW APPLICATION LODGED:</b>	28/05/2008
<b>APPLICANT:</b>	Mr G A Oshry
<b>OWNER:</b>	Mr G A & Mrs K L Oshry
<b>REVIEW OFFICER:</b>	Ms B Thomas

### LOCALITY PLAN



## **1. PREAMBLE**

Section 82A of the Environmental Planning and Assessment Act 1979 requires a s82A review of a determined application to be determined within one year of the original determination. In this instance, the original application was determined on 13 September 2007. As such, the subject s82A review of determination application must be determined by 13 September 2008.

## **2. SUMMARY**

### **Reason for report**

The original determination was made under delegated authority. In accordance with the requirements of Section 82A (6) of the Environmental Planning and Assessment Act 1979 and Council's Delegations, this Review of Determination is referred to the Application Assessment Panel for determination.

### **Issues**

- Streetscape Issues

### **Objections**

No objections have been received in response to the notification.

### **Recommendation**

Approval

## **3. BACKGROUND**

The original development application was lodged with Council on 13 August 2007. The proposed development involved the conversion of a carport into a single lock-up garage and associated work. The application was refused under delegated authority on 13 September 2007 for the following reasons:

### **1. Aims and objectives of the WLEP 1995 and zone.**

*The proposal does not comply with Clause 8(5) of the WLEP which prescribes that Council shall not grant consent to development unless it is satisfied that the proposal is consistent with the aims and objectives of the WLEP. The proposal does not comply with Clause 2(k)(iii) of the WLEP which in relation to urban design requires design and siting of new development to enhance the attributes of a site and improve the quality of the public environment.*

### **2. Building Size and Location**

*The proposal does not comply with the following objectives and controls of part 5.2 of the Woollahra Residential Development Control Plan 2003:*

*Objective: O 5.2.3; and  
Control: C 5.2.4.*

### 3. *Fences and Walls*

*The proposal does not comply with the following objectives and controls of part 5.4 of the Woollahra Residential Development Control Plan 2003:*

*Objective: O 5.4.1; and*

*Control: C 5.4.2, C 5.4.3, C 5.4.5.*

### 4. *On-Site Vehicle Parking, Garages, Carports, Driveway Access & Servicing Facilities.*

*The proposal does not comply with the following objectives and controls of part 5.9 of the Woollahra Residential Development Control Plan 2003:*

*Objective: O 5.9.3; and*

*Control: C 5.9.15.*

### 5. *Precinct Controls*

*The proposal does not comply with the following control of part 4.6 of the Woollahra Residential Development Control Plan 2003:*

*Control: C 4.6.5(B)*

### 6. *The public interest*

*The circumstances of the case and the public interest.*

## 4. DESCRIPTION OF PROPOSAL SUBJECT OF REVIEW

The application seeks approval for the conversion of a carport into single lock-up garage and associated work.

## 5. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	Residential dwelling-house
Previous relevant applications	DA 827/2006/1 for new front gates was approved under delegated authority on 2 February 2007
Pre-DA	None
Requests for additional information	None
Amended plans/Replacement Application	Amended plans for subject S82A assessment.
Land & Environment Court appeal	None

## 6. DESCRIPTION OF SITE AND LOCALITY

THE SITE AND LOCALITY	
<b>Physical features</b>	The subject site is located on the southern side of Lennox Street and has a total site area of 316.7m <sup>2</sup> . The site has a frontage to Lennox Street of 10.4m in length, a south-eastern (side) boundary of 30.45m in length, a north-western (side) boundary of 30.45m in length and a southern (rear) boundary of 10.4m in length.
<b>Topography</b>	The subject site is relatively flat.
<b>Existing buildings and structures</b>	Located on the subject site is a single storey dwelling houses.
<b>Environment</b>	The surrounding streetscape consists predominantly of one, two and three storey dwelling-houses.

## **7. DESCRIPTION OF PROPOSED REVIEW**

The applicant has requested that Council review its refusal. The proposal has been amended in the following way to address the reasons for refusal:

- The proposed increase in height to the front fence has been deleted from the application.

This report reviews all aspects of the determination including any cumulative impacts of the changes requested by the applicant.

## **8. COUNCIL'S STATUTORY RESPONSIBILITIES UNDER S82A**

Under Section 82A of the Environmental Planning and Assessment Act 1979, an applicant may request Council to review a determination of a development application, other than for:

- (a) designated development,
- (b) integrated development; or
- (c) state significant development

The request for review must be made within 12 months after the date of determination and the review must occur in the following way:

- (a) If the determination was made by a delegate of Council – the review must be undertaken by Council or another delegate of Council that is not subordinate to the delegate who made the determination, or
- (b) If the determination was made by full Council the review must also be undertaken by full Council.

Upon making a determination of the review application, the following must be undertaken:

- If upon review, Council grants development consent, or varies the conditions of a development consent, it must endorse on the notice of determination the date from which the consent, or the consent as varied by the review, operates.
- If upon review, Council changes a determination in any way, the changed determination replaces the earlier determination as from the date of the review.

Council's decision on a review may not be further reviewed under section 82A.

## **9. CONSIDERATION OF REVIEW**

### **9.1 Substantially the same development**

The amendment made to the proposal, as discussed under *Section 7* of this report, is considered to be minor relative to the scope of the original alterations and additions such that the proposal, as amended, is considered to be substantially the same as that previously refused by Council.

### **9.2 Estimated Cost of Works**

Council's Section 94 Contributions Plan and Section 94A Development Contributions Plan 2005 is not applicable to the proposal as the proposed cost of works is under \$50,000.

## **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. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION**

#### **10.1 SEPPs**

##### **SEPP 55: Remediation of Land**

Under clause 7(1)(a) of State Environmental Planning Policy 55 – Remediation of Land, consideration has been given as to whether the land is contaminated. An assessment of the documentation provided by the applicant indicates the land does not require further consideration under clause 7(1)(b) and (c) of SEPP 55.

##### **SEPP (Building Sustainability Index: BASIX) 2004**

*State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* ("BASIX") is not applicable as the cost of works is under \$50 000.

#### **10.2 SREPs**

##### **SREP (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.

#### **10.3 Other legislation**

None applicable.

### **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, subject to conditions.

#### **11.2 Statutory compliance table**

	<b>Existing Dwelling</b>	<b>Refused DA</b>	<b>Proposed S82A</b>	<b>Control</b>	<b>Complies</b>
Overall Height	6.4m	2.6m		9.5m	<b>Yes</b>

### 11.3 Height

The proposal would comply with the height control and satisfy the relevant objectives prescribed by the WLEP 1995.

### Clause 25 Water, wastewater and stormwater

Clause 25(1) and (2) of WLEP 1995 requires council to consider the provisions of adequate stormwater drainage and the provisions of adequate water and sewage services.

The proposal has been assessed against the provisions of Clause 25 and is considered to be satisfactory.

### Clause 25D Acid Sulfate Soils

The subject site is identified to be within a Class 5 Acid Sulfate Soil area within the Woollahra Council Acid Sulfate Soil Map. However, the subject works are not likely to lower the water table beyond 1m AHD below the existing ground level on any land within 500m of Class 1, 2, 3 or 4 land classification and therefore, there is no issue of acid sulfate soil affectation.

### Clause 28 Heritage conservation areas

The subject site is not listed as an item of heritage significance nor is the site located within a heritage conservation area. In this regard, the proposal is considered to be acceptable.

## 12. DRAFT AMENDMENTS TO STATUTORY CONTROLS

None relevant.

## 13. DEVELOPMENT CONTROL PLANS

### 13.1 Compliance table - Woollahra Residential Development Control Plan 2003

Site Area (316.7m <sup>2</sup> )	Existing	Proposed	Control	Complies
Ancillary Development ( <i>garage</i> )				
Maximum Height	3.0m	3.0m	3.6m	<b>Yes</b>
Rear Setback (south-west)	-	-	1.5m	<b>N/A</b>
Side Setback (north-west)	0.0m	0.0m	1.5m	<b>No*</b>
Side Setback (south-east)	7.0m	7.0m	1.5m	<b>Yes</b>
Solar Access to Open Space of Adjacent Properties (Hrs on 21 June)	50% (or 35m <sup>2</sup> ) for 2 hours	50% (or 35m <sup>2</sup> ) for 2 hours	50% (or 35m <sup>2</sup> ) for 2 hours	<b>Yes</b>
Solar Access to Nth Facing Living Areas of Adjacent Properties (Hrs on 21 June)	3.0 hours	3.0 hours	3.0 hours	<b>Yes</b>
Location of garage	Within front setback	Within front setback	Behind the building line	<b>No*</b>
Frontage width of garage	46% (4.8m) of the site	46% (4.8m) of the site	40% (4.2m) of the site	<b>No*</b>

\* Existing non-compliance

**Desired future precinct character objectives and performance criteria (Part 4)**

The subject site is located within the Bellevue Hill South Precinct.

C 4.6.5 requires that garages be designed so as not to dominate the streetscape

There is an existing carport structure located within the front setback area of the subject site. The proposed works would enclose the existing carport increasing the prominence of the existing structure. Furthermore, Lennox Street is characterised by garages and carports forward of the building line in the adjacent properties at No. 5, No. 7, No.9, No.11 and No.13. Lennox Street and the proposed works would not be inconsistent with the existing streetscape.

Subject Site-3 Lennox Street-carport forward of the building line	No. 5 Lennox Street -Garage forward of the building line
	
No. 7 Lennox Street-garage forward of the building line	No. 9 Lennox Street--garage forward of the building line
	
No. 11 Lennox Street--carport forward of the building line	No. 13 Lennox Street--carport forward of the building line
	

C4.6.5 B stipulates that all garages and car parking structures are to be provided behind the building line and are limited to a width as presented to the street of no greater than 40% (4.2m) of the site, frontage width where the frontage is less than 20m.

The existing carport is located forward of the building line and has a width is 4.8m (46%) of the site, an existing minor non compliance of 6% (0.6m). Furthermore, the siting of the proposed garage would not have an adverse impact on the amenity of adjoining properties.

The proposed works are acceptable as the garage would not be inconsistent with the streetscape and would not impact on any deep soil landscaping or significant views and vistas to the surrounding street areas meeting objectives 04.6.2 and 04.6.3 of the WRDCP 2003.

In this regard, the proposal is considered to be acceptable.

### **Streetscape performance criteria (Section 5.1)**

O5.1.3 seeks to ensure development contributes to cohesive streetscapes and desirable pedestrian environments.

The streetscape is characterised by carports and garages forward of the building line at No.5, No.7, No.9, No. 11 and No. 13 Lennox Street.

The proposed garage would not unreasonably impact on the streetscape due to the dominance of the existing columns for the carport. Furthermore, the proposed garage would not create an unreasonable sense of enclosure to No.1 Lennox Street, as the proposed garage is single storey in height and is within the front setback area of the subject site which is not utilised as private open space.

In this regard the proposal is considered to be acceptable.

### **Building size and location performance criteria (Section 5.2)**

#### Ancillary Development

C5.2.4 stipulates that ancillary development to a maximum height of 3.6 metres, may be permitted within the area designated as the rear setback if all other policy controls are satisfied. A minimum 1.5m rear setback applies to ancillary development.

The existing carport structure is defined as ancillary development and is non complaint as it is located within the front setback.

The proposal seeks to convert the existing carport structure into a single garage structure. The non complying ancillary development is acceptable as it would not have an adverse impact on the streetscape and architectural character of the subject dwelling due to the dominance of the existing carport structure and prevalence of garages within Lennox Street.

#### Setback

C5.2.5 stipulates that development has a minimum side boundary setback of 1.5m. The proposal will be setback 0m from the north western boundary and 0m from the eastern boundary.

The non-compliant setback (0m) to the north western boundary is acceptable as it upholds the relevant objectives of the side setback controls for the following reasons:

- The proposed works would not result in any unreasonable impacts in terms of loss of visual privacy to the neighbouring properties
- The proposed additions are modest in scale compared to the scale of surrounding development
- The works would not encroach upon or result in an unreasonable sense of enclosure to the neighbouring property
- The height, bulk and scale of the proposed garage is not unreasonable in a dense urban environment
- The works would not impact on any views and would preserve sunlight access to private open space for neighbouring residents

In this regard, the proposed works are considered to be unacceptable.

#### **Open space and landscaping performance criteria (*Section 5.3*)**

Not applicable to this assessment.

#### **Fences and walls performance criteria (*Section 5.4*)**

The proposal as amended does not alter the existing height of the front fence and is acceptable.

#### **Views performance criteria (*Section 5.5*)**

The proposed works would not alter any existing views or vistas.

#### **Energy efficiency performance criteria (*Section 5.6*)**

Not applicable to this assessment.

#### **Stormwater management performance criteria (*Section 5.7*)**

The proposal is considered to be satisfactory in regards to stormwater management.

#### **Acoustic and visual privacy performance criteria (*Section 5.8*)**

The proposed works will not have an adverse impact on the acoustic or visual privacy of the dwelling occupants or surrounding properties. If anything, the enclosure of the existing carport to form a garage will improve the acoustic relationship between properties. Accordingly the proposal is considered to be satisfactory.

#### **Car parking and driveways performance criteria (*Section 5.9*)**

O5.9.3 requires applicants to ensure that on-site car parking and driveways do not dominate or detract from the appearance of the development and the local streetscape.

The proposal seeks to enclose the existing carport structure and create a single garage.

The existing carport structure features dominant columns to the front façade and the proposal would not present unreasonable additional bulk and scale to the streetscape, which is characterised by garages and carports forward of the building line.

C5.9.15 outlines that garage doors must be designed to complement the building design and important character elements of the street.

The proposed garage door shall be a colourbond panel lift door as per **Condition C7**. This condition is imposed to ensure the garage door would complement the streetscape.

Subject to **Condition C7** the proposal would satisfy the relevant objectives of Part 5.9 of WRDCP 2003.

#### **Site facilities performance criteria (Section 5.10)**

Not applicable to this assessment.

#### **Harbour foreshore development performance criteria (Section 5.11)**

The subject site is not located within the Harbour foreshore scenic protection area.

### **13.2 DCP for off-street car parking provision and servicing facilities**

The proposal satisfies the provisions of this DCP.

### **13.3 Woollahra Access**

This proposal is for a Class 1 building. The Access DCP encourages, rather than requires, visitor access for older people or people with a disability. Access has 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 relevant.

## **14. APPLICABLE REGULATIONS**

Clause 92 of the EPA Regulation 2000 requires us to consider Australian Standard AS 2601-1991: The **demolition of structures**. This is addressed via **Condition E2**.

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

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

## **16. THE SUITABILITY OF THE SITE**

The site is suitable for the proposed development.

## **17. SUBMISSIONS**

The proposal was advertised and notified in accordance with Council's Advertising and Notifications DCP. No submissions were received in the original application.

The Section 82A Review was advertised and notified in accordance with Council's Advertising and Notifications DCP. No submissions were received.

## 18. CONCLUSION

It is considered that the proposal, as amended, adequately addresses **Reasons for Refusal 1-6** of the original development application for the reasons contained in the body of the report (above).

Furthermore, subject to conditions, the proposal is acceptable against the relevant considerations under s79C of EPA Act 1979.

## 19. RECOMMENDATION: Pursuant to Section 82A of the Environmental Planning and Assessment Act, 1979

THAT the Council, as the consent authority, grant development consent to Development Application No. 519/2007 for conversion of carport into single lock-up garage on land at 3 Lennox Street 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, piering, 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)
Plan 304/07	Architectural Plans	Nurham Ediz Boyacioglu	July 2007 Stamped Amended

**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

## 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 Payment of Security, and Fees

The person(s) with the benefit of this consent must pay the following security 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
<b>SECURITY</b> under section 80A(6) of the Environmental Planning and Assessment Act 1979			
<b>Property Damage Security Deposit -</b> Making good any damage caused to any property of the <i>Council</i> as a consequence of the doing of anything to which the consent relates.	\$2000	No	T600
<b>INSPECTION FEES</b> under section 608 of the Local Government Act 1993			
Security Administration Fee	\$163	No	T16
<b>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</b>	<b>\$2163 Plus any relevant indexed amounts and long service levy</b>		

### 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 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.3 Structural Adequacy of Existing Supporting Structures

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

**Note:** This condition is imposed to ensure that the existing structure structural is able to support the additional loads proposed.  
Standard Condition: C35

### C.4 Professional Engineering Details

The *Construction Certificate* plans and specifications, required by clause 139 of the *Regulation*, must include detailed *professional engineering* plans and/or specifications for all structural, electrical, hydraulic, 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.5 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](http://www.woollahra.nsw.gov.au)  
Standard Condition: C49

## C.6 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 garage door shall be a colourbond panel lift door. This condition is imposed to ensure the garage door would complement the streetscape.

**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

**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 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.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 downloaded free of charge from [www.woollahra.nsw.gov.au](http://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

## 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 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 outside the approved hours of work will be considered on a case by case basis.

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

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

**Note:** see [http://www.epa.nsw.gov.au/resources/ci\\_build\\_sheet7.pdf](http://www.epa.nsw.gov.au/resources/ci_build_sheet7.pdf)  
Standard Condition: E6

#### E.4 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.5 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.6 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.7 Maintenance of Environmental Controls**

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

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

**Note 1:** See [http://www.epa.nsw.gov.au/small\\_business/builders.htm](http://www.epa.nsw.gov.au/small_business/builders.htm) for additional information.  
Standard Condition: E11

## **E.8 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](http://www.woollahra.nsw.gov.au)  
Standard Condition: E24

## **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 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](http://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](http://www.workcover.nsw.gov.au) and [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au). Other specific condition and advice may apply.

**Note 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

## **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](http://www.woollahra.nsw.gov.au) or obtained from Council's customer service centre.  
Standard Condition: H13

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

No relevant conditions.

## 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](http://www.agd.nsw.gov.au).

Standard Advising: K1

## **K.2 Appeal**

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

**Belinda Thomas, Team Leader** on (02) 9391 7085

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

Ms B Thomas  
**REVIEW OFFICER**

Mr D Waghorn  
**ACTING TEAM LEADER**

## **ADVISINGS**

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### **ANNEXURES**

1. Plans and elevations
2. Original Assessment Report