



Application Assessment Panel

Agenda: *Application Assessment Panel*

Date: *Tuesday 28 August 2007*

Time: *3.00pm*

Part: *One of One Part*

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

20 August 2007

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

CC: The Mayor
All Councillors

Application Assessment Panel Meeting – 28 August 2007

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Application Assessment Panel** to be held in the **Committee Room, 536 New South Head Road, Double Bay, on Tuesday 28 August 2007 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 21 August 2007	1
D2	DA684/2002 Part 2 – 20D Benelong Crescent (aka Birriga Road) Bellevue Hill – Section 96 Application – Proposed Modification internal & external modifications – 16/5/2007 *See Recommendation Page 14	2-23
D3	DA207/2007 – 2 & 3/18 Ian Street, Rose Bay – Removal of balcony planters & replacement with frameless glass balustrading to Units 2 & 3 – 4/4/2007 *See Recommendation Page 33	24-54
D4	DA350/2005 – 22-24 Wolseley Road, Point Piper – Section 82A Review of refusal of consent – 16/11/2006 *See Recommendation Page 70	55-103

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 21 August 2007**
Author: Les Windle, Manager - Governance
File No: See Application Assessment Panel Minutes
Reason for Report: The Minutes of the Meeting of Tuesday 21 August 2007 were previously circulated. In accordance with the guidelines for Committees' operations it is now necessary that those Minutes be formally taken as read and confirmed.

Recommendation:

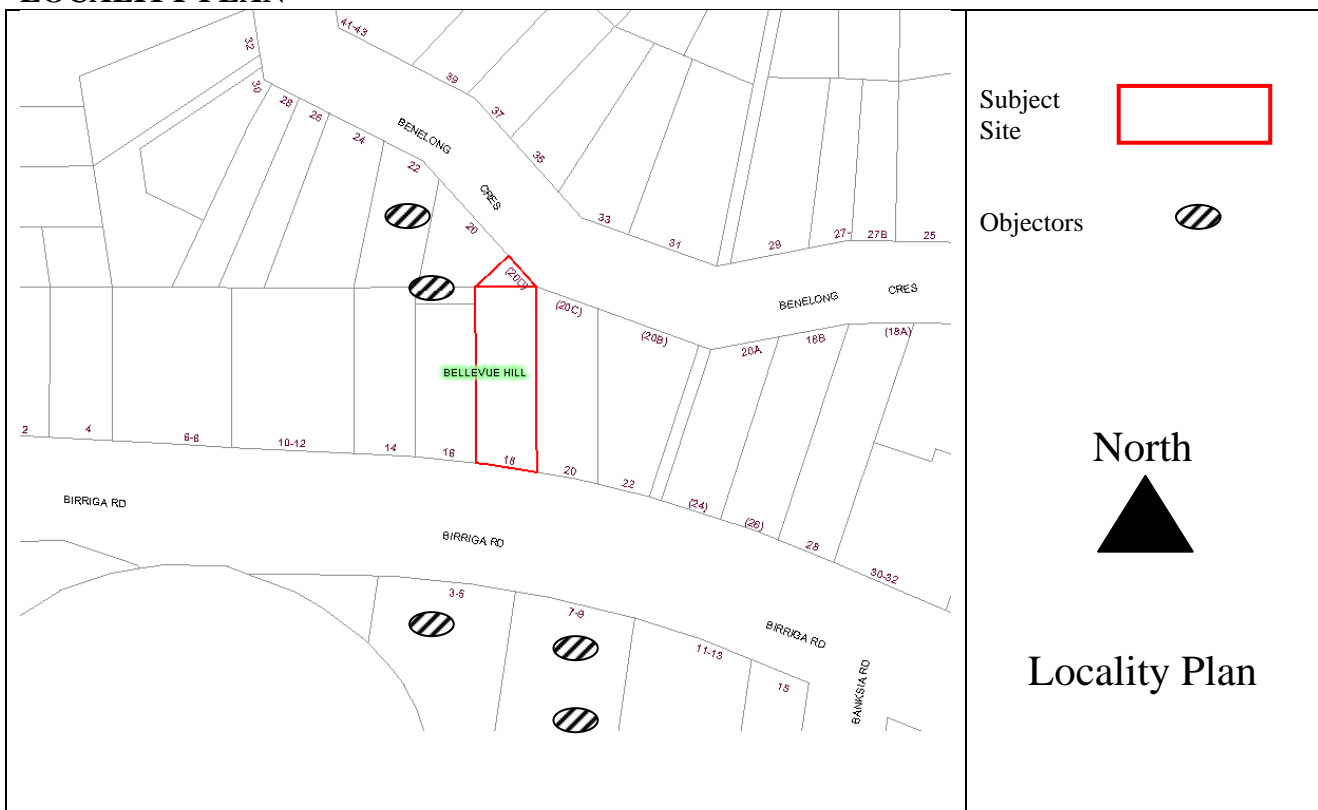
That the Minutes of the Application Assessment Panel Meeting of 21 August 2007 be taken as read and confirmed.

Les Windle
Manager - Governance

SECTION 96 APPLICATION ASSESSMENT REPORT

ITEM No.	D2
FILE No.	DA 684/2002/2
ADDRESS:	20D Benelong Crescent (aka 18 Birriga Road), Bellevue Hill
EXISTING CONSENT:	The demolition of an existing dwelling-house and garage and the construction of a 4 unit residential flat building with basement parking for 9 spaces.
TYPE OF CONSENT:	Local development
DATE OF CONSENT:	17 February 2003
ZONING:	Residential 2(b)
PROPOSED MODIFICATIONS:	Internal and external modifications
DATE S96 LODGED:	16/05/2007
CONSENT AUTHORITY:	Council
APPLICANT:	Mr A J Rahme
OWNER:	Mr A J & Mrs T C Rahme
AUTHOR:	Mr D Booth

LOCALITY PLAN



1. SUMMARY

Reason for report

Objectors' concerns cannot be comprehensively resolved through the modification of conditions of the existing development consent or through the imposition of additional conditions. Accordingly, the subject Section 96 application is referred to Council's Application Assessment Panel for determination.

Issues

- objectors' concerns
- floor space ratio non-compliance
- side boundaries setback non-compliances
- deep soil landscaped area non-compliance

Objections

Five.

Recommendation

The proposed modifications to the development consent are recommended for conditional approval because:

- they are satisfactory with all relevant provisions of environmental planning instruments and policies including Woollahra LEP 1995 and Woollahra RDCP 2003
- the consent as proposed to be modified is considered to be substantially the same as that originally granted
- they will not adversely affect the amenity of the public domain or adjoining properties such that refusal is justified.

2. DESCRIPTION OF APPROVED PROPOSAL

The demolition of an existing dwelling-house and garage and the construction of a residential flat building consisting of 2 x 2 bedroom units, 2 x 3 bedroom units and 9 off-street car parking spaces. The approved residential flat building consists of 3-5 storeys above the excavated basement carpark, presenting 2 storeys to Birriga Road and 5 terraced storeys to Benelong Crescent. The approved building contains a butterfly roof with clerestory below and a combination of cement render and metal cladding to the exterior.

3. DESCRIPTION OF PROPOSED MODIFICATION

The subject Section 96 Application involves the following modifications of the development consent:

- the southern extension to the lower ground floor level by 52.7 m²
- the eastern extension to the lower ground floor level by 14 m²
- the addition of a pedestrian tunnel between the northern end of the car park at lower ground floor level to Benelong Crescent
- the southern extension to the ground floor level by 82.5 m²
- the western extension to the ground floor level by 4.5 m²

- the southern extension to the first floor level by 37.2 m²
- the western extension to the first floor level by 4.5 m²
- the western extension to the second floor level by 12.5 m²
- the eastern extension to the second floor level by 2.3 m²
- the western extension to the third floor level by 15.8 m²
- the deletion of the planter returns from the northern terrace at third floor level
- the western extension to the fourth floor level by 12.5 m²
- the eastern extension to the fourth floor level by 14.1 m²
- the increase to the height of the levels throughout the building by 150 mm-300 mm with the overall height increased by 200 mm
- fenestrational changes to all elevations
- the reduction to the length of the privacy screen to the western side of the second floor level terrace by 1 m.

4. DESCRIPTION OF SITE AND LOCALITY

The site has a southern frontage to Birriga Road of 15.4 m and a northern frontage to Benelong Crescent of 10.2 m. The site has an eastern side boundary 46.3 m in length, a north-western side boundary 11.35 m in length, a western side boundary 43.9 m in length and an area of 743.6m². The site slopes downwards approximately 13 m from the Birriga Road frontage to the Benelong Crescent frontage. The subject site is currently undergoing earthworks for the approved development.

Surrounding development comprises dwelling houses and residential flat buildings of varying styles, ages and bulk and scale. The adjoining property to the east (20 Birriga Road) is occupied by a 5 storey residential flat building and the adjoining properties to the west (16 Birriga Rd and 20 Benelong Crescent) are currently being developed as a residential flat building containing five units and 11 off-street carparking spaces which will present 3 storeys to the Birriga Road frontage and 7 receding, terraced levels (including the carpark level) to Benelong Crescent.

ASSESSMENT UNDER S96

5.1 S96 (2) Other modifications

The proposed modifications have the potential to result in significant loss of amenity to surrounding residential properties. Accordingly, the subject Section 96 Application is deemed to fall within this category.

5.2 Substantially the same development

The proposed modifications to the development consent are the first. The extent of the modifications proposed are considered to be minor relative to the scope of the approved works (a new residential flat building) such that the consent as proposed to be modified is substantially the same as that originally granted.

5.3 Threatened species

The subject modifications will not result in any adverse impact upon any threatened species.

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:

6. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

6.1 SEPP 55-Remediation of Land

Under clause 7 (1) (a) of SEPP 55-Remediation of Land, consideration has been given as to whether the land is contaminated. There is no contamination issue in this instance.

6.2 SEPP 65–Design Quality of Residential Flat Development

The provisions of this instrument require Council to consider the design quality of the residential flat building when evaluated in accordance with the design quality principles. In this regard, the relevant design quality principles relate to context, scale, built form, density, aesthetics and amenity issues. Further, Council must have regard to the guidelines provided in the publication “*Residential Flat Design Code*”.

Subject to the modification of **Condition 2** requiring visual privacy measures, **Condition 72** requiring the deletion of inappropriate extensions to the side elevations at third and fourth floor levels in order to address adverse amenity impacts upon adjoining properties and the public domain and **Condition 73** requiring the deletion of inappropriate subterranean structures which inappropriately reduce the deep soil landscaped area, the proposed modifications are considered to be satisfactory with regard to the provisions of this instrument.

6.3 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 under this DA.

7. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

7.1 Aims and objectives of WLEP 1995 and zone (Clause 8(5))

The proposed modifications, as conditioned, are considered to be consistent with the aims and objectives of the LEP and the relevant objectives of the Residential 2 (b) zone.

7.2 Statutory compliance table

Site area: 743.6 m ²	Approved Development	Proposed modifications	Control	Complies
Overall Height (m)	10.6	10.8	12	YES
Floor Space Ratio	0.97:1 (722.9 m ²)	1.31:1 (975.5 m ²)	1:1 (743.6 m ²)	NO

7.3 Height

The maximum height of the proposed modifications of 10.8 m complies with Council's maximum height standard of 12 m.

7.4 Floor space ratio

The proposed modifications increase the floor space ratio from 0.97:1, as approved, to 1.31:1 resulting in a non-compliance with Council's maximum floor space ratio standard of 1:1 of 231.9m².

A SEPP 1 objection is not required to vary a statutory control in relation to a Section 96 Application.

The objectives of Council's floor space ratio standard aim to set the maximum density for new development, control building density, bulk and scale, to minimise adverse environmental impact upon adjoining properties and to relate new development to the existing character of the surrounding built and natural environment.

Of the 231.9 m² non-compliance, 165.7 m² is located below ground. Of this, the proposed eastern extension to the lower ground floor level by 1.2 m is objected to on the basis that the proposed 500 mm setback from the eastern side boundary is less than Council's minimum setback requirement for excavation of 1.5 m prescribed under performance criterion 5.2.16 under Woollahra RDCP 2003 and contributes 9.4 m² to the non-compliance with Council's deep soil landscaped area requirement of 40% prescribed under performance criterion 5.3.1 under Woollahra RDCP 2003. Accordingly, this aspect of the proposal is recommended to be deleted (see **Condition 73**). This reduces the non-compliance by 14 m². No objection is raised in relation to the remainder of the below ground extensions in the absence of any significant adverse environmental impact.

Of the proposed 66.2 m² additional floor area above ground, the proposed western extension to the Living/Dining room and the adjoining terrace at third floor level and the eastern and western extensions at fourth floor levels, (with the exception of the western extension to the stairwell) are not supported on the basis of adverse visual and overshadowing impacts upon neighbouring development. Accordingly, these aspects of the proposal are recommended to be deleted (see **Condition 72**). This reduces the non-compliance by a further 33.6 m². No objection is raised in relation to the remainder of the above ground extensions in the absence of any significant adverse environmental impact.

Subject to the deletion of the above-mentioned aspects, the proposed modifications are considered to be satisfactory in relation to the above-mentioned objectives and accordingly, no objection is raised in relation to the residual non-compliance of 184.3 m².

7.5 Clause 18 Excavation:

Clause 18 of Woollahra LEP 1995 requires Council to consider the impact of excavation, associated with a development proposal, upon the local environment. The proposed modifications involve approximately 276.8 m³ additional excavation at lower ground floor level, 272.2 m³ of additional excavation at ground floor level and 125.1 m³ additional excavation at first floor level. As discussed above, it is recommended that the proposed additional excavation adjacent to the eastern side boundary within the required setback of 1.5 m and which removes approximately 9.4 m² of deep soil landscaped area, be deleted (see **Condition 73**). Subject to this requirement, all of the proposed additional excavation complies with the setback requirement.

The development consent contains conditions which are designed to mitigate any adverse environmental impact associated with the approved excavation. Council's Development Engineer is of the opinion that these conditions have the capacity to address any environmental impact associated with the additional excavation proposed.

7.6 Clause 25 Water, wastewater and stormwater:

Clause 25 of Woollahra LEP 1995 requires Council to take into consideration the provision of adequate stormwater drainage and the provision of adequate water and sewerage services. The development consent contains conditions which address these issues in relation to the proposed modifications.

7.7 Clause 25D Acid Sulphate Soils

The subject site is within the Class 5 Acid Sulphate Soil area identified in the Planning NSW Acid Sulphate Soil Risk Map. However, the subject works are not likely to lower the water table below 1 m 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.

8. DEVELOPMENT CONTROL PLANS

8.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

Site Area (743.6 m ²)	Approved development	Proposed modifications	Control	Complies
Building Footprint	39% (290 m ²)	40.6% (301.9 m ²)	40% (297.4 m ²)	NO
Building Boundary Setbacks: (Lower ground floor level) (m)				
Front (Benelong Crescent)	6	0	6	NO
Front (Birriga Road)	14.7	10.3	6.6	YES
Side (East)	1.7	0.5	1.5	YES
Side (West)	1.5	1.5	1.5	YES
Building Boundary Setbacks: (Ground floor level) (m)				
Front (Birriga Road)	14.7	10.3	6.6	YES
Side (East)	2.5-3.5	3.5	1.5	YES
Side (West)	2	2	1.5	YES
Building Boundary Setbacks: (First floor level) (m)				
Front (Birriga Road)	14.7	10.3	6.6	YES
Side (East)	3-3.5	3.5	1.5	YES
Side (West)	2-3	2	1.5-3.4	NO (Partial)
Building Boundary Setbacks: (Second floor level) (m)				
Side (East)	3-3.5	3	3.4-6.5	NO
Side (West)	2-3.5	2-3.5	3.1-4.8	NO (Partial)
Building Boundary Setbacks: (Third floor level) (m)				
Side (West)	3.5	2-3.5	1.8-6.8	NO (Partial)
Building Boundary Setbacks: (Fourth floor level) (m)				
Side (East)	5.5	4.4	1.8-8.5	NO (Partial)
Side (West)	5	3.4-4.4	3.4-8.8	NO
Excavation, Piling and Surface Wall Setback-min (m)	1.5	<1.5	1.5m from all boundaries	NO
Deep Soil Landscaped Area	40.9% (304 m ²)	36.9% (274.4 m ²)	40% (297.4 m ²)	YES

Desired future precinct character objectives and performance criteria

The future character objectives for the Bellevue Hill South Precinct aim to achieve an appropriate scale for new development, minimise alterations to the landform, preserve the tree canopy and to preserve significant public views.

The proposal involves the following non-compliances with the relevant performance criteria stipulated under Part 4.6 of WRDCP 2003:

Performance Criterion C 4.6.3 stipulates a maximum building footprint of 40% for the subject site. The proposed modifications increase the building footprint from 39%, as approved, to 40.6% resulting in a non-compliance with Council's maximum building footprint control of 4.5 m².

The purpose of the building footprint control is to:

- limit site coverage and excavation of new buildings
- maximise on-site infiltration of stormwater
- maximise deep soil landscaped area
- maintain natural landform
- maintain subterranean water flows
- protect significant vegetation
- minimise the likelihood of land instability due to excavation

The proposed modifications which increase the building footprint relate to minor extensions to the lower levels of the eastern and western elevations which will not reduce the deep soil landscaped area of the development, does not involve significant additional excavation or have any significant impact upon the amenity of adjoining properties or the public domain. Accordingly, no objection is raised in relation to this minor area of non-compliance.

The proposal complies with the remainder of the performance criteria specified for the Bellevue Hill South Precinct.

Streetscape performance criteria

The provisions of Part 5.1 Council's RDCP 2003 require development to achieve consistency with the desired future character for the locality and contribute to cohesive streetscapes and desirable pedestrian environments.

The proposed modifications, as conditioned, are considered to be satisfactory with the desired future character objectives and performance criteria for the Bellevue Hill North Precinct contained in Woollahra RDCP 2003. The proposed modifications, as conditioned, will not have any significant adverse impact upon the public domain.

The proposed modifications, as conditioned, comply with the performance criteria stipulated under Part 5.1 of Council's RDCP 2003.

Building size and location performance criteria

The proposed modifications involve non-compliances with the minimum side and excavation setback requirements stipulated under Part 5.2 of Woollahra RDCP 2003.

The objectives of Part 5.2 of Woollahra RDCP 2003 involve:

- the preservation of established tree and vegetation networks and the promotion of new networks by ensuring sufficient areas for deep soil planting and sufficient setbacks between the rear of buildings
- to ensure the size and location of buildings allow for the sharing of views and preserve privacy and sunlight access for neighbouring residents
- to ensure the form and scale of development is not excessive and maintains the continuity of building forms and front setbacks in the street
- to limit site excavation and minimise cut and fill to ensure that building form relates to the topography and to protect the amenity of adjoining properties both during and after construction

The extent and significance of the areas of non-compliance are discussed as follows:

Eastern (side) elevation setback

The proposed 500 mm eastern extension to the northern 4.7 m of the second floor level eastern elevation is setback 3 m from the eastern side boundary which is less than Council's minimum requirement of 3.4-6.5 m. This area of non-compliance will not significantly adversely affect the amenity of the adjoining property to the east (20 Birriga Road) in terms of overshadowing, loss of views, loss of privacy or visual impact and will not have any adverse impact upon the public domain. Accordingly, no objection is raised in relation to this area of non-compliance.

The proposed 1.1 m eastern extension to the fourth floor level is setback 4.4 m from the eastern side boundary which is partially less than Council's minimum requirement of 1.8-8.5 m. The area of non-compliance relates to the northern two thirds of the proposed extension. Concern is raised that this area of non-compliance will significantly adversely affect the amenity of the adjoining property to the east (20 Birriga Road) in terms of overshadowing and visual impact. Accordingly, this aspect of the proposal is recommended to be deleted (see **Condition 72**).

Northern (front) elevation setback

The proposed addition of a pedestrian tunnel between the northern end of the car park at lower ground floor level to Benelong Crescent involves a zero setback from the Benelong Crescent frontage which is less than Council's minimum requirement of 6 m. Whilst the structure is underground, it would result in the loss 10.2 m² of the centre of the main section of deep soil landscaped area of the development. In the absence of any technical requirement for the pedestrian tunnel, it is recommended that it be deleted (see **Condition 73**).

Western (side) elevation setback

The proposed 1.5 m western extension to the northern 6.5 m of the second floor level is setback 2 m from the western side boundary which is less than Council's minimum requirement of 3.1-4.8 m. This area of non-compliance will not significantly adversely affect the amenity of the adjoining property to the west (16 Birriga Road) in terms of overshadowing, loss of views, loss of privacy or visual impact and will not have any adverse impact upon the public domain. Accordingly, no objection is raised in relation to this area of non-compliance.

The proposed 1.5 m western extension to the northern 11.3 m of the third floor level is setback 2 m from the western side boundary which is less than Council's minimum requirement of 3.4-6.8 m. Concern is raised that this area of non-compliance would significantly adversely affect the amenity of the adjoining property to the west (16 Birriga Road) in terms of overshadowing and visual impact and would unreasonably obstruct public views from Birriga Road. Accordingly, this aspect of the proposal is recommended to be deleted (see **Condition 72**).

The proposed 800 mm western extension to the central 4 m of the third floor level is setback 3.5 m from the western side boundary which is partially less than Council's minimum requirement of 1.8-4 m. The area of non-compliance relates to the upper half of the proposed extension. This area of non-compliance will not significantly adversely affect the amenity of the adjoining property to the west (16 Birriga Road) in terms of overshadowing, loss of views, loss of privacy or visual impact and will not have any adverse impact upon the public domain. Accordingly, no objection is raised in relation to this area of non-compliance.

The proposed 0.6-1.5 m western extension to the fourth floor level is setback 3.5-4.4 m from the western side boundary which is partially less than Council's minimum requirement of 3.4-8.8 m. The area of non-compliance relates to the northern/upper three quarters of the proposed extension. Concern is raised that this area of non-compliance will significantly adversely affect the amenity of the adjoining property to the west (16 Birriga Road) in terms of overshadowing and visual impact. Accordingly, this aspect of the proposal, (with the exception of the western stairwell extension) is recommended to be deleted (see **Condition 72**).

Excavation setback

The proposed eastern extension to the lower ground floor level by 1.2 m is objected to on the basis that the proposed 500 mm setback from the eastern side boundary is less than Council's minimum setback requirement for excavation of 1.5 m prescribed under performance criterion 5.2.16 under Woollahra RDCP 2003 and contributes 9.4 m² to the non-compliance with Council's deep soil landscaped area requirement of 40% prescribed under performance criterion 5.3.1 under Woollahra RDCP 2003. Accordingly, this aspect of the proposal is recommended to be deleted (see **Condition 73**).

Open space and landscaping performance criteria

The provisions of Part 5.3 of Council's RDCP 2003 requires the protection of significant existing vegetation and the provision of adequate deep soil landscaping.

Performance criterion 5.3.1 requires the provision of at least 40% of the site area (297.4m²) as deep soil landscaped area. The proposed modifications collectively reduce the approved deep soil landscaped area by 29.6 m². The proposed eastern extension to the lower ground floor level and the proposed addition of a pedestrian tunnel between the northern end of the car park at lower ground floor level to Benelong Crescent which would reduce the approved deep soil landscaped area by 19.6 m² are recommended to be deleted by **Condition 73** discussed previously. The residual 10 m² is a result of the south-western extension at lower ground floor level which will not significantly affect the landscaping contribution of the development to the locality. Accordingly, no objection is raised in relation to this residual non-compliance.

Views performance criteria

Objective 5.5.2 and performance criterion 5.5.6 requires the sharing of private views.

The owners of Units 8/7, 10/7 and 5/3-5 Birriga Road have objected to the proposed modifications on the grounds of loss of views.

The LEC in Tenacity Consulting Pty Ltd V Warringah Council has adopted a four-step assessment of view affectation. The steps are as follows:

1. The assessment of the views affected
2. Consideration from what part of the property the views are obtained
3. The extent of the impact; and
4. The reasonableness of the proposal that is causing the impact.

Unit 5/3-5 Birriga Road

The assessment of the views affected

Views potentially affected by the proposed modifications are of Sydney Harbour.

Consideration from what part of the property the views are obtained

The views are obtained from north-facing windows to the living room and a northern terrace which is the main private open space area.

The extent of the impact

The proposed increase to the overall height of the development by 200 mm will result in the partial obstruction of harbour views. Views of the Vaucluse ridgeline will be unobstructed. Quantitatively, less than 5% of total views from the unit will be lost. Qualitatively, the view impact is considered to be in the minor category.

The reasonableness of the proposal that is causing the impact

Considering that the overall extent of the view loss is minor in extent and that the proposed modifications maintain compliance with Council's height standard, the proposal is considered to be reasonable.

Unit 10/7 Birriga Road

The assessment of the views affected

Views potentially affected by the proposed modifications are of Sydney Harbour.

Consideration from what part of the property the views are obtained

The views are obtained from north-facing windows to the living room and kitchen and a northern terrace which is the main private open space area.

The extent of the impact

The proposed increase to the overall height of the development by 200 mm will result in the partial obstruction of harbour views. Views of the Vaucluse ridgeline will be unobstructed. Quantitatively, less than 5% of total views from the unit will be lost. Qualitatively, the view impact is considered to be in the negligible category.

The reasonableness of the proposal that is causing the impact

Considering that the overall extent of the view loss is minor in extent and that the proposed modifications maintain compliance with Council's height standard, the proposal is considered to be reasonable.

Unit 8/7 Birriga Road

Several attempts to contact the owner of this unit to arrange a view loss inspection were unsuccessful. The impact of the proposed modifications upon the views from this unit are estimated to be similar to the other 2 units discussed above.

Public Views

Objective 5.5.1 and performance criterion 5.5.2 requires the protection and enhancement of public views.

The proposed 1.5 m western extension to the northern 11.3 m of the third floor level is setback 2 m from the western side boundary which is less than Council's minimum requirement of 3.4-6.8 m. Concern is raised that this area of non-compliance would unreasonably obstruct public views from Birriga Road. Accordingly, this aspect of the proposal is recommended to be deleted (see **Condition 72**).

Energy efficiency performance criteria

The proposed modifications are considered to be satisfactory with regard to the performance criteria stipulated under Part 5.6 of Council's RDCP 2003.

Acoustic and visual privacy performance criteria

The provisions of Part 5.8 of Council's RDCP 2003 require the maintenance of the visual and acoustic privacy of adjoining properties and to ensure adequate privacy for the occupants of the proposed dwelling-house.

Objections have been received from the owners of the adjoining property to the west of the subject site (16 Birriga Road/20 Benelong Crescent) on the basis of loss of visual privacy.

The subject application involves the lowering of sill heights, the addition of several window openings to both side elevations which do not have adequate visual privacy mitigation measures, the deletion of planter boxes from both sides of the terrace at third floor level and the reduction to the length of the privacy screen to the western side of the second floor level terrace by 1 m. **Condition 2**, as recommended to be modified, requires measures to prevent overlooking of both adjoining side properties from these aspects of the proposal .

The proposed modifications do not increase the size of the terraces and therefore do not represent any potential for additional loss of acoustic privacy impacts upon adjoining properties beyond that associated with the approved development.

Subject to **Condition 2**, the proposal is considered to be satisfactory with regard to the provisions of Part 5.8 of Council's RDCP 2003.

9. Woollahra Access DCP

The provisions of Council's Access DCP require the provision of adequate access to the development by all people in the community including people with disabilities. The proposed modifications are considered to be satisfactory with regard to the provisions of this policy.

10. SUBMISSIONS

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

1. **J & R Ichilcik-Unit 10/7 Birriga Road, Bellevue Hill**
2. **J, I & R Benjamin Unit 5/3-5 Birriga Road, Bellevue Hill**
3. **S Weintroub-Unit 8/7 Birriga Road, Bellevue Hill**
4. **M. Campbell of Ingham Planning Suite 19, 303 Pacific Highway Lindfield 2070 on behalf of L Hughes-22 Benelong Crescent, Bellevue Hill**
5. **L. Rosselli 15 Randle Street, Surrey Hills 2010 on behalf of Castagnet Investments (Benelong) Plc-owner of 16 Birriga Rd/ 20 Benelong Crescent, Bellevue Hill.**

The objectors raised the following issues:

- incomplete documentation of the extent of the proposed modifications
- inappropriate increase to the width of the upper levels
- excessive floor space ratio and height
- inadequate boundary setbacks
- loss of views
- visual impact of lift overrun and mechanical ventilation above roofline
- inadequate statement of environmental effects
- impact of pedestrian tunnel on landscaping

These concerns have been addressed previously with the exception of the following:

- *incomplete documentation of the extent of the proposed modifications*

Despite several attempts, the applicant has not adequately documented all of the proposed modifications. However, a thorough comparison of the subject plans with the approval has been undertaken and all modifications, even those uncoloured, have been assessed.

- *visual impact of lift overrun and mechanical ventilation*

Not applicable.

- *inadequate statement of environmental effects*

Whilst the statement of environmental effects is inadequate, an assessment of the proposed modifications under the relevant planning provisions has been undertaken.

11. CONCLUSION

The proposed modifications, as conditioned, are considered to be acceptable against the relevant considerations under s79C and s96.

12. 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. 684/2002 for the demolition of an existing dwelling-house and garage and the construction of a 4 unit residential flat building with basement parking for 9 spaces on land at 18 Birriga Road/20D Benelong Crescent Bellevue Hill, in the following manner:

The modification of Condition No. 1 as follows:

1. Approved Plans

The development must be carried out in accordance with plans numbered 01B, dated 17 December 2002, 02A dated 10 January 2003, 03A, dated 13 January 2003, 04A dated 10 January 2003, 05A dated 8 January 2003, 06A dated 10 January 2003, 07A, 08A, 09A and 10A dated 13 January 2003 and 11A, dated 14 January 2003, drawn by Di Veroli Scotton Architects, including the landscape plan numbered LA01, Revision C, dated 31 May 2002, drawn by Taylor Brammer Landscape Architects, all of which carry a Council stamp "*Approved DA Plans*" and the signature of a Council officer, as amended by the works shown in colour on the plans numbered 1A-5A inclusive dated Feb '07, drawn by Thorsette P/L all of which carry a Council stamp "*Approved S96 Plans*" and the signature of a Council officer except where amended by the following conditions.

The modification of Condition No. 2 as follows:

2. Sill heights/privacy screens

In order to maintain the visual privacy of the adjoining properties to the west and east (16 & 20 Birriga Rd), the following windows are required to have sill heights that are a minimum of 1.7 m above finished floor level:

- i) the east-facing window to Bedroom 3 and the southern east-facing window to the Living/Dining room at ground floor level
- ii) the 3 west-facing windows at fourth floor level

Further, the privacy screens to both sides of the third floor terrace are to be extended to a length of 3.5 m and the privacy screen to the western side of the second floor level terrace is to be extended to a length of 4 m.

Such is to be indicated on the plans submitted with the Construction Certificate application.

The addition of the following conditions:

72. Deletion of certain proposed extensions at third and fourth floor levels

In order to the protect and enhance public views from Birriga Road and maintain the visual amenity and minimise overshadowing to the adjoining properties to the west and east (16 & 20 Birriga Rd), the proposed western extension to the Living/Dining room and the adjoining terrace at third floor level and the eastern and western extensions at fourth floor levels, (with the exception of the western extension to the stairwell) are to be deleted from the plans submitted with the Construction Certificate application.

73. Deletion of certain proposed extensions at lower ground floor level

In order to achieve compliance with Council's minimum excavation setback requirement of 1.5 m and to reduce the loss of the soil landscaped area adjacent to the eastern and northern boundaries, the proposed eastern extension and the proposed pedestrian tunnel at lower ground floor level are to be deleted from the plans submitted with the Construction Certificate application.

David Booth
SENIOR ASSESSMENT OFFICER

Nick Economou
TEAM LEADER

ANNEXURES

1. Plans and elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D3
FILE No.	DA 207/2007/1
PROPERTY DETAILS	2&3/18 Ian Street ROSE BAY
	Lot & DP No.: SP: 63399
	Side of Street: East
	Site Area (m²): 910.9
	Zoning: Residential 2(b)
PROPOSAL:	Removal of balcony planters and replacement with frameless glass balustrading to Units 2 and 3
TYPE OF CONSENT:	Local
APPLICANT:	Bensen & Partners Pty Ltd
OWNER:	THE PROPRIETORS OF STRATA PLAN 63399
DATE LODGED:	04/04/2007
AUTHOR:	Ms E Smith

1. RECOMMENDATION PRECIS

The application is recommended for approval.

2. PROPOSAL PRECIS

The development application is for the removal of the existing balcony planters and the introduction of replacement frameless glass balustrading to Units 2 and 3.

6. ESTIMATED COST OF WORKS

Council adopted (DCC 6 June 2005) administrative changes for determining DA fees based on the estimated cost of work. Where the estimated cost of work is greater than \$750,000 or where the applicant's estimate is considered to be neither genuine or accurate, the applicant has to provide a Quantity Surveyor's report. The estimated cost of works is \$18, 000 which is considered to be accurate.

7. DESCRIPTION OF SITE OF LOCALITY

THE SITE AND LOCALITY	
Physical features	The subject site is located at the northern end of Ian Street on the east side of the road. The site is a battle axe allotment. The site shares its access handle with No. 20 Ian Street.
Topography	The site slopes down towards Ian Street.
Existing buildings and structures	Standing on the subject site is a residential flat building, containing four dwelling units.
Environment	Surrounding development generally consists of residential flat buildings of three and four storeys.

8. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	Residential
Previous relevant applications	DA 96/109 - Demolition of existing building and the construction of a residential flat building. The application was refused at the Development Control Committee on the 02/12/1996. The development application was then approved by the Land and Environment Court on the 23/05/1997. DA 100/1999/297/1 – Air conditioning and mechanical ventilation. The application was approved on the 24/05/1999. DA 100/1999/1326/1 – Strata sub-division of building. The application was approved on the 13/03/2000. DA 100/2000/897/1 – New retractable sun awning. The application was approved on the 04/12/2000.
Pre-DA	Not applicable
Requests for additional information	Not applicable
Amended plans/ Replacement Application	Not applicable
Land & Environment Court appeal	Not applicable

9. REFERRALS

9.1 Internal referrals.

No internal referrals were required.

9.2 External referrals.

No external referrals were required.

ENVIRONMENTAL ASSESSMENT UNDER S.79C

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

10. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

10.1 SEPPs

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") does not apply to the proposed development as the cost of the proposed alterations and additions is less than \$50,000.

State Environmental Planning Policy 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. As the proposed development would not require any excavation works and the building was constructed in the late 1990's no further consideration is required under clause 7 (1) (a) of SEPP No. 55.

10.2 REPs

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject site is within an area to which the SREP applies. The objectives of the Plan are established at Clause 2 and include the following:

- (a) *To ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected and maintained;*
- (b) *As an outstanding natural asset, and*
- (c) *As a public asset of national heritage significance, for existing and future generations.*
- (d) *To ensure a healthy, sustainable environment on land and water*
- (e) *To achieve a high quality urban environment,*
- (f) *To ensure a prosperous working waterfront and an effective transport corridor,*
- (g) *To ensure accessibility to and along Sydney Harbour and its foreshores,*
- (h) *To provide a consolidated, simplified and updated legislative framework for future planning.*

The proposal would not have an adverse visual impact on the Harbour foreshore. The proposal is therefore consistent with the objectives of the SREP and would satisfy the relevant requirements of the SREP.

10.3 Section 94 contribution

Not applicable.

10.4 Other relevant legislation

No other legislation is applicable to this application.

11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

11.1 Aims and objectives of WLEP 1995 and zone (Clause 8(5))

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

11.2 Statutory compliance table

Site Area: 655m ²	Existing	Proposed	Control	Complies
Overall Height	7.4m (balcony balustrade)	7.4m (balcony balustrade)	9.5m	Yes

11.3 Height

The proposal complies with the maximum building height and objectives prescribed by Clause 12 of WLEP 1995.

11.4 Floor Space Ratio

The proposal would not result in an increase to the gross floor area of the units. The proposed development is therefore in accordance with the aims and objectives prescribed by Clause 11AA of the WLEP 1995.

11.5 Other special clauses/development standards

Clause 18 Excavation: The proposed development would not include excavation works. The proposal is therefore acceptable in terms of Clause 18.

Clause 19 HFSPA: The Council has made an assessment of the visual impact of the development when viewed from Sydney Harbour. The proposal is acceptable in terms of Clause 19(2).

Clause 24 Land adjoining public open space: The proposal is acceptable in terms of Clause 24(2).

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

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

Clauses 26-33 Heritage and conservation area provisions: The subject site is not a heritage item, is not in the immediate vicinity of any heritage items and is not located within a heritage conservation area. The proposal is therefore acceptable in terms of Clause 26-33 of the WLEP.

12. DRAFT AMENDMENTS TO STATUTORY CONTROLS

12.1 Draft State Environmental Planning Policy (Application of Development Standards) 2004

Draft State Environmental Planning Policy (Application of Development Standards) 2004 applies

Section 79C(1)(a)(ii) of the Act requires that in determining a development application, a consent authority is to take into consideration any **draft environmental planning instrument "EPI"** that is or has been placed on public exhibition and details of which have been notified to the consent authority.

Draft State Environmental Planning Policy (Application of Development Standards) 2004 ("the proposed SEPP") was publicly exhibited from 10 May to 18 June 2004. In considering how much weight should be placed upon an exhibited draft environmental planning instrument under section 79C of the Act one must assess how likely it is that the draft EPI will commence, in what form it is likely to commence and consider what effect the instrument would have if applied.

The proposed SEPP received significant criticism from the development industry in submissions. Officers of DIPNR have advised that it will not be made in the form it was exhibited and that it will now be included as part of the new Integrated LEP Template. This template will be placed on public exhibition in late April/May 2005. Therefore, it is not known in what form the draft SEPP will be made.

Clause 14 of the draft SEPP provides Saving and Transitional provisions. These provisions provide that any application submitted prior to the commencement of the proposed SEPP and within 28 days after the commencement of the proposed SEPP is to be determined in accordance with the former SEPP No.1 as if the former SEPP No.1 had not been repealed by the proposed SEPP. It is likely that the draft SEPP, if made, will contain transitional provisions.

The draft SEPP would, if it commenced in its exhibited form, require a higher threshold test in order for an objection against a development standard to be sustained. However, the draft policy should not be given determining weight in the assessment of development applications for the following reasons:

1. The draft SEPP will not be made in the form it was exhibited
2. It is not known whether the threshold tests contained in the exhibited SEPP will be retained
3. It is likely that, if made, the draft SEPP will contain savings and transitional provisions.

This means that objections submitted under State Environmental Planning Policy No.1 must be assessed under the current policy.

12.2 Woollahra Local Environmental Plan 1995 (Amendment No. 60)

Draft Amendment No. 60 to the WLEP was placed on exhibition from Friday 11 May 2007 to Friday 22 June 2007. The Draft Amendment to the WLEP is not applicable to this proposal.

13. DEVELOPMENT CONTROL PLANS

13.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

Not applicable to this assessment.

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

The application site is within the Rose Bay precinct. The proposed development is in accordance with the objectives of section 4.9.

13.3 Streetscape performance criteria (Section 5.1)

The removal of the balcony planters would not have a detrimental impact upon the streetscape. The proposal is in accordance with the objectives and performance criteria of section 5.1.

13.4 Building size and location performance criteria (Section 5.2)

The proposed development would not have a significant detrimental impact in terms of loss of privacy for neighbouring residents in accordance with objective O5.2.2. This issue is discussed in more detail in the 'acoustic and visual privacy performance criteria' section of the report.

The proposal is in accordance with the relevant objectives and controls of the RDCP 2003.

13.5 Open space and landscaping performance criteria (Section 5.3)

The proposal would not result in the loss of any mature vegetation or deep soil landscaping in accordance with objective O5.3.2.

The existing useable floor areas of the balconies are 26.25sq.m (unit 2) and 17.9sq.m (unit 3). The proposal would increase the useable floor areas of the balconies to 35.86sq.m (unit 2) and 25.81sq.m (unit 3). This is in accordance with performance criteria C5.3.5 which requires dwellings in residential flat buildings to have an area of private open space which is a minimum area of 8sq.m.

13.6 Views performance criteria (Section 5.5)

The proposed development would not result in a loss of public or private views as such the proposal is in accordance with the relevant objectives and controls of section 5.5 of the RDCP 2003.

13.7 Acoustic and visual privacy performance criteria (Section 5.8)

The planter boxes are approximately 0.9m high with a depth of approximately 1m, their removal would increase the area of useable space on the balconies. The removal of the planter boxes is considered acceptable with regards to the visual and acoustic privacy of the adjoining neighbours as:

- The planter boxes provide minimal screening to the rear open space of No.16 Ian Street due to the height of both the planter boxes and the planting. This is illustrated in the site line diagrams (Annexes 2 and 3).
- The site line diagram (Annex 3) and site photos (Annex 5) demonstrate that a large extent of the private open space area of No. 16, can already be viewed from a standing position on the application site balconies and the removal of the planter boxes would only afford minimal additional views of the rear open space.
- It is acknowledged that currently views of the rear open space of No. 16 are not available from a seated position on the balconies, and the removal of the planter boxes would enable some seated views of the rear space. However, as shown in the site line diagram (Annex 2) these views would only be available from a relatively small area of the forward most balconies as such the proposed level of overlooking is not significant enough to justify the refusal of the application.
- Views of the balconies at Units 1 and 2, No. 20 Ian Street are currently available from the forward most balconies on the application site. However, there is over 9m separation between

the balconies and this is a sufficient level of separation to prevent any unacceptable impacts in terms of overlooking (see site photos – Annexes 4 and 5). It was also noted by virtue of a site visit that the existing planters provide a minimal level of screening due to the height of both the planter boxes and the plants. It would be unreasonable to prevent the removal of the planter boxes when there is a sufficient level of separation and the planter boxes afford such a minimal level of screening.

- The application was refused at the Development Control Committee and then subsequently approved by the Land and Environment Court. The Senior Commissioner stated in his findings that siteline diagrams (Exhibit J) were submitted as evidence at the hearing, which indicated that there would be very little opportunity to overlook the adjoining properties. The Senior Inspector went on to state that the impact of the proposal on the privacy of the adjoining properties would be minor. Unfortunately the Council do not have the benefit of access to these siteline diagrams. It is therefore difficult to ascertain how much weight was given to the inclusion of the balcony planters in terms of preventing overlooking. The Senior Commissioner included a condition which required the provision of balcony planters, but it is noted that the Senior Commissioner did not state that the reason for the planters was to reduce overlooking.
- When the development on the site was originally approved minor weight should have been given to the ability of the planter boxes to protect against loss of privacy as set out in planning principle; *Super Studio v Waverley* [2004] NSWLEC 91. This is due to the fact that landscaping can not be relied upon as sole protection against overlooking because of its ability to be removed or reduced.
- The minimal physical separation provided by the planter boxes and balustrade is not considered to benefit the acoustic privacy of the adjoining side or rear neighbours.

For the above mentioned reasons the deletion of the planters will not have unreasonable privacy impacts on the adjoining side and rear neighbours. The proposed modifications are seen to satisfy the relevant objectives and performance criteria of the WRDCP.

14. Other DCPs, codes and policies

No other controls apply.

15. APPLICABLE REGULATIONS

The proposal would comply by condition.

16. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts have been addressed elsewhere in the report.

17. THE SUITABILITY OF THE SITE

The site is within a Class 5 Acid Sulphate Soil area identified in the Planning NSW Acid Sulphate Soil Risk Map. The site is therefore considered suitable for the proposed development.

18. SUBMISSIONS

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

Mr B. W. Bland,
1/20 Ian St,
Rose Bay,
2029

Mr T. Snow,
2/20 Ian St,
Rose Bay,
2029

Mr S. Behaettin,
16 Ian Street,
Rose Bay,
2029

The objectors raised the following issues:

- Privacy

This is addressed in the 'Acoustic and visual privacy performance criteria' section of the report.

19. CONCLUSION - THE PUBLIC INTEREST

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

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

THAT the Council, as the consent authority, grant development consent to Development Application No. 207/2007 for removal of balcony planters and replacement with frameless glass balustrading to Units 2 and 3 on land at 18 Ian Street Rose Bay, subject to the following conditions:

A. General Conditions

A.1 Conditions

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

Standard Condition: A1

A.2 Definitions

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

Applicant means the applicant for this Consent.

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

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

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

Council means Woollahra Municipal Council

Court means the Land and Environment Court

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

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

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

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

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

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

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

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

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

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

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

Site means the land being developed subject to this consent.

WLEP 1995 means *Woollahra Local Environmental Plan 1995*

Work for the purposes of this consent means:

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

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

A.3 Approved Plans and supporting documents

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

Reference	Description	Author/Drawn	Date(s)
DA 01/A DA 02/A DA 03/A DA 04/A DA 05/A DA 06/A DA 07/A	Architectural Plans	Bensen Partners Architects	15.03.07

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

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

A.4 Prescribed Conditions

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

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

A.5 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, Levies and Fees (S80A(6) & S94 of the Act, Section 608 of the Local Government Act 1993)

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

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

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

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy Use Calculator: http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation or use their online calculator	No	
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit - Making good any damage caused to any property of the <i>Council</i> as a consequence of the doing of anything to which the consent relates.	\$2000.00	No	T600
Security Administration Fee	\$163	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$2163.00 Plus any relevant indexed amounts and long service levy		

Building & Construction Industry Long Service Payment

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

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

How must the payments be made?

Payments must be made by:

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

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

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

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

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

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

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

This condition does not apply:

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

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

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

D.2 Site Signs

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

“Erection of signs

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

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

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

D.3 Toilet Facilities

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

Each toilet provided:

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

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

In this condition:

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

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

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

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

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

D.4 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

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

- a. a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited Certifier, and
- b. the person having the benefit of the development consent has:
 - i. appointed a principal certifying authority for the building work, and
 - ii. notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and

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

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

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

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

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

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

D.5 Notification of Home Building Act 1989 requirements

- a. For the purposes of section 80A (11) of the *Act*, the requirements of this condition are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the Home Building Act 1989.
- b. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - 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.6 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

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

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

- iv. given at least 2 days' notice to the council of the person's intention to commence the erection of the building.

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

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

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

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

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

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 Requirement to notify about new evidence

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, heritage significance, threatened species or other relevant matters must be immediately notified to Council and the Principal Certifying Authority.

Standard Condition: E4

E.4 Critical Stage Inspections

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

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

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

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

Standard Condition: E5

E.5 Hours of Work –Amenity of the neighbourhood

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

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

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

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

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

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

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

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

E.6 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.7 Placement and use of Skip Bins

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

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

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

E.8 Dust Mitigation

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

This generally requires:

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

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

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

Note 3: Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution.
Standard Condition: E23

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

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

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

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

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

No relevant conditions.

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

No relevant conditions.

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

No relevant conditions.

J. Miscellaneous Conditions

No relevant conditions.

K. Advisings

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

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

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

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

Warnings as to potential maximum penalties

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

Warning as to enforcement and legal costs

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

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

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

<http://www.theshopfront.org/documents/ConvictionsCriminalRecords.pdf> and the Attorney General's www.agd.nsw.gov.au.
Standard Advising: K1

K.2 Dial before you dig



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

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

Standard Advising: K2

K.3 Commonwealth Disability Discrimination Act 1992 (“DDA”)

The Disability Discrimination Act 1992 (DDA) makes it against the law for public places to be inaccessible to people with a disability. Compliance with this development consent, Council’s Access DCP and the BCA does not necessarily satisfy compliance with the DDA.

The DDA applies to existing places as well as places under construction. Existing places must be modified and be accessible (except where this would involve "unjustifiable hardship”).

Further detailed advice can be obtained from the Human Rights and Equal Opportunity Commission (“HEROC”):

- <http://www.hreoc.gov.au/index.html>
- http://www.hreoc.gov.au/disability_rights/dda_guide/ins/ins.html

If you have any further questions relating to the application of the DDA you can send an email to HEROC at disabdis@humanrights.gov.au.

Standard Advising: K3

K.4 Builders Licences and Owner Builders Permits

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

Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder):

<http://www.dft.nsw.gov.au/building.html> .

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

Standard Condition: K5

K.5 Building Standards - Guide to Standards and Tolerances

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

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

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

The Guide can be down loaded from:

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

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

Standard Condition: K6

K.6 Workcover requirements

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

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

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

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

Standard Condition: K7

K.7 Appeal

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

Eleanor Smith, Assessment Officer on (02) 9391 7090

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

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

Standard Condition: K14

K.8 Release of Security

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

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

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

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

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

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

K.9 Owner Builders

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

Standard Condition: K18

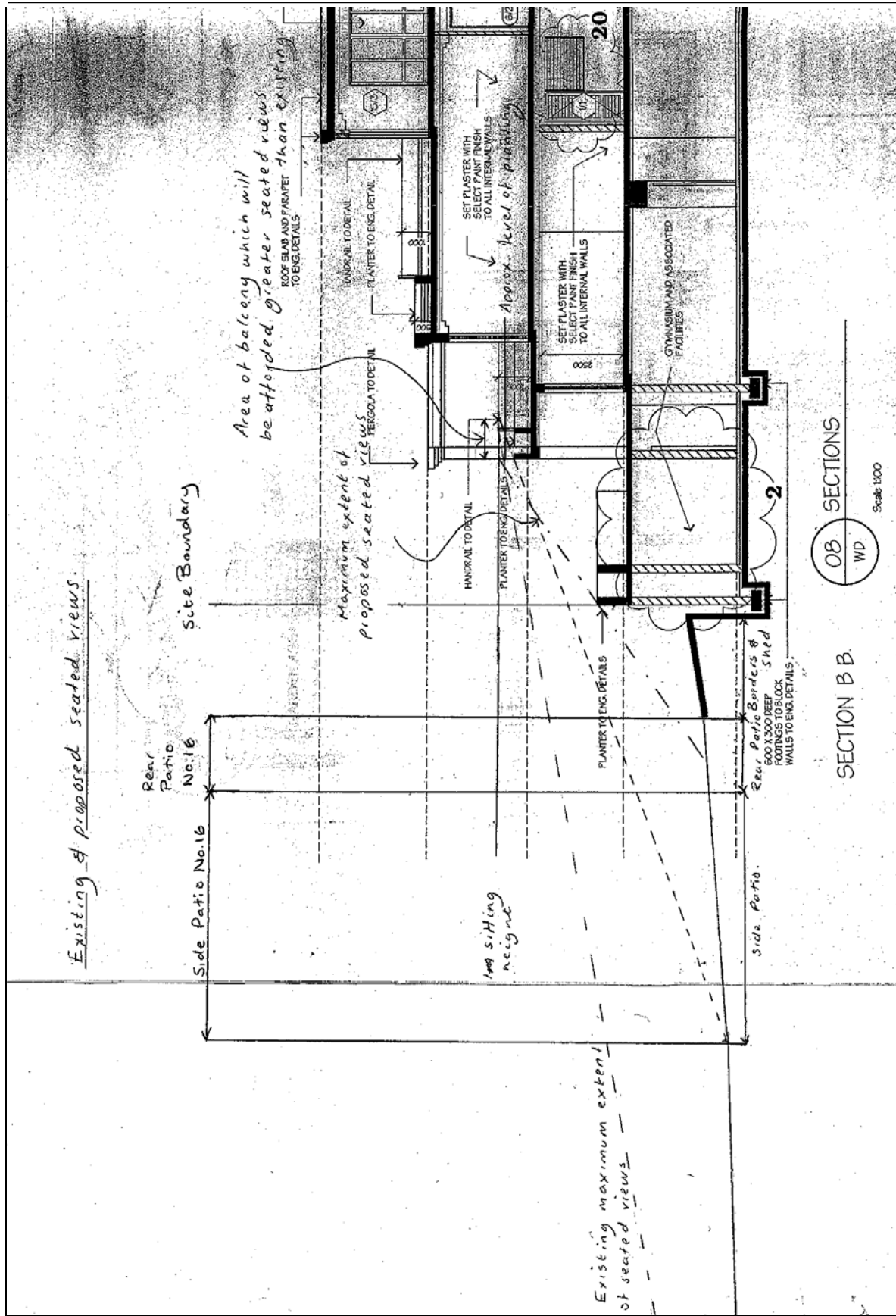
Ms E Smith
ASSESSMENT OFFICER

Mr M Schofield
TEAM LEADER

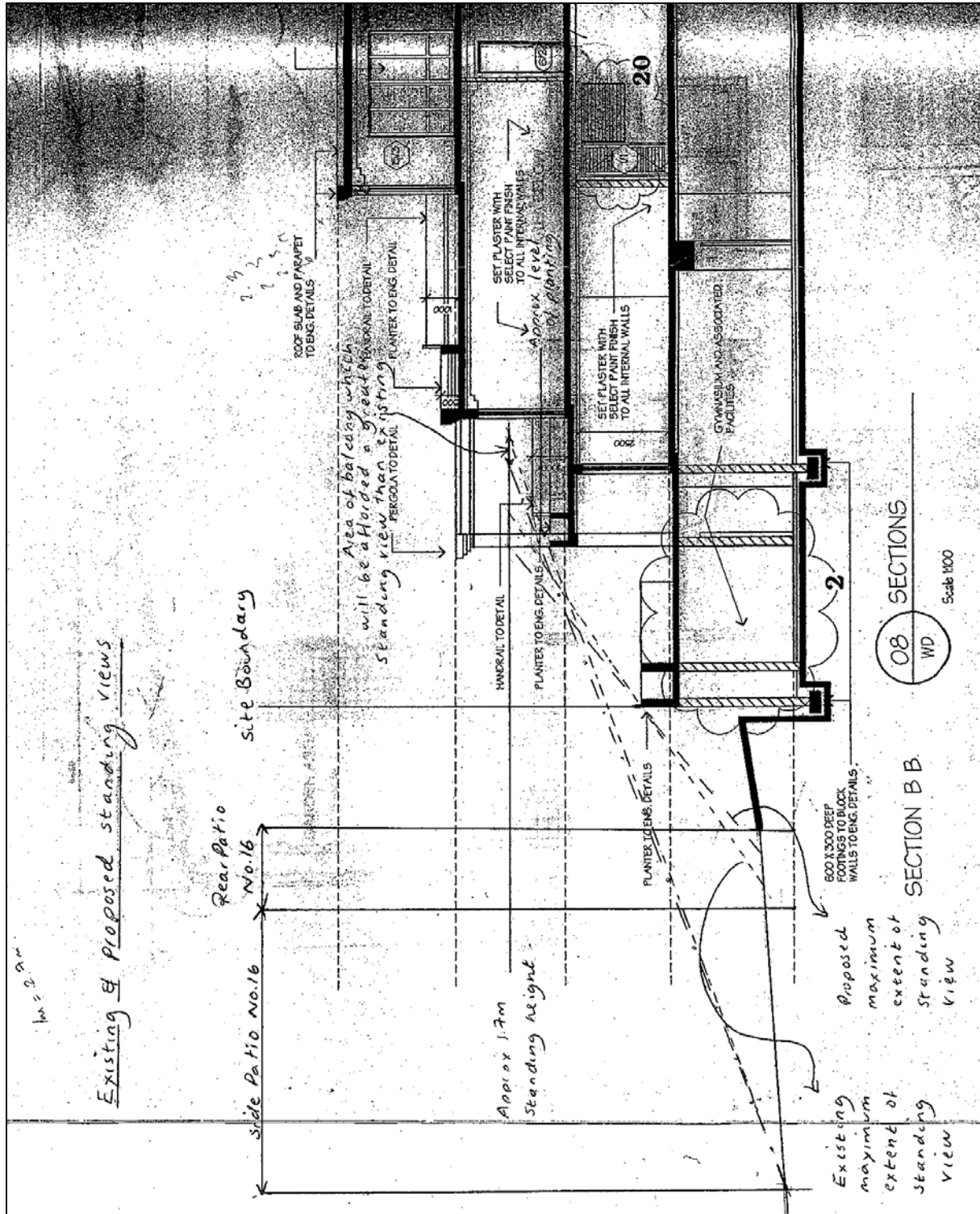
ANNEXURES

1. Plans and elevation
2. Siteline Diagram - Existing and proposed seated views.
3. Siteline Diagram - Existing and proposed standing views.
4. Aerial site photo.
5. Site photos.

2. Existing and proposed seated views.

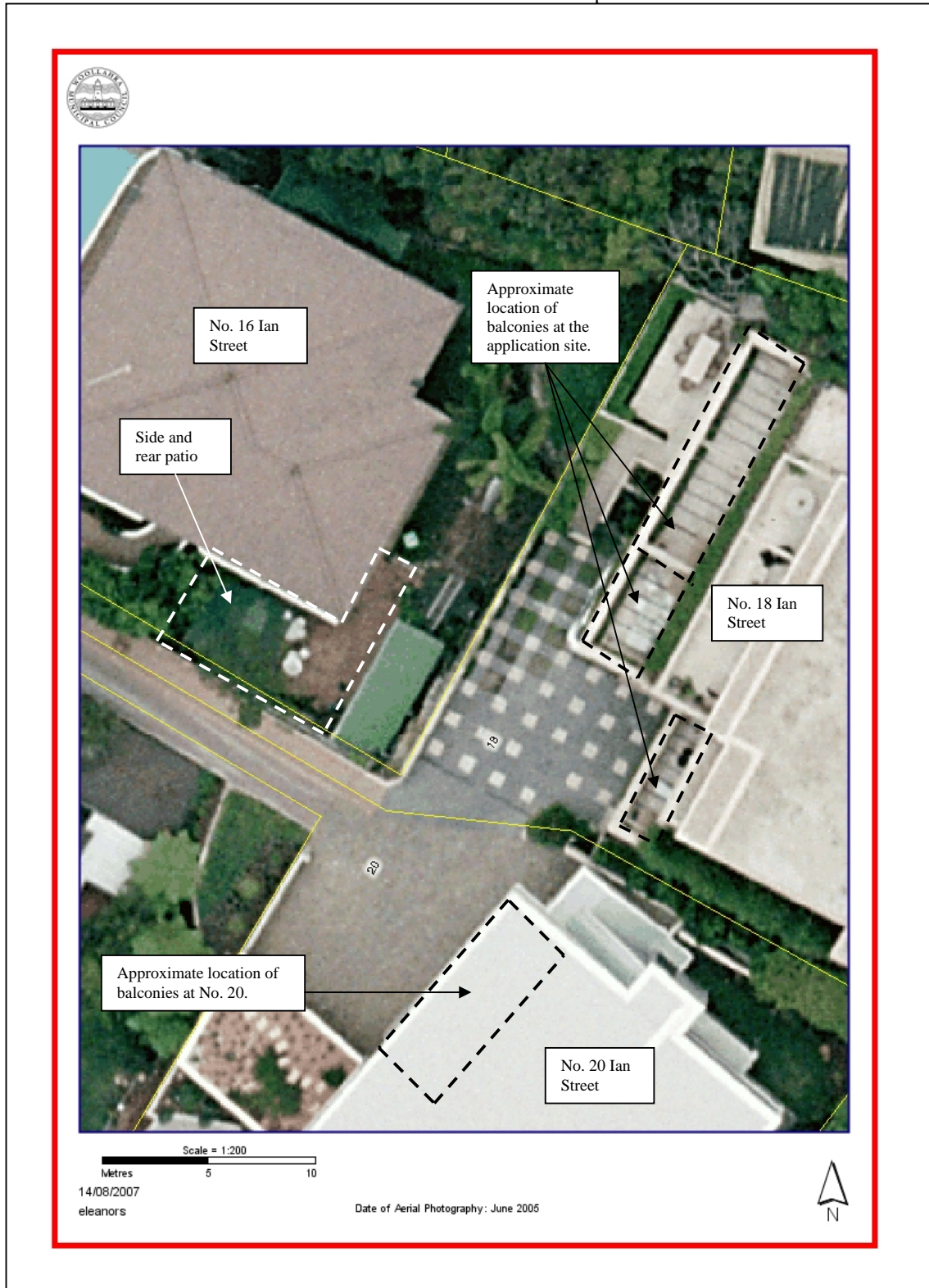


3. Existing and proposed standing views.



4. Aerial site photo.

Do not scale from this aerial photo.



5. Site photos.



i) The subject second floor balconies at units 2 & 3/18 Ian Street – viewed from the front drive.



ii) Living room balcony at 3/18 Ian Street – viewed from the bedroom balcony at unit 3.



iii) Balconies at units 1 & 2 /20 Ian Street - viewed from the living room balcony of Unit 3.

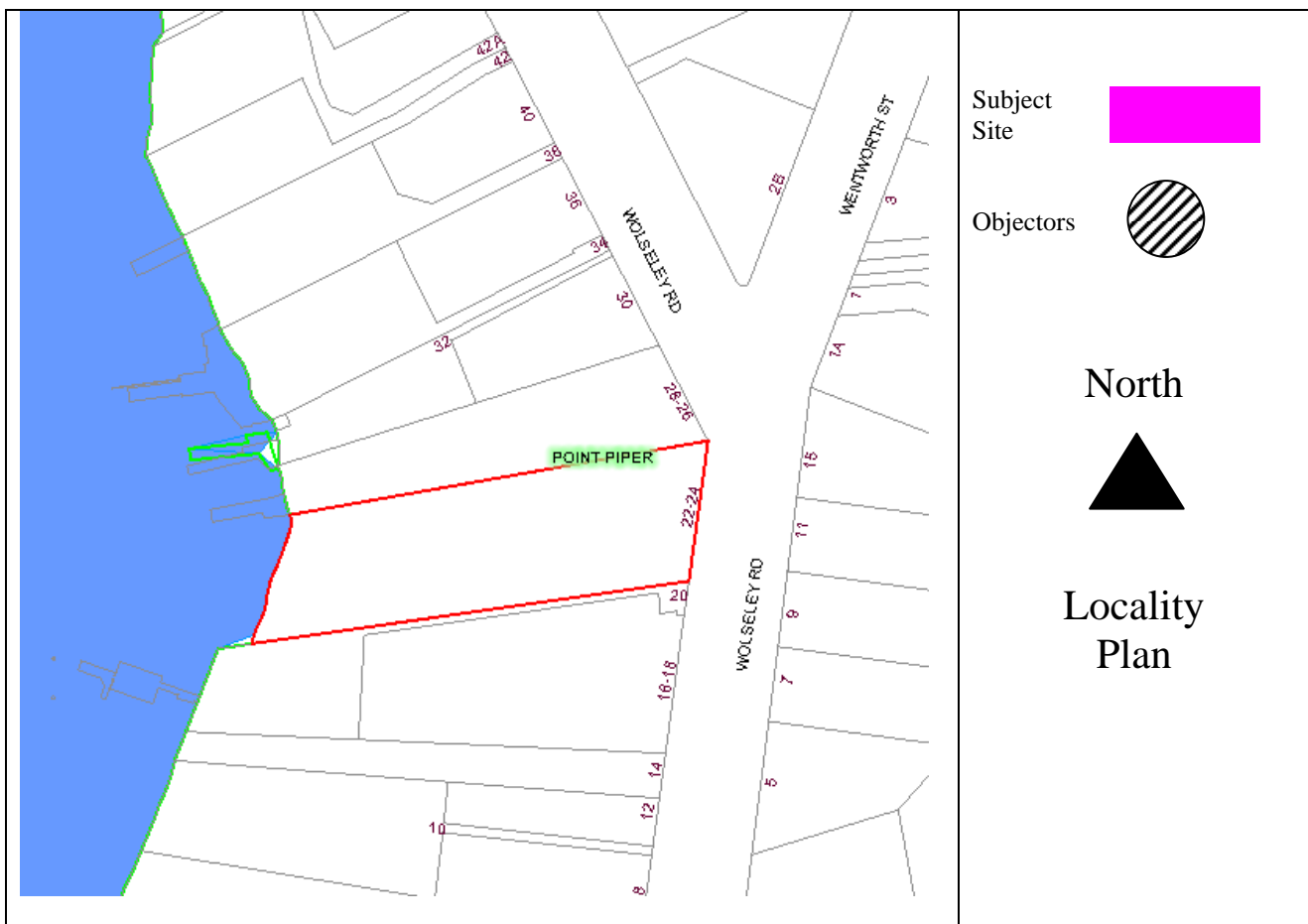


iv) No. 16 Ian street - viewed from the living room balcony of unit 3/18 Ian Street.

SECTION 82A REVIEW OF DETERMINATION REPORT

ITEM No.	D4
FILE No.	DA 350/2005
ADDRESS:	22-24 Wolseley Road POINT PIPER
PROPOSAL:	Change of use of caretaker's flat to be used as a residence
DATE DA DETERMINED:	17 November 2005
SUBJECT OF REVIEW:	Refusal of consent
DATE S82A REVIEW APPLICATION LODGED:	16/11/2006 (Amended 10 May 2007)
APPLICANT:	Wolseley Investments Pty Ltd
OWNER:	Wolseley Investments Pty Ltd
REVIEW OFFICER:	Mr M Schofield

LOCALITY PLAN



1. 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 of Authority, this Review of Determination is reported to the Application Assessment Panel for determination.

Issues

- Fire Safety
- Previous assessment

Objections

No objections have been received in response to the notification. Submissions have been made on behalf of a Director of Wolseley Investments Pty Ltd. The issues raised in the submissions are discussed in Section 14 of this report.

Recommendation

Approval

2. HISTORY

History of application

The application was lodged with Council on the 10 June 2005. The proposed development is described on the application form as being an application for use of the caretakers flat as a residence. The application was refused under delegated authority on the 17 November 2005 for the following reason:

- “1. *Insufficient information has been provided in relation to Fire Safety provisions contained in Clause 93 of the Environmental Planning and Assessment Regulation 2000 for Council to satisfactorily determine the application.*”

93 Fire safety considerations

- (1) *This clause applies to a development application for a change of building use for an existing building, where the applicant does not seek the rebuilding, alteration, enlargement or extension of a building.*
- (2) *In determining the development application, the consent authority is to take into consideration whether the fire protection and structural capacity of the building will be appropriate to the building's proposed new use.*
- (3) *Consent to the change of building use sought by a development application to which this clause applies **must not be granted** unless the consent authority is satisfied that the building complies (or will, when completed, comply) with such of the Category 1 fire safety provisions as are applicable to the building's proposed new use.”*

Other relevant history

Gordon Robinson Real Estate sent a letter to Council dated 27 March 2005 seeking confirmation of the existence of a caretaker's flat within the roof of the subject building. Council's Building and Compliance Division replied to the letter on the 23 May 2005 in the following manner:

"Thank you for your letter of 27 March 2005 seeking confirmation of the existence of a caretaker's flat within the roof of the subject building.

Anecdotal evidence from the minutes of Council's Building & Health Committee on 5 December 1955 reporting on a proposal for the construction of two penthouses, suggests that a residential unit had existed in this area since before that date."

A Building Certificate (BC) application was lodged on the 23 August 2006 for the caretakers flat within the existing roof space. The BC was approved on the 16 October 2006. The BC identifies the caretakers flat as being a Class 2 building in accordance with the classifications contained in the Building Code of Australia (BCA).

The subject flat is owned by Wolseley Investments Pty Ltd (The Company) under Company Title. The Company wishes to sell an entitlement to the flat to one of its Directors. It is the understanding of the review officer that the sale/purchase is conditional upon the company obtaining consent to a development application for the use of the existing caretakers flat as a residence. The Company and the prospective purchaser are currently involved in proceedings in the Supreme Court.

3. DESCRIPTION OF PROPOSAL SUBJECT OF REVIEW

The application seeks approval to use the caretakers flat contained within the roof space of the residential flat building as a private residence.

The caretaker's flat is one of eleven flats within the building, which was constructed in 1934. The flat is accessed via an external stair. There are ten on-site car parking spaces.

4. DESCRIPTION OF PROPOSED REVIEW

The applicant has requested that Council review its refusal. A Building Code of Australia (BCA)-Assessment Report was provided to address the reason for refusal.

The application was modified on the 10 May 2007 to include an extension to the central stair to provide internal access to the flat. The works for the stairs do not alter the external form of the building.

5. 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.

6. CONSIDERATION OF REVIEW

6.1 Substantially the same development

The application which is the subject of the review includes physical works which were not part of the original application. The works are required to facilitate the purpose for which approval is sought and to address the reason for refusal. Accordingly the proposal is substantially the same development to that which was originally refused.

6.2 REFERRALS

6.2.1 Fire Safety Officer

Council's Fire Safety Officer responded as follows:

"BCA Compliance is proposed with regard to provision of stair access and Fire resisting construction to building elements associated with the proposed new part.

It is intended to issue an order for the upgrade of the building to deal with significant fire safety issues posed by the existing building.

It has been contended by prospective purchaser of the property that the existing lift is required by the BCA to service the top storey of the building.

This is considered incorrect for the following reason:

1. *The lift is only specifically required to serve the building if the building is over 25 m in effective height to satisfy the requirements of part E 3 of the BCA. The Building is less than 25 Meters in effective height.*

Please include the following condition as a part of development consent for the proposed alteration and addition of the existing non habitable part

1. ***Pursuant to clause 94 of the Environmental Planning and Assessment Regulation 2000 Council as the consent authority requires the building to be brought into partial conformity with the Building Code of Australia as the measures contained in the building are inadequate to protect persons using the building, and to facilitate their egress from the building, in the event of fire, and to restrict the spread of fire from the building to other buildings nearby.***
 - (a) *New construction shall comply with the provisions of the Building Code of Australia 2007 and the recommendation of the Building Code of Australia assessment report by BCA Performance Pty Ltd dated May 2007 By John Koloadin.*
 - (b) *The proposed sole occupancy unit shall be separated from the remainder of the building by wall and floor construction with an FRL of 90/90/90 and in accordance with the requirements of Clause C1.1 and Table 3 of the specification C1.1 of the Building Code of Australia.*

Notes:

The building shall be the subject of an order for fire safety upgrade issued under (s) 121B (6) of the EP and A Act requiring fire upgrade of the whole of the building in conjunction with the occupation of the new part.”

The comments of the Fire Safety Officer are concurred with and the recommended condition forms part of the recommendation of this report (**refer to condition C.2**)

A copy of the fire safety officers comments is attached (**refer to annexure 2**)

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:

7. STATE/REGIONAL INSTRUMENTS AND LEGISLATION

7.1 SEPPs

State Environmental Planning Policy No.55 – Remediation of Land

Under Clause 7 (1) (a) of SEPP 55-Remediation of Land, consideration has been given as to whether the land is contaminated. The proposed works will not disturb the soil and as such there will be no issue of soil contamination. The works to the stair may disturb building fabric which is hazardous. Any issues which may arise can be dealt with by appropriate building techniques (**refer to advisings 5-7**).

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

The provisions of SEPP 65 are not applicable as the development does not involve the substantial redevelopment or the substantial refurbishment of an existing residential flat building.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (“BASIX”) does not apply to the proposed development as it was submitted prior to the 1 October 2006.

7.2 REPs

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject site is within the area to which the SREP applies. The proposed works are internal and will not alter the sites relationship with the harbour.

7.3 Section 94A/94 contribution

The development does not attract a s.94A or s.94 contribution.

7.4 Other legislation

None relevant.

8. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995 (WLEP 1995)

8.1 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.

8.2 Statutory compliance table

Site Area: 2248m² (approx)	Existing	Proposed	Control	Complies
Overall Height	20m(approx)	16m(approx)	9.5m	No

8.3 Height

The proposed internal stair reaches a height of 16m which is in breach of the 9.5m height limit.

The applicant submitted an objection prepared in accordance with the requirements of State Environmental Planning Policy No.1 (SEPP 1) to seek a variation to the control. The argument of the applicant is as follows:

“There is to be no change to the external form of the building. The works are internal only and as such are consistent with the Development Controls.”

The following assessment of the SEPP 1 Objection applies the principles arising from *Hooker Corporation Pty Limited v Hornsby Shire Council*(NSWLEC, 2 June 1986, unreported) by using the questions established in *Winten Property Group Limited v North Sydney Council*(2001) NSW LEC 46 (6 April 2001).

Is the planning control in question a development standard?

Clause 12 (Height) of the Woollahra Local Environmental Plan 1995 is a development standard.

What is the underlying purpose of the standard?

The objectives of the maximum building height for development standards as stated in clause 12AA are:

- (a) *to minimize impact of new development on existing views of Sydney Harbour, ridgelines, public and private open spaces and views of the Sydney City skyline,*
- (b) *to provide compatibility with the adjoining residential neighbourhood,*
- (c) *to safeguard visual privacy of interior and exterior living areas of neighbouring dwellings,*
- (d) *to minimise detrimental impacts on existing sunlight access to interior living rooms and exterior open space areas and minimize overshadowing,*
- (e) *to maintain the amenity of the public domain by preserving public views of the harbour and surrounding areas and the special qualities of the streetscapes.*

Is non-compliance with the development standard consistent with the aims of the Policy, and in particular, would strict compliance with the development standard tend to hinder the attainment of the objectives specified in S.5(a)(I) and (ii) of the EPA Act?

Having regard to the above-mentioned objectives, the proposed works that exceed the 9.5m height control limit are satisfactory for the following reasons:

- (a) The proposed works are internal and will not obstruct any public or private views.
- (b) The proposed works are internal and as such the buildings relationship with the adjoining residential neighbourhood will be maintained.
- (c) The proposed works do not create any greater opportunity for the overlooking of the neighbouring properties.
- (d) The proposed works are internal and will not lead to any change in the solar access received by the neighbouring properties.
- (e) The proposed works are internal and will not affect any public views.

Following consideration of the argument presented by the applicant in their SEPP1 submission against the relevant objectives of development standard 12AA of the Woollahra LEP 1995, it is acknowledged that the proposal would uphold the objectives underlying the development standard and in this instance it is successfully argued that compliance with the standard would hinder the attainment of objectives specified in s.5(a)(i) and (ii) of the EPA Act.

Is compliance with the standard unreasonable or unnecessary in the circumstances of the case?

The proposal achieves consistency with the objectives of the height of buildings standard and therefore the SEPP 1 objection to this standard is supported. It is recommended that Council resolve to vary the standard in this instance as compliance is considered to be unreasonable and unnecessary.

Paragraph 3 of Circular B1 from the former Department of Planning states-

“As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases a variation will be numerically small in others it may be numerically large, but nevertheless be consistent with the purpose of the standard.”

The underlying purpose of the standard as expressed by the objectives under clause 12AA of WLEP 1995 is to achieve compatibility with the height of surrounding development and to safeguard amenity. Having regard to the context of surrounding development and the desired future character objectives for the area, the underlying purpose of the standard would be achieved.

Is the objection well founded?

The objection advanced by the applicant that compliance with the development standard is unreasonable and unnecessary is well founded and it is considered that granting of development consent would be consistent with the aims and objectives of SEPP 1.

8.4 Floor space ratio (FSR)

Clause 11 of the WLEP 1995 limits development on the site to a maximum FSR of 0.625: 1. The proposed works occur within the envelope of the existing building and do not alter the gross floor area.

8.5 Other special clauses/development standards

Clause 19 HFSPA: The subject site is located within the Harbour Foreshore Scenic Protection Area. The proposed works are internal and will not lead to any change in the sites relationship with the Harbour. The proposal is consistent with the requirements of this clause.

Clauses 26-33 Heritage and conservation area provisions: The subject site is not a heritage item or located with a Heritage Conservation Area, but is located within the vicinity of several heritage items, those being:

Street (or General location)	Suburb	Street No.	Description of Heritage Item
Wolseley Rd with Road Reserve	Point Piper		Norfolk Island Pine
Wolseley Rd	Point Piper	16-18	<i>Danmark</i> - Residential flat building
Wolseley Rd	Point Piper	28	Building

The proposal does not involve change to the external form of the building and as such will not alter the sites relationship with these heritage items.

The proposal would satisfy the relevant clauses 26-33 of the Woollahra LEP 1995.

9. DRAFT AMENDMENTS TO STATUTORY CONTROLS

9.1 Draft State Environmental Planning Policy (Application of Development Standards) 2004 applies.

Section 79C(1)(a)(ii) of the Act requires that in determining a development application, a consent authority is to take into consideration any **draft environmental planning instrument "EPI"** that is or has been placed on public exhibition and details of which have been notified to the consent authority.

Draft State Environmental Planning Policy (Application of Development Standards) 2004 ("the proposed SEPP") was publicly exhibited from 10 May to 18 June 2004. In considering how much weight should be placed upon an exhibited draft environmental planning instrument under section 79C of the Act one must assess how likely it is that the draft EPI will commence, in what form it is likely to commence and consider what effect the instrument would have if applied.

The proposed SEPP received significant criticism from the development industry in submissions. Officers of DIPNR have advised that it will not be made in the form it was exhibited and that it will now be included as part of the new Integrated LEP Template. This template will be placed on public exhibition in late April/May 2005. Therefore, it is not known in what form the draft SEPP will be made.

Clause 14 of the draft SEPP provides Saving and Transitional provisions. These provisions provide that any application submitted prior to the commencement of the proposed SEPP and within 28 days after the commencement of the proposed SEPP is to be determined in accordance with the former SEPP No.1 as if the former SEPP No.1 had not been repealed by the proposed SEPP. It is likely that the draft SEPP, if made, will contain transitional provisions.

The draft SEPP would, if it commenced in its exhibited form, require a higher threshold test in order for an objection against a development standard to be sustained. However, the draft policy should not be given determining weight in the assessment of development applications for the following reasons:

1. The draft SEPP will not be made in the form it was exhibited.
2. It is not known whether the threshold tests contained in the exhibited SEPP will be retained.
3. It is likely that, if made, the draft SEPP will contain savings and transitional provisions.

This means that objections submitted under State Environmental Planning Policy No.1 must be assessed under the current policy.

9.2 Woollahra Local Environmental Plan 1995 (Amendment No. 60)

Draft Amendment No. 60 to the WLEP was placed on exhibition from Friday 11 May 2007 to Friday 22 June 2007. The Draft Amendment to the WLEP is not applicable to this proposal.

10. DEVELOPMENT CONTROL PLANS

Compliance table - Woollahra Residential Development Control Plan 2003

Site Area (2248m ²)	Existing	Proposed	Control	Complies
Private Open Space – Upper Floor Units in RFBs	8m ²	8m ²	8m ² Min dimension 2m	YES
Car Parking Spaces – RFB/Dual Occupancy	10 (10 x 4 br units)	10 (10 x 4 br units, 1 x 1 br)	1.0 (1 bed) 2.0 (3+ bed) 0.25 (visitor)	NO*

* Existing non-compliance

Desired future precinct character objectives and performance criteria

The proposal is consistent with the desired future character objectives and performance criteria of the Point Piper Precinct. An assessment of the proposals compliance with the inter war flat building controls is made below.

Streetscape performance criteria (Section 5.1)

The proposed works are internal and will not alter the sites relationship with the street.

Building size and location performance criteria (Section 5.2)

There is no change proposed to the external configuration of the building.

Open Space and Landscaping (Section 5.3)

The proposed works are internal and do not alter the provision of deep soil landscaping.

The subject flat has a balcony which complies with the minimum area and dimension requirements.

Views (Section 5.5)

The proposed works are internal and will not affect any public or private views.

Energy efficiency (Section 5.6)

The flat has good access to light and ventilation. The proposed works will not significantly affect its energy efficiency.

Acoustic and Visual Privacy (Section 5.8)

The proposed works will not create any greater opportunity for overlooking of the neighbouring properties.

There will not be any significant change in the flats acoustic relationship with the neighbouring flats.

Carparking criteria (Section 5.9)

The original assessment of the application assessed the issue of parking as follows:

“The existing building (excluding the caretaker’s flat) does not satisfy the currently performance criteria of the DCP. There is a shortfall within the existing development of 10 resident spaces and three visitor spaces. The additional flat would generate the need for another resident space. On-street parking in Wolseley Road is severely compromised by the significant number of footpath crossings which reduce the number of kerb-side spaces in the street. The additional dwelling will increase parking demand by one space which cannot be accommodated on site without significant works being carried out to upgrade the existing parking provision which currently relies on a turntable to manoeuvre in and out of the site. The proposal is unsatisfactory in this regard. However the proposal does not propose the construction of additional floor space to accommodate an additional dwelling unit and it is considered unreasonable to recommend refusal on these grounds.”

The basis of the above assessment is that the development results in the creation of an additional dwelling. The reviewing officer does not share this opinion.

Councils Compliance Unit has investigated and found anecdotal evidence to suggest that a caretaker’s flat has existed within the roof since before 5 December 1955. The stance of the Compliance Unit on this matter is further demonstrated by the issue of a building certificate and the absence of any action to require the applicant to seek approval for its use as a residence. The review officer supports the position of the compliance unit.

As the proposed development does not involve the creation of a new dwelling or an intensification of the existing dwelling, it does not create any additional demand for parking.

Access and Mobility (Section 5.13)

The access DCP requires that 1 in 10 flats within the building be adaptable. The proposed works will upgrade the subject flat, but it will not be an adaptable flat. This is an existing circumstance and it would be unreasonable to require it to be made adaptable on the basis that there may not be another adaptable apartment within the building.

Inter-war flat buildings (Section 5.14)

The core of the building contains period timber detailing and stain-glass windows. The new stair will complement the existing detail.

DCP for off-street car parking provision and servicing facilities

The provision of the off-street parking DCP are overridden by the RDCP 2003.

Other DCPs, codes and policies

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 - Development Control Plan

The proposed works are internal and will not alter the sites relationship with the harbour.

11. APPLICABLE REGULATIONS

Clause 93 of the Environmental Planning and Assessment Regulation 2000 requires Council to consider structural and fire safety measures for applications for a change of use for an existing building, where the applicant does not seek the rebuilding, alteration, enlargement or extension of a building. This provision is not applicable to this review as it does not involve a change of use and includes physical works.

Clause 94 of the Environmental Planning and Assessment Regulation 2000 requires Council to consider fire safety measures for alterations and additions to an existing building. Council's Fire Safety Officer has assessed the application and is satisfied that subject to appropriate conditions of consent (**refer to condition C2**) the fire safety measures will be appropriate.

12. THE LIKELY IMPACTS OF THE PROPOSAL

All the likely impacts have been assessed in this report.

13. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

14. SUBMISSIONS

The proposal was advertised and notified in accordance with Council's Advertising and Notifications DCP. No objections were received.

Submissions have been made on behalf of a Director of Wolseley Investments Pty Ltd by Clinch Neville Long lawyers. The issues raised in the letter are summarised as follows:

Issue 1

Having regard to the provisions of Part E3 of the 2007 BCA and in particular EF3.1 and EP 3.1, the roof level should have the benefit of a passenger lift.

Comment: Council's Fire Safety Officer has considered this issue (**refer to 6.2.1 of this report**) and is of the opinion that Part E3 of the BCA does not apply to the proposed development as it has an effective height which is less than 25m.

Issue 2

An additional car parking space should be required to be provided. This space can be provided within the companies' property without structural alterations.

Comment: The issue of parking was assessed in Section 10 of this report. The proposed development does not involve the creation of a new dwelling or an intensification of the existing dwelling and does not therefore create any additional demand for parking.

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

15. REVIEW OF ORIGINAL REASONS FOR REFUSAL

The application was refused for the following reason:

1. *“Insufficient information has been provided in relation to Fire Safety provisions contained in Clause 93 of the Environmental Planning and Assessment Regulation 2000 for Council to satisfactorily determine the application.*

93 Fire safety considerations

- (1) *This clause applies to a development application for a change of building use for an existing building, where the applicant does not seek the rebuilding, alteration, enlargement or extension of a building.*
- (2) *In determining the development application, the consent authority is to take into consideration whether the fire protection and structural capacity of the building will be appropriate to the building’s proposed new use.*
- (3) *Consent to the change of building use sought by a development application to which this clause applies **must not be granted** unless the consent authority is satisfied that the building complies (or will, when completed, comply) with such of the Category 1 fire safety provisions as are applicable to the building’s proposed new use.”*

Clause 93 of the Environmental Planning and Assessment regulation 2000 applies to development applications which propose a change of use without any building work. The Environmental Planning and Assessment Act 1979 defines a ‘Change of building use’ as being:

***Change of building use** means a change of use of a building from a use that the Building Code of Australia recognises as appropriate to one class of building to a use that the Building Code of Australia recognises as appropriate to a different class of building.”*

The provisions of clause 93 of the Regulations were assessed as follows in the original assessment:

“Clause 93 of the Environmental Planning and Assessment Regulation 2000 requires Council to consider structural and fire safety measures for changes of use to an existing building. There is a change of use proposed in terms of the definition contained in the EPA Act. This change of use is from a non-habitable part of a building classified as Class 10a within a Class 2 building to a habitable dwelling within a Class 2 building which contains two or more sole occupancy units.”

The review officer does not concur with the assessment that the existing apartment is best defined as being a class 10 - non-habitable structure. The Building Code of Australia classifies Class 10 structures as follows:

*“**Class 10** – a non-habitable building or structure being-*

- (a) ***Class 10(a)** - a non habitable building being a private garage, carport, shed or the like*
- (b) ***Class 10(b)** - a structure being a fence, mast, antenna, retaining or free-standing wall, swimming pool or the like”*

The BCA defines a *habitable room* as follows:

“Habitable room means a room used for normal domestic activities, and-

- (a) includes a bedroom, living room, lounge room, music room, television room, kitchen, dining room, sewing room, study, playroom, family room and sunroom; but*
- (b) excludes a bathroom, laundry, water closet, pantry, walk-in wardrobe, corridor, hallway, lobby, photographic darkroom, clothe-drying room, and other spaces of a specialised natures occupied neither frequently nor for extended periods.”*

The apartment consists of a living area, kitchen, study and bedroom, all of which are habitable rooms. In addition to these rooms the apartment includes a bathroom and study. This suite of rooms constitutes a dwelling. The flat as existing and proposed is best defined as a Class 2 building, which is described by the BCA as follows:

“Class 2: a building containing 2 or more sole occupancy units each being a separate dwelling.”

In addition to the above the application has been amended to include building works to address the reasons for refusal. Section 93 of the Regulation applies only to those applications that do not include any works.

16. ADDITIONAL MATTERS FOR CONSIDERATION

Description of works

In the notification of the development application, the development was described as being “Change of use of caretaker's flat to be used as a residence”. It has been discussed in Section 15 of this report that the application does not constitute a change of use. The description of the development contained in the recommendation of this report has been amended to “Change in the nature of the use of a dwelling from a caretaker's flat to a private residence and internal alterations”.

The amended description is a more accurate description of the development which is recommended for approval. The new description would not prejudice any other party as it is consistent with the original description. Further it has been assessed in Section 14 of this report that the notification of the application is in accordance with Council’s notification policy.

17. CONCLUSION

The proposal is acceptable and is recommended for approval.

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

THAT the Council, as the consent authority, is of the opinion that the objection under *State Environmental Planning Policy No. 1- Development Standards to clause 12 of the Woollahra Local Environmental Plan 1995* is well founded. The Council is also of the opinion that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of this case.

AND

THAT the Council, as the consent authority, being satisfied that the objection under SEPP No. 1 is well founded and also being of the opinion that the granting of consent to Development Application No. 350/2005 is consistent with the aims of the Policy, grant development consent to DA No. 350/2005 for change in the nature of the use of a dwelling from a caretaker's flat to a private residence and internal alterations, subject to the following conditions:

A. General Conditions

A.1 Conditions

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

Standard Condition: A1

A.2 Definitions

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

Applicant means the applicant for this Consent.

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

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

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

Council means Woollahra Municipal Council

Court means the Land and Environment Court

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

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

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

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

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

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

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

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

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

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

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

Site means the land being developed subject to this consent.

WLEP 1995 means *Woollahra Local Environmental Plan 1995*

Work for the purposes of this consent means:

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

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

A.3 Approved Plans and supporting documents

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

Reference	Description	Author/Drawn	Date(s)
Job No: 07479, Drawing No's S00 – S03 (Issue A)	Architectural Plans	Northrop Consulting Engineers	3 May 2007
Drawing No. MD 01 (Revision A)	Architectural Plans	Molnar Freeman Architects	May 2002

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

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

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

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

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

A.5 Prescribed Conditions

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

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

B. Conditions which must be satisfied prior to 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, Levies and Fees (S80A(6) & S94 of the Act, Section 608 of the Local Government Act 1993)

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

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

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

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy Use Calculator: http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation or use their online calculator	No	
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit - Making good any damage caused to any property of the <i>Council</i> as a consequence of the doing of anything to which the consent relates.	\$ 2000	No	T600
DEVELOPMENT LEVY under Woollahra Section 94A Development Contributions Plan 2005 This plan may be inspected at Woollahra Council or downloaded from our website www.woollahra.nsw.gov.au .			
Development Levy	\$163 + Index Amount	Yes, quarterly	T94
INSPECTION FEES under section 608 of the Local Government Act 1993			
Security Administration Fee	\$163	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$ 2 163 Plus any relevant indexed amounts and long service levy		

Building & Construction Industry Long Service Payment

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

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

How must the payments be made?

Payments must be made by:

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

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

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

C.2 Building upgrade (Cl. 94 of the Regulation)

Pursuant to clause 94 of the Environmental Planning and Assessment Regulation 2000 Council as the consent authority requires the building to be brought into partial conformity with the Building Code of Australia as the measures contained in the building are inadequate to protect persons using the building, and to facilitate their egress from the building, in the event of fire, and to restrict the spread of fire from the building to other buildings nearby.

- a. New construction shall comply with the provisions of the Building Code of Australia 2007 and the recommendation of the Building Code of Australia assessment report by BCA Performance Pty Ltd dated May 2007 By John Koloadin.
- b. The proposed sole occupancy unit shall be separated from the remainder of the building by wall and floor construction with an FRL of 90/90/90 and in accordance with the requirements of Clause C1.1 and Table 3 of the specification C1.1 of the Building Code of Australia.

Notes:

The building shall be the subject of an order for fire safety upgrade issued under (s) 121B (6) of the EP and A Act requiring fire upgrade of the whole of the building in conjunction with the occupation of the new part.

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

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

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

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

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

This condition does not apply:

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

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

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

D.2 Site Signs

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

“Erection of signs

1. For the purposes of section 80A (11) of the *Act*, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
2. A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - a. showing the name, address and telephone number of the principal certifying authority for the work, and
 - b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - c. stating that unauthorised entry to the work site is prohibited.

3. Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
4. This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
5. This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws."

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

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

D.3 Toilet Facilities

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

Each toilet provided:

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

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

In this condition:

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

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

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

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

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

D.4 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

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

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

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

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

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

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

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

D.5 Notification of Home Building Act 1989 requirements

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

Standard Condition: D17

E. Conditions which must be satisfied during any development work

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

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

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

This condition does not apply:

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

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

Standard Condition: E1

E.2 Compliance with Australian Standard for Demolition

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

Standard Condition: E2

E.3 Critical Stage Inspections

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

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

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

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

Standard Condition: E5

E.4 Hours of Work –Amenity of the neighbourhood

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

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

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

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

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

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

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

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

E.5 Maintenance of Vehicular and Pedestrian Safety and Access

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

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

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

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

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

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

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

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

Part C Management of Waste:

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

Part E Public roads:

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

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

E.6 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.7 Prohibition of burning

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

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

E.8 Dust Mitigation

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

This generally requires:

- a) Dust screens to all hoardings and site fences.
- b) All stockpiles or loose materials to be covered when not being used.
- c) All equipment, where capable, being fitted with dust catchers.

- d) All loose materials being placed bags before placing into waste or skip bins.
- e) All waste and skip bins being kept covered when not being filled or emptied.
- f) The surface of excavation work being kept wet to minimise dust.
- g) Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

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

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

Note 3: Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution.
Standard Condition: E23

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 Fire Safety Certificates

In the case of a *final occupation certificate* to authorise a person:

- a. to commence occupation or use of a *new building*, or
- b. to commence a change of building use for an existing building,

a *certifying authority* must be satisfied that a final fire safety certificate has been issued for the building.

In the case of an *interim occupation certificate* to authorise a person:

- a. to commence occupation or use of a partially completed *new building*, or
- b. to commence a change of building use for part of an existing building,

a *certifying authority* must be satisfied that a final fire safety certificate or an interim fire safety certificate has been issued for the relevant part of the building.

Note: This condition does not apply to a class 1a or class 10 building within the meaning of clause 167 of the Regulation.

Note: In this condition:

interim fire safety certificate has the same meaning as it has in Part 9 of the Regulation.

final fire safety certificate has the same meaning as it has in Part 9 of the Regulation.

new building has the same meaning as it has in section 109H of the Act.

Standard Condition: F4

F.2 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 (s.109C(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

I. Conditions which must be satisfied during the on-going use of the development

I.1 Annual Fire Safety Statements (Class 1b to 9c buildings inclusive)

Each year, the owner of a building to which an *essential fire safety measure* is applicable must provide an *annual fire safety statement* to *Council* and the Commissioner of the NSW Fire Brigades. The *annual fire safety statement* must be prominently displayed in the building.

Note: *Essential fire safety measure* has the same meaning as in clause 165 of the *Regulation*. *Annual fire safety statement* has the same meaning as in clause 175 of the *Regulation*. Part 9 Division 5 of the *Regulation* applies in addition to this condition at the date of this consent. Visit Council's web site for additional information in relation to fire safety www.woollahra.nsw.gov.au.
Standard Condition: I22

J. Miscellaneous Conditions

No relevant conditions

K. Advising

K1. Criminal Offences – Breach of Development Consent & Environmental laws

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

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

- Issue Penalty Infringement Notices (On-the-spot fines);
- Issue notices and orders;
- Prosecute any person breaching this consent; and/or

- Seek injunctions/orders before the courts to restrain and remedy any breach.

Warnings as to potential maximum penalties

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

Warning as to enforcement and legal costs

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

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

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

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

Standard Advising: K1

K.2. Commonwealth Disability Discrimination Act 1992 ("DDA")

The Disability Discrimination Act 1992 (DDA) makes it against the law for public places to be inaccessible to people with a disability. Compliance with this development consent, Council's Access DCP and the BCA does not necessarily satisfy compliance with the DDA.

The DDA applies to existing places as well as places under construction. Existing places must be modified and be accessible (except where this would involve "unjustifiable hardship").

Further detailed advice can be obtained from the Human Rights and Equal Opportunity Commission ("HEROC"):

- <http://www.hreoc.gov.au/index.html>
- http://www.hreoc.gov.au/disability_rights/dda_guide/ins/ins.html

If you have any further questions relating to the application of the DDA you can send an email to HEROC at disabdis@humanrights.gov.au.

Standard Advising: K3

K.3. Builders Licences and Owner Builders Permits

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

Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder):

<http://www.dft.nsw.gov.au/building.html> .

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

Standard Condition: K5

K.4 Building Standards - Guide to Standards and Tolerances

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

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

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

The Guide can be down loaded from:

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

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

Standard Condition: K6

K.5 Workcover requirements

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

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

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

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

Standard Condition: K7

K.6 Asbestos Removal, Repair or Disturbance

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

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

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

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

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

K.7 Lead Paint

It is beyond the scope of this consent to provide detailed information about dealing with lead paint. Painters working in an area containing lead-based paint should refer to Australian Standard AS 4361.1–1995, Guide to Lead Paint Management—Industrial Applications, or AS 4361.2–1998, Guide to Lead Paint Management—Residential and Commercial Buildings.

Industrial paints may contain lead. Lead is used in some specialised sign-writing and artist paints, and road marking paints, and anti-corrosive paints. Lead was a major ingredient in commercial and residential paints from the late 1800s to 1970. Most Australian commercial buildings and residential homes built before 1970 contain lead paint. These paints were used both inside and outside buildings.

Lead hazards - Lead particles are released when old lead paint flakes and peels and collects as dust in ceiling, wall and floor voids. If dust is generated it must be contained. If runoff contains lead particles it must be contained. Lead is extremely hazardous, and stripping of lead-based paint and the disposal of contaminated waste must be carried out with all care. Lead is a cumulative poison and even small levels in the body can have severe effects.

Standard Advising: K9

Mr M Schofield
TEAM LEADER

Mr Brett Daintry
MANAGER – DEVELOPMENT CONTROL

ANNEXURES

1. Development Plans
2. Comments from Councils Fire Safety Officer
3. Original assessment Report