



Application Assessment Panel

Agenda: *Application Assessment Panel*

Date: *Tuesday 15 January 2008*

Time: *3.00pm*

Part: *One of One Part*

Item: *D1 to D4*

Outline of Meeting Protocol & Procedure:

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

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

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

- Calling requires one Councillor
- A Councillor may call a matter by written or oral request by 3.00pm on the business day preceding 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

8 January 2008

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

CC: The Mayor
All Councillors

Application Assessment Panel Meeting – 15 January 2008

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Application Assessment Panel** to be held in the **Committee Room, 536 New South Head Road, Double Bay, on Tuesday 15 January 2008 at 3.00pm.**

Gary James
General Manager

Meeting Agenda

Part One of One Part

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

Items to be Decided by this Committee using its Delegated Authority

D1	Confirmation of Minutes of Meeting held on 8 January 2008	1
D2	DA 551/2007/1 - 2 Etham Avenue Darling Point - Alterations and additions to dwelling including addition of first floor bedroom at rear and conversion of roof space for attic with stairs, dormers and a roof terrace at rear - 28/08/2007 *See Recommendation Page 19	2 - 50
D3	DA 458/2007/1 - 40-41 Olola Avenue Vaucluse - Alterations and additions to existing garage - 12/07/2007 (Original Proposal) 7/12/2007 (Revised proposal) *See Recommendation Page 61	51 - 101
D4	DA 710/2006/2 - 14 Holland Road Bellevue Hill – Section 96 application - Reinstatement of the double garage - 27/08/2007 *See Recommendation Page 112	102 - 125

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 8 January 2008**
Author: Les Windle, Manager - Governance
File No: See Application Assessment Panel Minutes
Reason for Report: The Minutes of the Meeting of Tuesday 8 January 2008 were previously circulated. In accordance with the guidelines for Committees' operations it is now necessary that those Minutes be formally taken as read and confirmed.

Recommendation:

That the Minutes of the Application Assessment Panel Meeting of 8 January 2008 be taken as read and confirmed.

Les Windle
Manager - Governance

DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D2
FILE No.	DA 551/2007/1
PROPERTY DETAILS	2 Etham Avenue DARLING POINT 2027
	Lot & DP No.: LOT: 1 DP: 137049
	Side of Street: Northern
	Site Area (m²): 537.4
	Zoning: Residential 2(b)
PROPOSAL:	Alterations and additions to dwelling including addition of first floor bedroom at rear and conversion of roof space for attic with stairs, dormers and a roof terrace at rear
TYPE OF CONSENT:	Local development
APPLICANT:	Mrs C Dwyer & Mr J M Dwyer
OWNER:	Mrs C & Mr J M Dwyer
DATE LODGED:	28/08/2007
AUTHOR:	Mr A Gilderdale

1. RECOMMENDATION PRECIS

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

2. PROPOSAL PRECIS

The proposal is for alterations and additions to an existing 1920's Arts and Crafts styled two storey residence existing terrace house including the addition of a rooftop terrace area to the rear.

3. LOCALITY PLAN



4. DESCRIPTION OF PROPOSAL

The proposal involves alterations and additions to the existing residential dwelling at 2 Etham Ave, Darling Point, including:

Garage:

- Installation of steel supports for the garage roof and removal of inner brickwork skin.

First Floor:

- New ensuite in existing wardrobe;
- Infill existing window;
- New wardrobe to bedroom 1;
- New bedroom [bedroom 4] over existing dining room including new windows; and
- New staircase to attic.

Attic Floor Plan:

- Addition of attic floor and roof terrace;
- Balustrade with metal hand rail & brackets to roof terrace;
- 1.6m high privacy screen to roof terrace [east elevation];
- New staircase;
- New ensuite;

- New dormer windows;
- New cupboards, sink and bench;
- New roof [in part];
- New skylight; and
- Raise existing chimney by 800mm [detail to match existing].

5. SUMMARY

Reasons for report	Issues	Submissions
<ul style="list-style-type: none"> ▪ The DA does not satisfy the criteria for determination under staff delegation as one objection remains unresolved. 	<ul style="list-style-type: none"> ▪ Visual privacy; and ▪ Clothes drying on the proposed rooftop terrace. 	1 submission was received.

6. ESTIMATED COST OF WORKS

The applicant's estimated cost for the proposed development is \$404,000. This has been checked using the adopted practice and is considered to be accurate.

7. DESCRIPTION OF SITE OF LOCALITY

THE SITE AND LOCALITY	
Physical features	The subject site is located 1 block east of the corner of Darling Point Road and Etham Ave. The site has a rectangular shape and a total area of approximately 537.8m ² . The site has a street front width of approximately 22m and a length of approximately 43m.
Topography	The site falls approximately 650mm between the rear of the subject site [RL 29.36] and front of the subject site [RL 30.02]. There are no significant trees located within the site.
Existing buildings and structures	The site contains a 1920's arts and Crafts styled two storey residences, rendered with picturesque roofscape of tailored hips, punctuated by bold chimneys. The elevations are characterised by a series of casement windows, string course lines and an archway to define the entry. A number of sympathetic modifications have been made to the house. Refer to figure 1.0.
Environment	The Etham Avenue Heritage Conservation Area is notable for its collection of buildings from the 1900 to 1920's period. It has the distinctive character of an early 20 th century garden suburb. The subject property makes a positive contribution to the area due to its historic and aesthetic values.

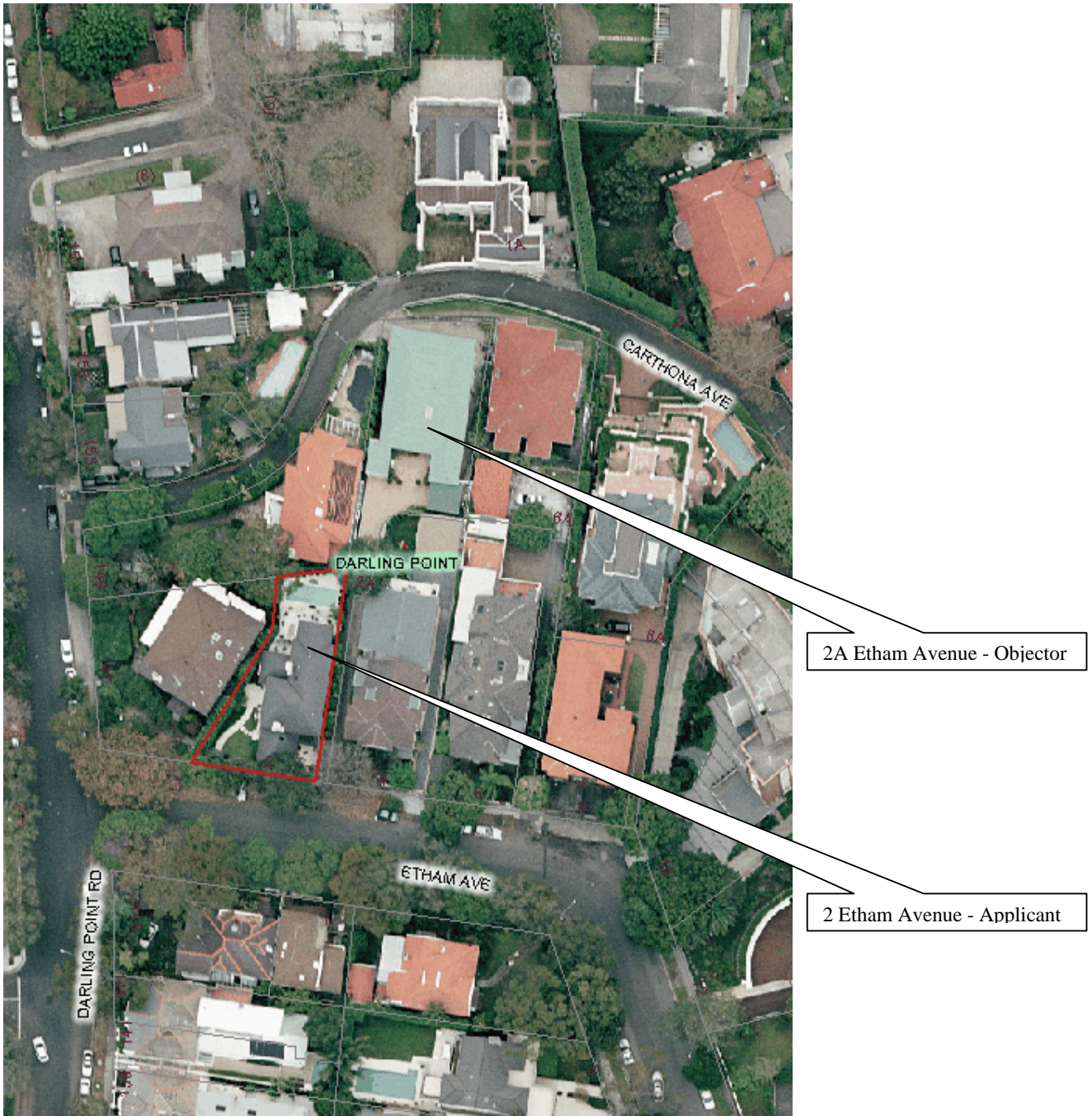


Fig 1.0: Aerial view of 2 Etham Avenue

8. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	The subject site is currently use for residential purposes.
Previous relevant applications	There are no previous or relevant development applications.
Pre-DA	N/A
Requests for additional information	N/A
Amended plans/ Replacement Application	A replacement application was lodged on 22/11/2007 to address issues raised by Council's Heritage Officer.
Land & Environment Court appeal	N/A

9. REFERRALS

9.1 The following table contains particulars of internal referrals.

INTERNAL REFERRALS		
Referral Officer	Comment	Annexure
Heritage Officer	The problems with the previous design have been resolved. There are no further heritage reasons why the application should not be approved. The application is recommended for approval.	3

9.2 The following table contains particulars of external referrals.

Not applicable.

ENVIRONMENTAL ASSESSMENT UNDER S.79C

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

10. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

10.1 SEPPs

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. The land is currently used for residential purpose and there is no evidence before Council to suggest that the land has been used for any non-residential purpose. Consequently, the possibility of the land being contaminated is substantially reduced.

It is considered that Council can be satisfied that the land is not contaminated such that remediation would be required. It is therefore considered acceptable with regard to SEPP 55.

10.2 REPs

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

10.3 Section 94A contribution

The estimates cost of the work is \$404,000. In accordance with Councils S94A Plan which came into force on November 2006 [Amendment No. 1-7 Feb 2007] the subject development attracts a S94A contribution fee. The necessary calculations for the contribution fee are as follows:

$$\begin{aligned} & \$404,000 \times 1\% \text{ [The proposed cost of development is more than } \$200,000\text{]} \\ & = \$4040 \end{aligned}$$

Condition C.2 of the recommendation details the subject fee.

10.4 Other relevant legislation

There is no other relevant legislation.

11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

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

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

11.2 Statutory compliance table

Site Area: 537.8m ²	Existing	Proposed	Control	Complies
Overall Height	10.0m	10.5	9.5m	Yes

11.4 Height

Clause 12 requires that a building shall not be erected on land within a height zone to a height greater than the maximum height shown on the height map as applicable to land within that height zone. The prescribed height limit pursuant to Clause 12 of the Woollahra LEP is a development standard and imposes a statutory height of 9.5m on the subject site. The existing building has a height of approximately 10.0m, which does not comply with the statutory height limit. The proposed works will attain a height of approximately 10.5m which exceeds the 9.5m statutory height limit.

A SEPP No. 1 objection to this development standard has been lodged with the application. The applicant made the following comment:

“The maximum allowable height for the 2(b) medium density residential zoning is 9.5m. The existing ridge line of the house is 10.0m above natural ground. The proposed work seeks to extend this ridge line; this extension is also 10.0m above natural ground, as measured from the section. The development exceeds the control by 0.5m”.

The appropriate way for dealing with a SEPP No. 1 objection is by way of a five-part test. The following assessment has been set out in this fashion.

1. *Is the planning control in question a development standard?*

The planning control in question is the height standard, set by Clause 12 of the Woollahra LEP 1995. As such, any variation of this standard requires a SEPP 1 objection, as has been prepared in this case.

2. *What is the underlying purpose of the standard?*

The objectives of the height standard listed under Clause 12AA of Woollahra LEP 1995 are:

- (a) *to minimise 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 minimise 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.*

[Principles arising from the Hooker corporation Pty Ltd vs Hornsby Shire Council (NSWLEC. 2 June 1986)]

3. *Is compliance with the development standard consistent with the aims of the Policy, and in particular, does the development standard tend to hinder the attainment of the objects specified in s.5(a)(i) and (ii) of the EPA Act?*

It is considered that allowing a variation to the height standard, in this instance, would still enable the objectives of this standard to be upheld. It should be noted that part of the variation to the height development standard is from the existing building which presently has a height of approximately 10.0m. In addition the proposed development will not have a detrimental impact with respect to visual privacy, solar access [of adjoining neighbours] and or the amenity of public views from the public domain. Furthermore, the proposals will not make the building readily discernable from the street or Sydney Harbour.

The objects specified in s 5(a)(i) and (ii) of the Act state:

5. The objects of this Act are:

- (a) *to encourage:*
 - (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;*
 - (ii) *the promotion and co-ordination of the orderly and economic use and development of land.*

It is considered that enforcing the numeric development standard will hinder the attainment of objectives under 5(a) of the Act. Compliance is unreasonable in this instance based on:

- The proposal will not be readily discernable from the street or Harbour;
- The proposal will not adversely affect the amenity of surrounding properties;
- The proposal will not obstruct views from surrounding properties or from the public domain.

The proposal is therefore seen to be in accordance with the objectives under 5(a) of the Act.

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

The proposal achieves consistency with the objectives of Council's height standard and the SEPP No 1 objection to the standard has adequately demonstrated that strict compliance with the height development standard in this instance would be unreasonable and unnecessary.

5. *Is the objection well founded?*

The objection advanced by the applicant that compliance with this development standard is unreasonable and unnecessary, is well founded in relation as the additional height will not be readily discernable from the street or Sydney Harbour and the additional height will be only marginally increased and will have a negligible impact with respect to the amenity of adjoining neighbours.

It is considered that strict enforcement of this development standard would be unreasonable and unnecessary in this case and that granting of consent would be consistent with the aims and objectives set out in Clause 3 of SEPP No. 1.

11.7 Other special clauses/development standards

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

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

Clauses 26-33 Heritage and conservation area provisions: The subject site is not a listed heritage item; however, it is located within the Heritage Conservation Area. The proposed development is acceptable with respect to clause 27 of the WLEP 1995.

12. DRAFT AMENDMENTS TO STATUTORY CONTROLS

There are no draft amendments relevant to this application.

13. DEVELOPMENT CONTROL PLANS

13.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

Site Area (537.8m ²)	Existing	Proposed	Control	Complies
Maximum Number of Storeys – Dwelling	2	2 [+ Attic]	2	Yes
Building Boundary Setbacks				
Front (South)	0.0-13.3m	13.3m	6.5m	Yes
Rear (North)	9.5-13.3m	9.5-13.3m	8.075m	Yes
Side (East)				
Ground Floor	0.9-1.3m	0.9-1.3m	1.5m	No*
First Floor	0.9-1.3m	0.9-1.3m	1.5m	No*
Side (West)				
Ground Floor	1.6m	1.6m	1.5m	Yes
First Floor	6.4m	1.6m	1.5m	Yes
Setback from Significant Mature Trees	>3.0	>3.0	3.0m	Yes
Floor Space Ratio	0.51:1 (279m ²)	0.64:1 (344.91m ²)	0.875:1 (m ²)	Yes
Floor to Ceiling Height – Habitable Room	2.8	2.6	2.7m	No
Solar Access to Open Space of Adjacent Properties (Hrs on 21 June)	>35m ² for 2 hours	>35m ² for 2 hours	50% (or 35m ²) for 2 hours	Yes
Solar Access to Nth Facing Living Areas of Adjacent Properties (Hrs on 21 June)	>3.0 hours	>3.0 hours	3.0 hours	Yes

Site Area (537.8m ²)	Existing	Proposed	Control	Complies
Solar Access to North-Facing Living Areas of Development (Hrs on 21 June)	>3.0 hours	> 3.0 hours	3.0 hours	Yes
Minimum Number of North Facing Habitable Rooms	2	2	1	Yes
Height of Chimneys/Flues	0.5m	0.5m	1.0m	Yes

* Existing non-compliance

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

The subject site is located within the Darling Point precinct. The proposed development is of a minor nature and will not be readily discernable from the street frontage or from the Harbour. Therefore the proposal is considered to be acceptable in terms of Part 4 of the WRDCP 2003.

Streetscape performance criteria (Section 5.1)

The objectives of the WRDCP 2003 streetscape performance criteria require development to achieve a scale and character in keeping with the desired future character for the locality and to ensure that development contributes to cohesive streetscapes and desirable pedestrian movements, a safe environment and to ensure that development recognises predominant streetscape qualities.

The proposal will retain the overall character of the dwelling as minor alterations and additions are proposed to predominantly the rear of the dwelling. The proposal will in part be visible from Etham Avenue; however, the impact on the existing streetscape will be negligible. The proposal is considered to be modest, it conserves the architectural character of the subject dwelling and will have a negligible impact on the historical/ aesthetic value of adjoining dwellings. In this respect, the proposal is considered to be satisfactory in terms of Section 5.1 of the WRDCP 2003.

Building size and location performance criteria (Section 5.2)

The objectives of the WRDCP 2003 building size and location performance criteria are as follows:

- O 5.2.1** *To preserve established tree and vegetation networks and promote new networks by ensuring sufficient areas for deep soil planting and sufficient setbacks between the rear of buildings.*
- O 5.2.2** *To ensure the size and location of buildings allow for the sharing of views and preserve privacy and sunlight access for neighbouring residents.*
- O 5.2.3** *To ensure the form and scale of development is not excessive and maintains the continuity of building forms and front setbacks in the street.*
- O 5.2.4** *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 proposal is considered to be consistent with the above-mentioned objectives for the following reasons:

- The proposal does not include the removal of any established tree and does not include any reduction in private open space or deep soil landscaping.

- The form and character of the proposal will not result in an adverse impact on the amenity of the adjoining properties in terms of bulk and scale, loss of visual and or acoustic privacy, loss of views and or overshadowing. The proposed development is considered to be consistent with performance criteria C 5.2.13 and C 5.2.14 due to the orientation of the site and the minor nature of the development.
- The proposal is considered to be comparable in form and scale with other buildings in the immediate area.
- The proposal does not include excavation.
- The proposed development does not involve any changes to the existing footprint of the building.

The proposal is inconsistent with the following performance criteria:

Setbacks

Side: C 5.2.5 stipulates that the proposal is required to be setback 1.5m from the eastern boundary and 1.5 from the western boundary. The proposal will be setback 0.9-1.3m [non-compliant] from the eastern boundary and 1.6m [compliant] from the western boundary. As such, the proposal results in the following non-compliance:

- a maximum setback non-compliance of 0.2m for the attic level for a length of 6.2m along the eastern boundary.

The purpose of the setback controls are to protect the visual and aural privacy of residents, provide side access to the rear of properties, avoid buildings or part of buildings encroaching onto adjoining properties, enable opportunities for screen planting, protect significant vegetation, avoid an unreasonable sense of enclosure, safeguard privacy and minimize the noise impacts of dwellings.

The non-compliances with the side boundary setback requirements are considered to be consistent with the above-mentioned purpose for the following reasons:

- The non-compliance with the eastern boundary setback requirements will not have an adverse impact on the bulk and scale or sense of enclosure for adjoining properties given that the distance between the subject dwelling and adjoining dwelling [No. 149 Darling Point Road] is approximately 4.9m.
- The proposal complies with the western (side) boundary setback requirements
- The proposal will retain side access to the rear of the building
- The proposal will not have an adverse impact on adjoining properties in terms of overshadowing
- The proposal will have no impact on the lanescape credentials of the site
- The proposal will have a negligible impact on overshadowing as hipped roofing is proposed.
- The bulk and scale of the proposal is comparable with that of other development on the eastern and western side of the subject property.

Solar Access

C 5.2.13 stipulates that sunlight is provided to at least 50% of the main ground level of private open space of adjacent properties for a minimum of 2 hours between 9am and 3pm on 21 June. C 5.2.14 stipulates that north facing windows to habitable rooms of neighbouring dwellings do not have sunlight reduced to 3 hours between 9am and 3pm on 21 June.

In terms of C 5.2.13, the shadow diagrams submitted with the development application demonstrate the proposal complies with this requirement. The additional extent of overshadowing is considered to be satisfactory for the following reasons:

- the proposal complies with the relevant building envelope controls being the FSR
- the proposal complies with the western side performance criteria
- the proposal complies with Council's solar access requirements in terms of C 5.2.13 (solar access to primary areas of private open space)

Floor to Ceiling Height

C 5.2.10 requires habitable rooms to have a minimum floor to ceiling height of 2.7 metres. The proposal will have a floor-to-ceiling height of 2.6-2.85 metres. The non-complying floor to ceiling height relates to the proposed new bedroom 3 which is proposed to have a floor to ceiling height of 2.6m. The non-complying floor to ceiling height is considered to be acceptable as the proposal currently results in a non-complying height of 10.0m, therefore, compliance with the floor to ceiling height would inevitably increase the height of the roof above proposed bedroom 3. It is considered that the non-complying floor to ceiling height will not adversely impact on the environmental quality of the proposed bedroom 3. Accordingly, no objection is raised to this non-compliance.

Building Footprint

The proposed development does not involve any changes to the existing footprint of the building.

Open space and landscaping performance criteria (Section 5.3)

The proposal will have no impact on the lanescape credentials of the site. In this respect, the proposal is considered to be satisfactory in terms of Section 5.3 of the WRDCP 2003.

Views performance criteria (Section 5.5)

The proposal will not disrupt any views that are presently enjoyed by occupants of adjoining buildings. The proposal continues to maintain view sharing arrangements and is considered to be satisfactory. In this respect, the proposal is considered to be satisfactory in terms of Section 5.5 of the WRDCP 2003.

Energy efficiency performance criteria (Section 5.6)

The application was accompanied by BASIX certificate A17216 confirming that the proposed development will meet the NSW government's requirements for sustainability. The BASIX commitments relate to water and energy efficiency. Accordingly, the proposal demonstrates compliance with the relevant objectives and performance criteria stipulated under Part 5.6 of WRDCP 2003.

Stormwater management performance criteria (Section 5.7)

The proposed development will be connected to the existing stormwater system at the site.

Acoustic and visual privacy performance criteria (Section 5.8)

The privacy controls of the WRDCP 2003 are applied within the following general planning principles set out in the Meriton case [Meriton Properties Management Pty Ltd and Karimbla Properties (No 3) Pty Ltd v Sydney City Council [2004] NSWLEC 313].

General Principles

1. When visual privacy is referred to in the context of residential design, it means the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space.
2. Most planning instruments and DCPs acknowledge the need for privacy, but leave it open to be assessed quantitatively. (This is the case with our DCPs)
3. Numeric guidelines assist - see AMCORD and the Residential Flat Design Code attached to SEPP 65. AMCORD recommends a separation of 9m between habitable rooms. The RFD Code recommends increasing separation between buildings as they get taller. For buildings up to 3 storeys it suggests 12m separation between habitable rooms and balconies, 9m between habitable and non-habitable rooms and 6m between non-habitable rooms. For tall buildings it suggests 24m separation between non-habitable rooms.
4. Generalised numerical guidelines need to be applied with a great deal of judgement
5. In considering a proposal, density, separation, use and design need to be considered.

Visual Privacy Principles

When visual privacy is referred to in the context of residential design, it means the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space. Most planning instruments and development control plans acknowledge the need for privacy, but leave it to be assessed qualitatively. The WRDCP 2003 contains the following visual privacy controls:

C 5.8.5 *Habitable room windows with a direct sightline to the habitable room windows in an adjacent dwelling within 9.0m:*

- *are offset from the edge of one window to the edge of the other by a distance sufficient to limit views into the adjacent windows; or*
- *have sill heights of 1.7m above floor level; or*
- *have fixed obscure glazing in any part of the window below 1.7m above floor level.*

C 5.8.6 *Balconies, terraces, decks and other like areas within a development are suitably screened to prevent direct views into habitable rooms or private open space of adjacent dwellings.*

C 5.8.7 *Windows and balconies of an upper-level dwelling are designed to prevent overlooking of the private open space of a lower level dwelling directly below and within the same development.*

C 5.8.8 *Balconies are designed to provide privacy for occupants of the building when viewed from the street or nearby public space.*

Numerical guidelines such as above need to be applied with a great deal of judgment, taking into consideration **density**, **separation**, **use** and **design**. The following principles may assist.

1. The ease with which privacy can be protected is inversely proportional to the **density** of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.
2. Privacy can be achieved by **separation**. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the *objective* should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.) (See C.5.8.5 of RDCP 2003)
3. The **use** of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.
4. Overlooking of neighbours that arises out of poor **design** is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.
5. Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.
6. Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable. (See applicable DCP controls)
7. Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.
8. In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.

Planning principle: protection of visual privacy

The principle is to protect the visual privacy of adjoining dwellings by minimising direct overlooking of principal living areas and private open space. In the context the following assessment is made.

The purpose of the proposed rooftop terrace area is to improve the outlook to Sydney Harbour from the subject building. The proposed terrace area is to be located on the proposed attic level. It is considered that the size of the proposed rooftop terrace area is excessive being approximately 19.6m². The size of the proposed terrace area raises the likelihood that this rooftop area could be used frequently, including for entertainment purposes. The proposed internal floor plan of the attic level includes but is not limited to the addition of bench space, a sink and cupboards which may be used to facilitate bar/ entertaining operations. In this context, it can be reasonably assumed that the attic level is not intended to be used as a bedroom rather an entertaining area. It is reasonable to assume that the impact on adjoining properties will be as follows:

2A Etham Avenue

The proposed rooftop terrace area will be setback 11.2m from the rear boundary [northern] and approximately 32.0m from the rear elevation of 2A Etham Avenue. The potential for direct overlooking of principal living areas at 2A Etham Avenue is considerably reduced by virtue of the significant separation between the proposed terrace area and 2A Etham Avenue. The significant difference in the RL between the proposed terrace area [RL37.35] and 2A Etham Avenue [Approx RL 31.15] will ensure that direct cross viewing between building windows will not be possible.

An objection has been received from the owner of 2A Etham Avenue citing that the proposal will have an impact in terms of visual privacy [private open space] at the rear of 2A Etham Avenue. The potential for direct overlooking of private open space at the rear of 2A Etham Avenue is significant, however, it should be noted that the area of private open space at the rear of 2A Etham Avenue is completely paved and is presently being used as a service area to maneuver and park motor vehicles and to provide access to the building. Notwithstanding this, **condition C.1 (a)** is recommended and shall read:

C.1 (a) In accordance with Objective O 5.8.1 of Part 5.8 of the WRDCP 2003, the proposed rooftop terrace shall be reduced by 1.0m along the northern side of the proposed rooftop terrace area.

Condition C.1 (a) has been imposed to reduce the trafficable area and entertaining capacity of the proposed rooftop terrace area and to ensure that the proposal does not exacerbate the existing overlooking of the private open space issue at the rear 2A Etham Avenue, a site which is presently surrounded by numerous balconies resulting in significant overlooking and a reduction in privacy.

The proposed rooftop terrace area is considered to be acceptable subject to special **condition C.1 (a)** as 2A Etham Avenue presently has a large balcony on the northern side of the building; the balcony is distinctly private and enjoys sweeping views of Sydney Harbour; hence the balcony at the front of the building [2A Etham Avenue] is more likely to be used for entertaining and the quiet enjoyment of the occupants as compared to the private open space at the rear of the site which is primarily used to maneuver and park vehicles. In this respect, the proposed rooftop terrace area is considered to be reasonable subject to the imposition of **condition C.1 (a)**.

4 Etham Avenue

The proposed rooftop terrace area will be setback 2.0m from the side boundary [eastern]. The separation between the proposed rooftop terrace area and the western elevation of 4 Etham Avenue is approximately 6.2m. The proposed rooftop terrace area includes a 1.6m high privacy screen along the eastern elevation therefore mitigating the potential for direct overlooking.

The acoustic impact of the proposed rooftop terrace area is mitigated by the imposition of **condition C.1 (a)** which is aimed at reducing the trafficable area of the proposed rooftop terrace area. In this respect, the proposed rooftop terrace area is considered to be acceptable.

147 Darling Point Road

The proposed rooftop terrace area will be setback 5.3m from the side boundary [western]; however, the proposal does not incorporate a privacy screen along the western side of the proposed rooftop terrace area which is considered to be unsatisfactory given the potential for adverse and unnecessary overlooking of the adjoining allotment which is a 3 storey RFB. In this respect, **condition C.1 (b)** is recommended and shall read:

C.1 (b) In accordance with Control C5.8.6 of Part 5.8 of the WRDCP 2003, a privacy screen shall be erected along the western side of the proposed rooftop terrace area up to a height of 1.6m. The privacy screen shall have 50% transparency.

This condition has been imposed to ensure that no adverse overlooking results from the proposed new rooftop terrace area. In this respect, the proposed rooftop terrace area is considered to be acceptable.

149 Darling Point Road

The proposed rooftop terrace area will be setback 11.2m from the rear boundary [northern]. The proposal will have a negligible impact on 149 Darling Point Road with respect to visual and acoustic privacy given the separation between buildings and the substantial difference in the RL between the subject site [RL29.36] and 149 Darling Point Road [Gutter RL32.9]. Furthermore, a lattice screen fence on a high retaining wall presently exists along the rear boundary [northern] therefore limiting the potential for direct overlooking.

Summary

It is considered that the proposal accords with the abovementioned parts of the Development Control Plan, subject to the conditions included in the recommendation of this report which require the reduction in size of the trafficable area of the proposed rooftop terrace area. The potential for visual and acoustic privacy impacts on the neighbouring properties will be considerably reduced with the proposed construction of a privacy screen along the eastern side of the proposed terrace area and the imposition of **condition C.1 (b)** requiring the erection of a privacy screen up to a height of 1.6m along the western side of the proposed terrace area. This aims at preventing opportunities for overlooking into the adjoining properties to the east and west and will serve to improve the amenity of the residents of the surrounding properties by reducing the potential for visual privacy impacts.

In relation to the potential acoustic amenity impacts, the addition of the proposed terrace would mean that noise emanating from the subject site would be greater than that presently produced. This particular type of development does not have walls or a roof to stop noise and its use is likely to increase noise disturbance in the locality, hence the imposition of **condition C.1 (a)** requiring a reduction in the trafficable size of the proposed rooftop terrace area by stepping in the northern, side of the proposed rooftop terrace area an additional 1.0m which will reduce the size of the proposed rooftop terrace area from 19.6m² to 14.7m². This will serve to limit the functionality of the terrace by limiting the space available and therefore the number of people that can comfortably occupy the area. This in turn will mitigate the generation of noise and its transmission to the surrounding properties. Furthermore, the imposition of condition C.1 (a) will limit the extent to which the proposed rooftop terrace exacerbates the already eroded privacy credentials at the rear of 2A Etham Avenue. In this respect, the proposal is considered to be reasonable subject to the imposition of **condition C.1 (a)**.

The planning principles established in *Super Studio v Waverley [2004]NSWLEC 91* provide further guidance in relation to the assessment of visual and acoustic privacy impacts, with particular reference to rooftop terraces. The planning principle outlines the assessment of the acceptability of privacy impacts and works on the rationale that acceptability depends on the extent of the impact. It also looks at the reasonableness of and necessity for the development that causes them. With reference to the application at hand the specific nature of the proposed rooftop terrace means that any potential impacts should be assessed with a heightened degree of sensitivity. The visual and acoustic impacts of the use of the rooftop area should be assessed to be acceptable only if the impacts are minor or negligible in nature. In this case, subject to the imposition of **conditions C.1**

(a) and (b), it is considered that the proposal is reasonable and satisfies the visual and acoustic privacy objectives and performance criteria of Part 5.8 of the WRDCP 2003.

One of the other principles established in *Super Studio v Waverley [2004]NSWLEC 91* deals with the degree to which an approval for the proposed development might be used as a precedent in favour of approving other applications for roof terraces in the locality. In applying this principle to the proposed development, it is noted that a rooftop terrace was recently approved by the NSWLEC [*Appeal 10608*] in the locality, at 2/4 Etham Avenue, Darling Point. This means that the proposed rooftop terrace would not be a new element in the area.

In summary, the proposed rooftop terrace area with special **conditions C.1 (a) and (b)** is considered to accord with objective O 5.8.1 and the relevant performance criteria of Part 5.8 of the WRDCP 2003. In this respect, the proposal is considered to be reasonable such that refusal would not be justified.

Car parking and driveways performance criteria (Section 5.9)

The proposal would retain the existing two on-site parking spaces. In this respect, the proposal is considered to be satisfactory in terms of Section 5.9 of the WRDCP 2003.

Site facilities performance criteria (Section 5.10)

Not applicable.

Harbour foreshore development performance criteria (Section 5.11)

The proposal is considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under Part 5.11 of WRDCP 2003.

Access and mobility performance criteria (Section 5.13)

The proposed development is considered to be satisfactory in terms of Section 5.13 of the WDCP 2003.

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

Not applicable.

13.3 Woollahra Access

Access to the subject terrace will not be compromised as a result of the proposed works. In this respect, the proposal is considered to be acceptable under the provisions of the DCP.

13.4 Other DCPs, codes and policies

There are no other DCPs, codes or polices applicable to the proposed development.

14. APPLICABLE REGULATIONS

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

Part 3.7 Fire Safety

Part 3.8 Health and Amenity

Part 3.9 Safe Movement and Access

15. THE LIKELY IMPACTS OF THE PROPOSAL

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

16. THE SUITABILITY OF THE SITE

Acid Sulfate Soil Area

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

The subject site is within 500m of Class 2 land; however the proposed works would not lower the watertable below 1 metre AHD and is therefore acceptable.

17. SUBMISSIONS

In accordance with clause 4.5 of Woollahra Municipal Council's development Control Plan for Advertising and Notification of Development Applications and Applications to Modify Development Consents, the applicant has completed the statutory declaration [see correspondence on file dated 13 July 2007] declaring that the site notice for DA 2007/551 at 2 Etham Avenue, Darling Point was erected and maintained during the notification period in accordance with the requirements of the DCP.

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

- Ian W Ross of 2A Etham Avenue, Darling Point

The objections raised the following issues:

- **Visual Privacy**

Comment: This has been acknowledged. Refer to planning comment beneath the '*Acoustic and visual privacy performance criteria (Section 5.8)*' subheading. Furthermore, condition C.1 (a) has been imposed and requires that the area proposed rooftop terrace be reduced.

- **Washing on Balcony**

Comment: This issue has been addressed through the imposition of condition I.1 '*Clothes drying*'.

18. CONCLUSION - THE PUBLIC INTEREST

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

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

THAT the Council, as the consent authority, grant development consent to DA 551/2007/1 for Alterations and additions to dwelling including addition of first floor bedroom at rear and conversion of roof space for attic with stairs, dormers and a roof terrace at rear on land at 2 Etham Avenue DARLING POINT 2027, 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)
A1.05A A1.06A A1.07A A1.08A	Architectural Plans Proposed Plans Proposed Plans Proposed Elevations Elevation & Section A-A	Giles Tribe Architects Giles Tribe Architects Giles Tribe Architects Giles Tribe Architects	20/7/2007 20/7/2007 20/7/2007 20/7/2007
A17216	BASIX Certificate	Department of Planning	Monday, 27 August 2007

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

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

A.4 Prescribed Conditions

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

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

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

B.1 Construction Certificate required prior to any demolition

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

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

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

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

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

- a. In accordance with Objective O 5.8.1 of Part 5.8 of the WRDCP 2003, the proposed rooftop terrace shall be reduced by 1.0m along the northern side of the proposed rooftop terrace area.
- b. In accordance with Control C5.8.6 of Part 5.8 of the WRDCP 2003, a privacy screen shall be erected along the western side of the proposed rooftop terrace area up to a height of 1.6m. The privacy screen shall have 50% transparency.

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

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

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

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

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

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

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

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy Use Calculator: http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation or use their online calculator	No	
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit - Making good any damage caused to any property of the <i>Council</i> as a consequence of the doing of anything to which the consent relates.	\$9080	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	\$4040 + 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	\$13283 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:

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

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

- the guarantee is by an Australian bank for the amount of the total outstanding contribution;
- 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;
- 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
- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

How will the section 94A levy be indexed?

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

Do you need HELP indexing the levy?

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

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

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

- the reasons given;
- whether any prejudice will be caused to the community deriving benefit from the public facilities;

- c. whether any prejudice will be caused to the efficacy and operation of this plan; and
- d. whether the provision of public facilities in accordance with the adopted works schedule will be adversely affected.

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

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

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

Standard Condition: C5

C.3 BASIX commitments

The *applicant* must submit to the *Certifying Authority BASIX Certificate* No. A17216 with any application for a *Construction Certificate*.

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

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

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

Standard Condition: C7

C.4 Structural Adequacy of Existing Supporting Structures

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

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

Standard Condition: C35

C.5 Professional Engineering Details

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

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

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

Standard Condition: C36

C.6 Light & Ventilation

The *Construction Certificate* plans and specifications, required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation*, must detail all a lighting, mechanical ventilation or air-conditioning systems complying with Part F.4 of the *BCA* or clause 3.8.4 and 3.8.5 of the *BCA* Housing Provisions, inclusive of [AS 1668.1](#), [AS 1668.2](#) and [AS/NZS 3666.1](#). If an alternate solution is proposed then the *Construction Certificate* application must include a statement as to how the performance requirements of the *BCA* are to be complied with and support the performance based solution by expert *evidence of suitability*. This condition does not set aside the mandatory requirements of the *Public Health (Microbial Control) Regulation 2000* in relation to *regulated systems*. This condition does not set aside the effect of the *Protection of the Environment Operations Act 1997* in relation to offensive noise or odour.

Note: Clause 98 of the Regulation requires compliance with the *BCA*. Clause 145 of the *Regulation* prevents the issue of a *Construction Certificate* unless the *Accredited Certifier/Council* is satisfied that compliance has been achieved. Schedule 1, Part 3 of the *Regulation* details what information must be submitted with any *Construction Certificate*. It is the Applicant's responsibility to demonstrate compliance through the *Construction Certificate* application process. Applicants must also consider possible noise and odour nuisances that may arise. The provisions of the *Protection of the Environment Operations Act 1997* have overriding effect if offensive noise or odour arises from the use. Applicant's must pay attention to the location of air intakes and air exhausts relative to sources of potentially contaminated air and neighbouring windows and air intakes respectively, see section 2 and 3 of [AS 1668.2](#).

Standard Condition C59

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 Work (Construction) Zone – Approval & Implementation

A work zone is required for this development. The *principal contractor* or *owner* must apply for, obtained approval for, pay all fees for and implemented the required work zone before commencement of any work.

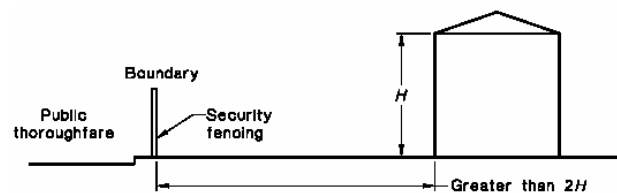
The *principal contractor* must pay all fees associated with the application and occupation and use of the road as a work zone. All Work Zone signs must have been erected by Council to permit enforcement of the work zone by Rangers and Police before commencement of any work. Signs are not erected until full payment of work zone fees.

Note: The *principal contractor* or *owner* must allow not less than four weeks (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under the Clause 22 of the *Transport Administration (General) Regulation 2000* to exercise those functions delegated by the Roads and Traffic Authority under Section 50 of the *Transport Administration Act 1988*.

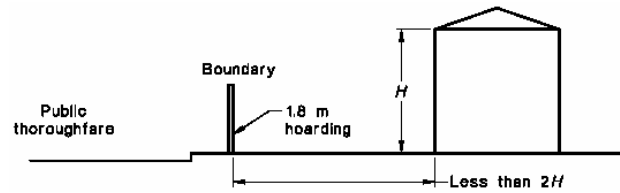
Note: The enforcement of the work zone is at the discretion of Council's Rangers and the NSW Police Service. The principal contractor must report any breach of the work zone to either Council or the NSW Police Service.
Standard Condition: D10

D.3 Security Fencing, Hoarding and Overhead Protection

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



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

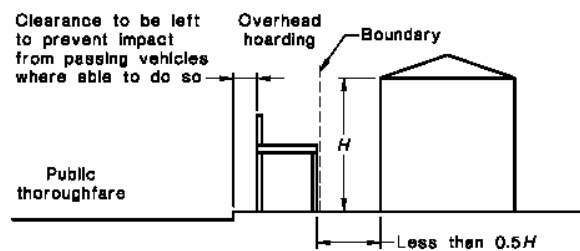


Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an *overhead protective structure* and the facing facade protected by heavy-duty scaffolding, unless either

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

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

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



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

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

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

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

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

D.4 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.5 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.6 Erosion and Sediment Controls – Installation

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

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

Where there is any conflict The Blue Book takes precedence.

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

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

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

Note: Section 257 of the *Protection of the Environment Operations Act 1997* provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”

Warning, irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.

Standard Condition: D14

D.7 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.8 Notification of Home Building Act 1989 requirements

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

Standard Condition: D17

E. Conditions which must be satisfied during any development work

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

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

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

This condition does not apply:

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

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

Standard Condition: E1

E.2 Compliance with Australian Standard for Demolition

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

Standard Condition: E2

E.3 Critical Stage Inspections

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

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

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

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

Standard Condition: E5

E.4 Hours of Work –Amenity of the neighbourhood

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

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

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

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

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

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

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

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

E.5 Maintenance of Vehicular and Pedestrian Safety and Access

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

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

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

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

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

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

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

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

Part C Management of Waste:

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

Part E Public roads:

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

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

E.6 Tree Preservation

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

General Protection Requirements:

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

Note: Trees must be pruned in accordance with Australian Standard AS 4373 – 2007 “Pruning of Amenity Trees” and Workcover NSW Code of Practice Amenity Tree Industry 1998.
Standard Condition: E8

E.7 Maintenance of Environmental Controls

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

- (a) Erosion and sediment controls;
- (b) Dust controls;

- (c) Dewatering discharges;
- (d) Noise controls;
- (e) Vibration monitoring and controls;
- (f) Ablutions.

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

E.8 Placement and use of Skip Bins

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

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

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

E.9 Prohibition of burning

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

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

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

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

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

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

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

No relevant conditions.

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

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

All BASIX commitments must be effected in accordance with the BASIX Certificate No. A 17216.

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

Standard Condition: H7

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

I.1 Clothes drying etcetera

No clothes, linen or the like must be hung from any balcony, terrace or veranda such that they are visible from any public place.

Reason: This condition has been imposed to ensure that the visual amenity of the neighbourhood is not detrimentally affected by a proliferation of such practices.

Standard Condition: I9

I.2 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. A 17216.

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

Standard Condition: I7

I.3 Removal of Graffiti

All graffiti must be removed or obliterated from buildings and fences within 72 hours.

Reason: This condition has been imposed to ensure the quality of our urban environment is not degraded by the accumulations of graffiti.

Note: Procedures for working with graffiti are contained in a special training program available from the Master Painters Australia NSW Association Inc. See: <http://www.masterpainters.com.au/>

Standard Condition: I26

I.4 Outdoor lighting – Residential

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

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

Note: This condition has been imposed to control the obtrusive effects of outdoor lighting.

Standard Condition: I42

I.5 Noise Control

The use of the premises must not give rise to the transmission of *offensive noise* to any place of different occupancy. *Offensive noise* is defined in the *Protection of the Environment Operations Act 1997*.

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

Note: Council will generally enforce this condition in accordance with the *Noise Guide for Local Government* (<http://www.environment.nsw.gov.au/noise/nlg.htm>) and the *Industrial Noise Guidelines* (<http://www.environment.nsw.gov.au/noise/industrial.htm>) publish by the Department of Environment and Conservation. Other state government authorities also regulate the *Protection of the Environment Operations Act 1997*.

Useful links:

Community Justice Centres—free mediation service provided by the NSW Government (www.cjc.nsw.gov.au).

Department of Environment and Conservation NSW, Noise Policy Section web page (www.environment.nsw.gov.au/noise).

New South Wales Government Legislation home page for access to all NSW legislation, including the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Noise Control Regulation 2000* (www.legislation.nsw.gov.au).

Australian Acoustical Society—professional society of noise-related professionals (www.acoustics.asn.au/index.php).

Association of Australian Acoustical Consultants—professional society of noise related professionals (www.aaac.org.au).

Department of Gaming and Racing - (www.dgr.nsw.gov.au).
Standard Condition: 150

J. Miscellaneous Conditions

No relevant conditions.

K. Advisings

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

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

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

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

Warnings as to potential maximum penalties

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

Warning as to enforcement and legal costs

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

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

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

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

K.2 Dial before you dig



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

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

Standard Advising: K2

K.3 Builders Licences and Owner Builders Permits

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

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

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

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

Standard Condition: K5

K.4 Building Standards - Guide to Standards and Tolerances

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

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

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

The Guide can be down loaded from:

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

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

Standard Condition: K6

K.5 Workcover requirements

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

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

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

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

Standard Condition: K7

K.6 Asbestos Removal, Repair or Disturbance

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

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

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

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

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

K.7 Lead Paint

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

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

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

Standard Advising: K9

K.8 Appeal

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

Mr. A Gilderdale, Assessment Officer on (02) 9391 7063.

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

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

Standard Condition: K14

K.9 Release of Security

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

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

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

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

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

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

K.10 Recycling of Demolition and Building Material

It is estimated that building waste, including disposable materials, resulting from demolition, excavation, construction and renovation, accounts for almost 70% of landfill. Such waste is also a problem in the generation of dust and the pollution of stormwater. Council encourages the recycling of demolition and building materials.

Standard Condition: K17

K.11 Owner Builders

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

Standard Condition: K18

K.12 Pruning or Removing a Tree Growing on Private Property

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

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

Standard Condition: K19

K.13 Compliance with the Building Code of Australia

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

Part 3.3.4 - Weatherproofing of masonry

Part 3.4.1 - Sub floor ventilation

Part 3.7 - Fire safety

Part 3.7.1 Fire separation

Part 3.7.2 Smoke alarms

Part 3.7.3 Heating appliances

Part 3.8 - Health and amenity

Part 3.8.1 Wet areas

Part 3.8.3 Facilities

Part 3.8.4 Light

Part 3.8.5 Ventilation

Part 3.8.6 Sound insulation

Part 3.9 - Safe movement and access

Part 3.9.1 Stair construction

Part 3.9.2 Balustrades

Part 3.9.3 Pool access

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

Standard Condition: K20 (Autotext KK20)

Mr. A Gilderdale
ASSESSMENT OFFICER

Mr. G Fotis
TEAM LEADER

ANNEXURES

1. Plans and elevation
2. Heritage referral response [dated 2 September 2007]
3. Heritage referral response [dated 29 November 2007]

DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D3
FILE No.	DA 458/2007/1
PROPERTY DETAILS	40-41 Olola Avenue VAUCLUSE 2030
	Lot & DP No.: LOT: 1 DP: 710471
	Side of Street: Eastern
	Site Area (m²): 2100m ²
	Zoning: Residential 2(a)
PROPOSAL:	Alterations and additions to existing garage
TYPE OF CONSENT:	Local Development
APPLICANT:	SX Projects Pty Ltd
OWNER:	Mrs L S Adler
DATE LODGED:	12/07/2007 (Original Proposal) 7/12/2007 (Revised proposal)
AUTHOR:	Ms L Northridge

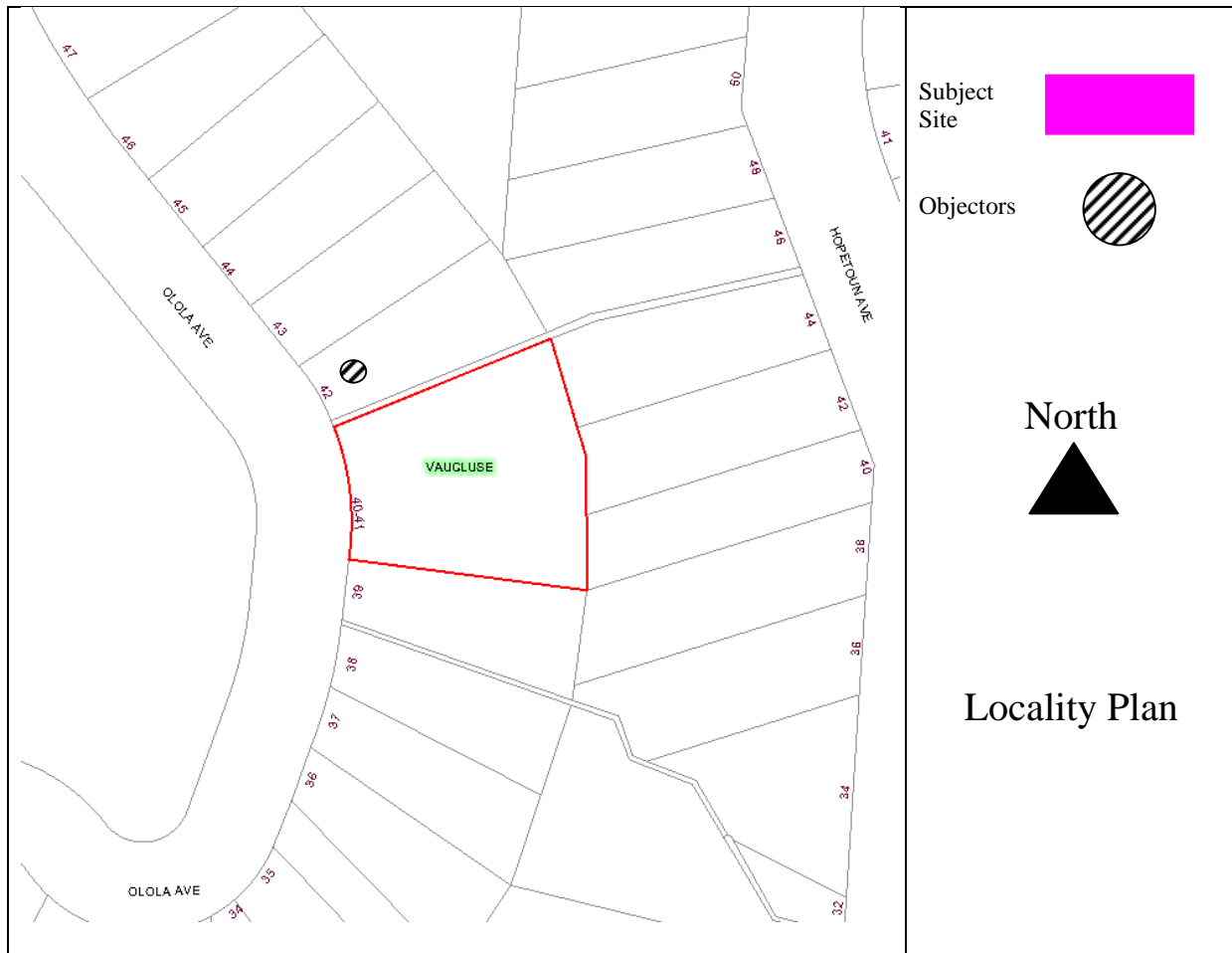
1. RECOMMENDATION PRECIS

The application is recommended for approval, subject to conditions.

2. PROPOSAL PRECIS

Alterations and additions to an existing garage.

3. LOCALITY PLAN



4. DESCRIPTION OF PROPOSAL

The proposal is for a two storey addition to an existing garage and other external works. The proposal involves the following works:

- Demolition of existing garage roof and garage loft;
- Construction of a two storey addition above the existing garage to provide two bedroom servants quarters including bathroom and living area on the upper ground floor and a one bedroom guest quarters including ensuite and living area on the first floor;
- New terrace facing the tennis court;
- New terrace off the upper ground floor facing swimming pool;
- New first floor balcony facing the tennis court;
- Alterations to the garage door configuration and replacement of existing garage doors;
- Construction of a cover over the existing external stairs from the new terrace to the tennis court.

The applicant submitted amended plans on the 7/12/2007. The following changes were received:

- The separate entries for the servants quarters and the guests quarters was deleted;
- The pitch of the roof has been altered on the north-western side allowing the proposed stairs and the storage area to be accommodated within the roof space.

5. SUMMARY

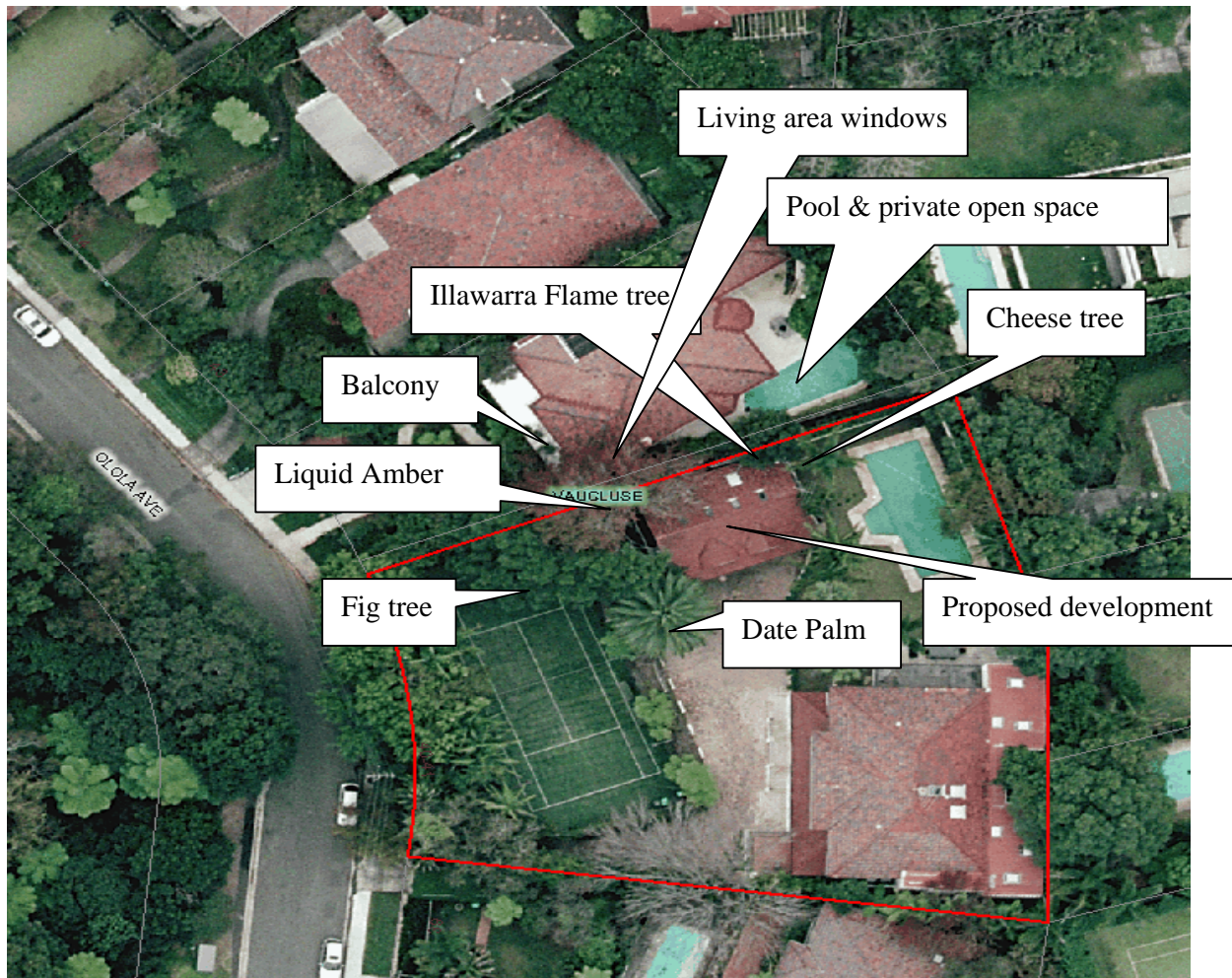
Reasons for report	Issues	Submissions
<ul style="list-style-type: none"> ▪ The DA does not satisfy the criteria for determination under staff delegation. 	<ul style="list-style-type: none"> • Acoustic privacy • Setbacks • Loss of light/sense of enclosure • Bulk and scale 	1 submission was received.

6. ESTIMATED COST OF WORKS

The applicant’s stated cost of the proposed development at \$187 000 has been checked using our adopted practice and is considered to be accurate.

7. DESCRIPTION OF SITE OF LOCALITY

THE SITE AND LOCALITY	
Physical features	The site is located on the eastern side of Olola Ave, Vaucluse. The subject site has an irregular shape and is 2100m ² in size.
Topography	The site falls steeply from the rear of the site to the street.
Existing buildings and structures	The site is occupied by a two storey residential dwelling, a detached garage with loft, tennis court and inground swimming pool. The subject site contains a number of significant trees including a Cheese tree, Liquid Amber, Moreton Bay Fig, Canary Island Date Palm and a Alexandra Palm.
Environment	The subject site is located within the Vaucluse West Precinct under WRDCP 2003. The subject site is adjoined by residential dwellings to the north and south and is located opposite Vaucluse Park.



8. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	Residential
Previous relevant applications	n/a
Pre-DA	n/a
Requests for additional information	Amended plans were requested on the 06/12/2007
Amended plans/ Replacement Application	Amended were received on the 07/12/2007.
Land & Environment Court appeal	n/a

9. REFERRALS

9.1 The following table contains particulars of internal referrals.

INTERNAL REFERRALS		
Referral Officer	Comment	Annexure
Landscaping Officer	Satisfactory subject to Conditions Nos. B2, C6, D2, E4, E5, F2, H2 and Advising K11.	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:

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") applies to the proposed development. The development application was accompanied by BASIX Certificate No. 146911S committing to environmental sustainability measures.

These requirements have been imposed by standard condition prescribed by clause 97A of the *Environmental Planning & Assessment Regulation 2000*.

State Environmental Planning Policy No. 55

Under clause 7 (1) (a) of State Environmental Planning Policy No. 55 – Remediation of Land, consideration has been given as to whether the land is contaminated. The land is currently used for residential purpose and there is no evidence before Council to suggest that the land has been used for any non-residential purpose. Consequently, the possibility of the land being contaminated is substantially reduced.

It is considered that Council can be satisfied that the land is not contaminated such that remediation would be required. It is therefore considered acceptable with regard to SEPP 55.

10.2 REPs

SREP (Sydney Harbour Catchment) 2005

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

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(a) Residential zone

11.2 Statutory compliance table

Site Area: 2100.86m ²	Existing	Proposed	Control	Complies
Overall Height	9.05m	9.2m	9.5m	YES

* Existing non-compliance

11.4 Height

Clause 12 of the WLEP imposes a statutory height limit of 9.5m in respect to development on this land. The proposed development does not exceed the maximum statutory height limit.

11.7 Other special clauses/development standards

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

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

Clause 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.

13. DEVELOPMENT CONTROL PLANS

13.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

Site Area (2100.86m ²)	Existing	Proposed	Control	Complies
Maximum Number of Storeys – Dwelling (C4.13.5.3)	2	3	2	NO
Ancillary Development				
Maximum Height (C5.2.4)	5.6m	9.2m	3.6m	NO
Rear Setback (eastern)	16.1m	13.1m	1.5m	YES
Side Setback (northern) (garage)	0.86m	0.86m	1.5m	NO*
Upper ground floor	n/a	0.86m	1.5m	NO
First floor	n/a	1.8m	1.5m	YES

Site Area (2100.86m ²)	Existing	Proposed	Control	Complies
Side Setback (southern)	34.2m	34.2m	1.5m	YES
Floor Space Ratio (C5.2.9)	0.46.5:1 (976.65m ²)	0.55:1 (1155.29m ²)	0.55:1 (1155.45m ²)	YES
Floor to Ceiling Height – Habitable Rooms	n/a	2.7m	2.7m	YES
Solar Access to Open Space of Adjacent Properties (Hrs on 21 June)	> 2 hours	> 2 hours	50% (or 35m ²) for 2 hours	YES
Solar Access to Nth Facing Living Areas of Adjacent Properties (Hrs on 21 June)	>3 hours	> 3 hours	3.0 hours	YES
Deep Soil Landscaping – Dwelling (C5.3.2)	32.1% (487m ²)	32.9% (499m ²)	50% (735.301m ²)	NO*
Private Open Space at Ground Level – Total	> 35m ² > 3m	> 35m ² > 3m	35m ² Min dimension 3m	YES
Private Open Space at Ground Level – Principal Area	> 16m ²	> 16m ²	16m ² Min dimension 4m	YES
Private Open Space at Ground Level – Maximum Gradient	< 1:10	< 1:10	1:10	YES
Solar Access to North-Facing Living Areas of Development (Hrs on 21 June)	> 3 hours	> 3 hours	3.0 hours	YES

* Existing non-compliance

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

The desired future character objectives of the Vaucluse West precinct relate to the maintenance of low rise residential development forms through the incorporation of good contemporary buildings and the reinforcement of the landscape character and the protection of views.

The proposed development is considered to uphold the desired future character objectives for the Vaucluse West precinct.

The proposal does not comply with the following performance criteria stipulated under Part 4.13 of WRDCP 2003:

Number of storeys

C 4.13.5.3 stipulates a maximum height of two storeys for the precinct.

The proposed development will contain 3 storeys. Notwithstanding this non-compliance, the proposal is considered to be satisfactory for the following reasons:

- The proposed development will not be visible from the Olola Ave;
- The proposed development will not adversely affect the amenity of surrounding properties in terms of loss of solar access or privacy (this has been further discussed in Sections and 5.2 and 5.8 of this report);
- The proposed development will be partly screened from the northern adjoining property by existing vegetation located along the northern boundary of the site and has been amended and conditioned so that it appears as one and a half storeys from the northern adjoining property.

In this regard, the proposed development is considered to be satisfactory in terms of the desired future character objectives and performance criteria contained in Part 4 of the RDCP.

Streetscape performance criteria (Section 5.1)

The proposed development will not be visible from the street.

Building size and location performance criteria (Section 5.2)

The proposed development is considered to be consistent with the relevant performance criteria contained in section 5.2 of the WRDCP, 2003 in the following way:

Floor space ratio

Pursuant to C5.2.9, the site is subject to a maximum FSR of 0.55:1. The proposed development has a maximum FSR of 0.55:1 and would therefore comply with C5.2.9 of the RDCP.

Building Setbacks

The proposed development does not propose any changes to the setbacks of the existing dwelling house.

Performance criteria 5.2.4 under Section 5.2 of the RDCP 2003 requires ancillary development to have a maximum height of 3.6 metres and minimum rear setback of 1.5 metres.

The proposed development complies with the minimum rear boundary setback. However, the proposed development represents a significant non-compliance with the maximum height requirements for ancillary development. The proposed development is considered to be acceptable for the following reasons:

- The non-compliance in height does not result in the loss of solar access or privacy to adjoining properties (this has been discussed in detail below in Sections 5.2 and 5.8 of this report);
- The proposed development will not be visible from any part of the public domain and will not obstruct any views;
- The proposed development will only be partially visible from one adjoining property (No. 42), the visibility of this proposal will be reduced due to the existence of vegetation located along this boundary;
- The proposal has been amended and conditioned to minimise the bulk and scale of the proposed structure when viewed from No. 42. Originally the proposed development presents as a two and half storey structure with a low pitched roof. This was amended so that the structure presented as a one and half storey structure with a mansard roof that is pitched from the top of the upper ground floor wall. These changes were not considered to sufficiently reduce the bulk and scale of the proposed development as viewed from No. 42, particularly given that the Illawarra Flame tree located along the northern boundary is to be removed and as the Liquid Amber is deciduous. Therefore a condition of consent has been recommended that requires the overall height of the building to be reduced by 400mm (RL 51.14). A further condition of consent has been recommended that requires the pitch of the mansard style roof to start at least 1.85 metres from the northern boundary (refer to **Condition No. C3**). (a 1.85 metre setback from the northern boundary was recommended to accord with the northern boundary setback that was originally proposed at second floor level);
- The bulk and scale of the proposed development has also been reduced as the proposed first floor balcony and the associated privacy screen has been recommended to be deleted (refer to **Condition No. C3**);

- The proposed development would comply with the maximum statutory height limits that are applicable to the subject site.

Performance criteria 5.2.5 under Section 5.2 of the RDCP 2003 requires development to be setback by 1.5m.

No changes to the existing garage setback has been proposed.. However, the proposed upper ground floor and first floor does not comply with the minimum northern side boundary setbacks. This non-compliance is considered to be acceptable as this non-compliance does not result in the loss of amenity to adjoining properties due to the orientation of the site, the existing vegetation located along the northern boundary, the existence of the easement along the northern boundary and as no window openings have been proposed on the northern elevation.

Accordingly, the proposed side boundary setbacks and height are considered to be acceptable.

Excavation: No excavation works has been proposed.

Solar Access

Performance Criteria C5.2.13 requires that sunlight to be provided to at least 50% of the primary ground level private open space of adjacent properties for a minimum of three hours between 9am and 3pm on 21 June.

Analysis of the shadow diagrams shows the adjoining areas of private open space at ground level will meet performance criteria 5.2.13 of the RDCP.

Performance Criteria C5.2.14 requires all north facing windows to receive at least 3 hours of direct sunlight during the winter solstice between 9am and 3pm.

The proposed development will not result in the loss of any solar access to surrounding properties as the southern adjoining property is located approximately 30 metres from the proposed works.

In this regard, the proposed development is appropriate from a solar access perspective.

Open space and landscaping performance criteria (Section 5.3)

Whilst, the proposed development does not comply with minimum deep soil landscaping requirements, the proposed development will result in a net increase in the amount of deep soil landscaping at the site (from 487m² to 499m²).

The proposed development will involve the removal of two trees (Tree 1 is a Cabbage Tree which is located within the footprint of the proposed terrace off the servants quarters and Tree 3 is a Illawarra Flame tree, which is located to the rear of the existing garage). Council's Landscape officer has considered the proposed removal of these trees and the proposed pruning of other trees on the site to be acceptable subject to replacement planting being planted on the site compliant with **Condition Nos. E5, F2.**

In this respect, the proposed development is considered to be acceptable in terms of Section 5.3 of the RDCP.

Energy efficiency performance criteria (Section 5.6)

A BASIX certificate has been submitted with this application. The revised proposal has shown all of the relevant BASIX commitments on the architectural plans including insulation, energy efficient glazing and sun shading devices.

Whilst, the proposed habitable rooms have not been orientated to the north in accordance with C5.6.3, the proposed habitable rooms will received in excess of 3 hours of direct sunlight between 9am and 3pm during the winter solstice.

Therefore the proposed development is considered to be satisfactory with regard to Section 5.6 of the RDCP, 2003.

Stormwater management performance criteria (Section 5.7)

A condition of consent has been recommended to ensure that the additional stormwater created by the proposal will be adequately disposed (refer to **Condition No. C9**).

Acoustic and visual privacy performance criteria (Section 5.8)

O5.8.1 seeks to ensure that adequate acoustic and visual privacy for occupants and neighbours is provided. The proposed development is considered to be consistent with this objective for the following reasons:

- The proposed terrace at the garage level has been setback from the northern boundary by 4 metres and will be a further 3.5 metres from adjoining habitable room windows and the front balcony at No. 42. The privacy of this property is further protected by the dense vegetation located on this boundary. In addition this deck is not directly accessible from the proposed new habitable rooms;
- The proposed terrace off the proposed servant's quarters is considered to be acceptable as a condition of consent has been recommended that requires the proposed privacy screen to be acoustically treated (refer to **Condition No.C3**). This is to protect the acoustic privacy of the northern adjoining property as this deck is within 5.5metres of the swimming pool and primary area of private open space at No. 42. The proposed screen and the existing vegetation located along this boundary will protect the visual privacy of this property;
- The proposed balcony that has been proposed off the proposed guest quarters is considered to have an adverse impact on the acoustic privacy of habitable room windows and private open space at No. 42 as this balcony is only 2 metres from the northern boundary and the Liquid Amber tree located directly behind the proposed balcony is deciduous. Whilst, this balcony is screened on the northern side and is located off the bedroom, the cumulative impact of this additional area of private open space on the acoustic privacy of surrounding properties is unacceptable. In addition the proposed privacy screen adds additional bulk to the upper floor of the building. Therefore a condition of consent has been recommended that requires this balcony to be deleted (refer to **Condition No.C3**);
- The proposal has been revised so that the proposed separate entries to the proposed servants and guest quarters have been deleted. A condition of consent has also been recommended that prevents these areas from being used as separate domiciles (refer to **Condition No.C2**);
- No openings have been proposed on the proposed northern elevation;
- The proposal will maintain the use of the property as a single dwelling and does not include the addition of any mechanical equipment, such as air conditioning, that would impact the acoustic amenity of the neighboring residential properties.

In this respect, the proposed development would be consistent with Section 5.8 of the RDCP.

Car parking and driveways performance criteria (Section 5.9)

The only change to the existing onsite car parking is the changes to the existing garage doors. No objection has been raised by Council's Technical Services Department. The proposal would therefore be acceptable in terms of Section 5.9 of the RDCP.

Access and mobility performance criteria (Section 5.13)

The proposed development is considered to be satisfactory in terms of Section 5.13 of the RDCP.

13.3 Woollahra Access

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

This proposal is for alterations and additions. The Access DCP encourages rather than requires, visitor access for older people or people with a disability for class 1a buildings were no more than 4 dwellings are proposed. Access has been provided in this proposal in the form of a new lift and, as such the proposal would be acceptable under the provisions of the DCP.

13.4 Other DCPs, codes and policies

There are no other DCPs, codes or policies applicable to the proposed development.

14. APPLICABLE REGULATIONS

Clause 92 of the EP & A Regulation 2000 requires Council to consider Australian Standard AS 2601-1991: The demolition of structures. It also requires compliance with this standard by condition of consent. This will comply by condition.

Clause 94 EP&A Regulation 2000 applies to the rebuilding, alteration or enlargement of a building where the measures contained within the building are inadequate to protect the persons using the building and to facilitate their access from the building in the event of fire, or to restrict the spread of fire from the building to other buildings in the vicinity. Subject to the installation of smoke alarms (Part 3.7 BCA) the premises are considered to be at an acceptable level of fire safety.

15. THE LIKELY IMPACTS OF THE PROPOSAL

All the likely impacts of the proposed works have been assessed in earlier sections of this report.

16. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

17. SUBMISSIONS

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

Mr R Sims & Ms A Pert
42 Olola Ave
Vaucluse NSW 2030

The objector raised the following issues:

- **Misidentification of neighbouring plans**

Comment: The applicant has submitted sufficient information to allow for an adequate assessment of the proposed development. A site visit of both the subject property and neighbouring property has been carried out. In addition Council's aerial photos have been used as part of this assessment.

- **Setbacks and location of boundaries**

Comment: The correct setback from the boundaries has been used to assess this proposal.

- **Non-compliance with the side boundary setbacks**

Comment: The proposed works are considered to be ancillary development, the non-compliance with these controls have been addressed above in Section 5.2 of this report.

- **Visual and aural privacy**

Comment: This has been addressed above in Section 5.8 of this report

- **3 storey development**

Comment: This non-compliance has been addressed above in Section 4 of this report

- **Height, Bulk and scale**

Comment: The proposal has been amended and conditioned to minimise the bulk and scale of the proposal (refer to **Condition No. C3**). This issue has been further addressed above in Section 5.2 of this report.

- **Lopping of the Liquid Amber**

Comment: Council's Landscape Officer has considered that the proposed lopping of the Liquid Amber to be acceptable. Suitable conditions of consent to protect the health and stability of this tree has been imposed (refer to **Condition Nos. B2, D2, E4**).

- **Loss of Light and loss of sky views**

Comment: The proposed development will not result in any additional overshadowing to No. 42. The proposal has been amended and conditioned to minimise loss of light and loss of outlook to this property.

- **Inconsistencies/other errors in drawings**

Comment: The applicant has submitted sufficient information to allow for an adequate assessment of the proposed development. A site visit of both the subject property and neighbouring property has been carried out.

- **Vegetation on the boundary**

Comment: The application has been amended and conditioned to minimise the impact on the northern adjoining property, the existence of vegetation along the northern boundary has not been relied upon to mitigate the impacts of the proposal.

18. CONCLUSION - THE PUBLIC INTEREST

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

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

THAT the Council, as the consent authority, grant development consent to DA 458/2007/1 for Addition to existing two-storey garage on land at 40-41 Olola Avenue VAUCLUSE 2030, 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)
A100 Rev B, A200, A201 Rev C, A300, A301 Rev D	Architectural Plans	Tony Owen Architects	05/12/2007
146911S	BASIX Certificate	Department of Planning	06/07/2007
	Arborist Report	TALC Tree & Landscape Consultants	05/07/2007

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

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

A.4 Prescribed Conditions

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

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

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

B.1 Construction Certificate required prior to any demolition

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

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

B.2 Establishment of Tree Protection Zones

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

(a) Tree Protection Zone areas

Council Reference No:	Species	Location	Radius from Trunk (Metres)*
2	<i>Glochidion ferdinandi</i> Cheese Tree	Adjacent to north western corner of garage	2.5m
4	<i>Liquidambar styraciflua</i> Liquidambar	Adjacent to south western corner of garage	7.5m
5	<i>Ficus macrophylla</i> Moreton Bay Fig	Adjacent to south western corner of garage	5.5m
6	<i>Phoenix canariensis</i> Canary Island Date Palm	Adjacent to south eastern corner of garage	7.0m
7	<i>Archontophoenix alexandrae</i> Alexandra Palm	Approx 4m east of north eastern corner of garage	3.0m

Notes: Where this condition relates to trees adjacent to existing structures, the protections fence is to be placed along the edge of the existing structure

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

Council Reference No:	Species	Location
6	<i>Phoenix canariensis</i> Canary Island Date Palm	Adjacent to south eastern corner of garage

A padding material eg. Hessian or thick carpet underlay, is to be wrapt around the trunk first. Harwood planks, 50x100mm and to the maximum possible length, are to be placed over the padding and around the trunk of the tree at 150mm centres. These planks are to be secured in place by 8 gauge wire at 300mm spacing. In addition the installation of suitable soil compaction prevention (such as "Rumble Boards") will be required.

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

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

Standard Condition: B5

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

C.1 Separate Domicile

To ensure the orderly development of the site and to maintain the amenity of the surrounding residential area the proposed additions above the existing garage shall not be used or occupied as a separate domiciles.

C.2 Water conservation

In ensure compliance with Section 5.7.3 of the Woollahra Residential Development Control Plan, 2003, the use of dual flushing toilets shall be incorporated into the design of any new bathroom.

Details shall be submitted with an application for a Construction Certificate.

C.3 Modification of details of the development (s80A(1)(g) of the Act)

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

- a. To protect the acoustic privacy of the surrounding property (No. 42) and to minimise the bulk and scale of the proposal the proposed first floor balcony off bedroom 3 shall be deleted. The associated French doors shall be changed to windows and the roof shall be made non-trafficable;
- b. To protect the acoustic privacy of the surrounding property (No.42) the privacy screen to the proposed terrace off the servant's quarters shall be acoustically treated to comply with the NSW Industrial Noise Policy, 2000 "Noise Amenity" criteria. The design of this screen shall be designed by a qualified practicing acoustic engineer (who is a member of either Australian Acoustic Society or the Association of Australian Acoustical Consultants);
- c. To minimise the bulk and scale of the proposed development the overall height of the proposed development shall be reduced by 400mm (RL51.14);
- d. To minimise the bulk and scale of the proposed development the proposed mansard style roof shall be pitched a minimum of 1.8 metres from the northern side boundary.

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

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

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

Standard Condition: C4

C.4 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.	\$5 800	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	\$935 + 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	\$6 898 Plus any relevant indexed amounts and long service levy		

Building & Construction Industry Long Service Payment

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

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

How must the payments be made?

Payments must be made by:

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

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

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

How will the section 94A levy be indexed?

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

Do you need HELP indexing the levy?

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

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

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

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

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

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

Any deferred or outstanding component of the section 94A levy will be adjusted in accordance with clause 3.13 of the plan. The applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.
Standard Condition: C5

C.5 BASIX commitments

The *applicant* must submit to the *Certifying Authority* *BASIX Certificate* No.146911S with any application for a *Construction Certificate*.

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

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

Note: Clause 145(1)(a1) of the *Environmental Planning & Assessment Regulation* 2000 provides: "A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires,"
Standard Condition: C7

C.6 Tree Management Details

The *Construction Certificate* plans and specifications required by clause 139 of the *Regulation* must, show the following information;

- a. trees to be numbered in accordance with these conditions,
- b. shaded green where required to be protected and retained,
- c. shaded yellow where required to be transplanted,
- d. shaded blue where required to be pruned,
- e. shaded red where authorised to be removed and,
- f. references to applicable tree management plan, arborists report, transplant method statement or bush regeneration management plan.

Standard Condition: C30

C.7 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.8 Professional Engineering Details

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

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

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

Standard Condition: C36

C.9 Stormwater discharge to existing *Stormwater Drainage System* (Clause 25(2) WLEP 1995)

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

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

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

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

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

Note: Stormwater Drainage Systems must not discharge to any Sewer System. It is illegal to connect stormwater pipes and drains to the sewerage system as this can overload the system and cause sewage overflows. See:

<http://www.sydneywater.com.au/Publications/Factsheets/SewerfixLookingAfterYourSewerPipes.pdf>

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

www.woollahra.nsw.gov.au

Standard Condition: C49

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

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

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

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

This condition does not apply:

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

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

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

D.2 Establishment of Tree Protection Zones

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

- (a) Tree Protection Zone areas

Council Reference No:	Species	Location	Radius from Trunk (Metres)*
2	<i>Glochidion ferdinandi</i> Cheese Tree	Adjacent to north western corner of garage	2.5m
4	<i>Liquidambar styraciflua</i> Liquidambar	Adjacent to south western corner of garage	7.5m
5	<i>Ficus macrophylla</i> Moreton Bay Fig	Adjacent to south western corner of garage	5.5m
6	<i>Phoenix canariensis</i> Canary Island Date Palm	Adjacent to south eastern corner of garage	7.0m
7	<i>Archontophoenix alexandrae</i> Alexandra Palm	Approx 4m east of north eastern corner of garage	3.0m

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

Council Reference No:	Species	Location
6	<i>Phoenix canariensis</i> Canary Island Date Palm	Adjacent to south eastern corner of garage

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

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

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

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

Standard Condition: D8

D.3 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.4 Toilet Facilities

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

Each toilet provided:

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

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

In this condition:

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

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

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

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

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

D.5 Erosion and Sediment Controls – Installation

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

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

Where there is any conflict The Blue Book takes precedence.

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

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

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

Note: Section 257 of the *Protection of the Environment Operations Act 1997* provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”

Warning, irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.
Standard Condition: D14

D.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

D.7 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.8 Checking Construction Certificate plans & protecting assets owned by the Sydney Water Corporation

Construction Certificate plans must be stamped by the Sydney Water Corporation prior to the commencement of any development work. This is required to ensure that buildings close to or over Sydney Water Corporation assets are identified and requirements for protecting them are implemented.

Note: Further information can be obtained from the Sydney Water Corporation on or telephone 13 20 92 or by visiting their web site:

http://www.sydneywater.com.au/html/yourhome/quick_check/building_renovating.cfm

Standard Condition: D19

E. Conditions which must be satisfied during any development work

E.1 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.2 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.3 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.4 Tree Preservation

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

General Protection Requirements:

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

Note: Trees must be pruned in accordance with Australian Standard AS 4373 – 2007 “Pruning of Amenity Trees” and Workcover NSW Code of Practice Amenity Tree Industry 1998.
Standard Condition: E8

E.5 Tree Preservation & Approved Landscaping Works

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

- a) The following trees must be retained:

Trees on Private Land

Council Reference No:	Species	Location	Dimension (Metres)
2	<i>Glochidion ferdinandi</i> Cheese Tree	Adjacent to north western corner of garage	8 x 4m
4	<i>Liquidambar styraciflua</i> Liquidambar	Adjacent to south western corner of garage	15 x 8m
5	<i>Ficus macrophylla</i> Moreton Bay Fig	Adjacent to south western corner of garage	15 x 8m
6	<i>Phoenix canariensis</i> Canary Island Date Palm	Adjacent to south eastern corner of garage	10 x 6m
7	<i>Archontophoenix alexandrae</i> Alexandra Palm	Approx 4m east of north eastern corner of garage	14 x 4m

c) The following trees may be removed:

Council Reference No:	Species	Location	Dimension (Metres)
1	<i>Cordyline sp</i> Cabbage Tree	Approximately 1m north of north eastern corner of garage	6 x 3m
3	<i>Brachychiton acerifolium</i> Illawarra Flame Tree	Adjacent to north western corner of garage	

Note: The tree trees that may be removed should appear coloured red on the construction certificate plans. All removal works are to be carried out so as to avoid damage to any part of adjacent trees to be retained, including the tree's root system. Excavation of the removed tree's stump and main roots is not permitted.

d) The following trees may be pruned in accordance with Australian Standard AS 4373 – 2007 “Pruning of Amenity Trees” and Workcover NSW Code of Practice Amenity Tree Industry, 1998 to the minimum extent necessary to provide clearance to the new development:

Council Ref. No:	Species	Location	Approved pruning specification (extent of pruning)
2	<i>Glochidion ferdinandi</i> Cheese Tree	Adjacent to north western corner of garage	Reduction of eastern side of crown to allow for extension up to a maximum of 20% of canopy (AS4373 - 7.3.2)
4	<i>Liquidambar styraciflua</i> Liquidambar	Adjacent to south western corner of garage	Reduction of eastern side of crown to allow for stair way roofing up to a maximum of 10% of canopy (AS4373 - 7.3.2)
5	<i>Ficus macrophylla</i> Moreton Bay Fig	Adjacent to south western corner of garage	Reduction of eastern side of crown to allow for stair way roofing up to a maximum of 10% of canopy (AS4373 - 7.3.2)
6	<i>Phoenix canariensis</i> Canary Island Date Palm	Adjacent to south eastern corner of garage	Crown Lifting of lower whorl of fronds to allow for construction of proposal (AS4373 – 7.3.3)

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

Note: Water Restrictions take precedence over this condition.

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

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

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

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

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

F.2 Amenity Landscaping

No Landscape Plan was received or assessed as part of this assessment of the proposed works. The Statement of Environmental Effects indicated that the proposal complies with section 5.3.2-Landscaping for the Woollahra Residential Development Control Plan 2003. The *owner or principal contractor* must maintain and/or install amenity landscape works (screen planting, soil stabilisation planting, etc.) in accordance with the Woollahra Residential DCP 2003 prior to any occupation or use of the site. Maintenance and/or installation works are to include the planting of a minimum of 2 medium sized trees (minimum pot size of 35 litre) appropriate to site conditions and planted in an appropriate and sustainable location.

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

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

No relevant Conditions

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

H.1 Removal of Ancillary Works and Structures

The *principal contractor or owner* must remove from the land and any adjoining public place:

- a. The site sign;
- b. Hoarding;
- c. Scaffolding; and
- d. Waste materials, matter, article or thing.

Note: This condition has been imposed to ensure that all ancillary matter is removed prior to the issue of the *Final Occupation Certificate*.
Standard Condition: H12

H.2 Landscaping

No Landscape Plan was received or assessed as part of this assessment of the proposed works. The Statement of Environmental Effects indicated that the proposal complies with section 5.3.2-Landscaping for the Woollahra Residential Development Control Plan 2003. The *owner or principal contractor* must maintain and/or install amenity landscape works (screen planting, soil stabilisation planting, etc.) in accordance with the Woollahra Residential DCP 2003 prior to any occupation or use of the site. Maintenance and/or installation works are to include the planting of a minimum of 2 medium sized trees appropriate to site conditions and planted in an appropriate and sustainable location.

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

Standard Condition: H9

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

I.1 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No.146911S.

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

Standard Condition: I7

I.2 Maintenance of Landscaping

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

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

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

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

Standard Condition: I8

J. Miscellaneous Conditions

No relevant Conditions

K. Advisings

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

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

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

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

Warnings as to potential maximum penalties

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

Warning as to enforcement and legal costs

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

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

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

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

Standard Advising: K1

K.2 Dial before you dig



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

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

Standard Advising: K2

K.3 Builders Licences and Owner Builders Permits

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

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

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

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

Standard Condition: K5

K.4 Building Standards - Guide to Standards and Tolerances

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

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

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

The Guide can be down loaded from:

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

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

Standard Condition: K6

K.5 Workcover requirements

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

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

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

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

Standard Condition: K7

K.6 Asbestos Removal, Repair or Disturbance

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

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

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

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

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

K.7 Lead Paint

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

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

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

Standard Advising: K9

K.8 Appeal

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

George Fotis, Assessment Officer on (02) 9391 7089

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

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

Standard Condition: K14

K.9 Release of Security

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

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

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

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

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

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

Standard Condition: K15

K.10 Owner Builders

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

Standard Condition: K18

K.11 Pruning or Removing a Tree Growing on Private Property

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

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

Standard Condition: K19

K.12 Compliance with the Building Code of Australia

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

Part 3.3.4 - Weatherproofing of masonry

Part 3.4.1 - Sub floor ventilation

Part 3.7 - Fire safety

Part 3.7.1 Fire separation

Part 3.7.2 Smoke alarms

Part 3.8 - Health and amenity

Part 3.8.1 Wet areas

Part 3.8.3 Facilities

Part 3.8.4 Light

Part 3.8.5 Ventilation

Part 3.8.6 Sound insulation

Part 3.9 - Safe movement and access

Part 3.9.1 Stair construction

Part 3.9.2 Balustrades

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

Standard Condition: K20 (Autotext KK20)

Ms L Northridge
ASSESSMENT OFFICER

Mr G Fotis
TEAM LEADER

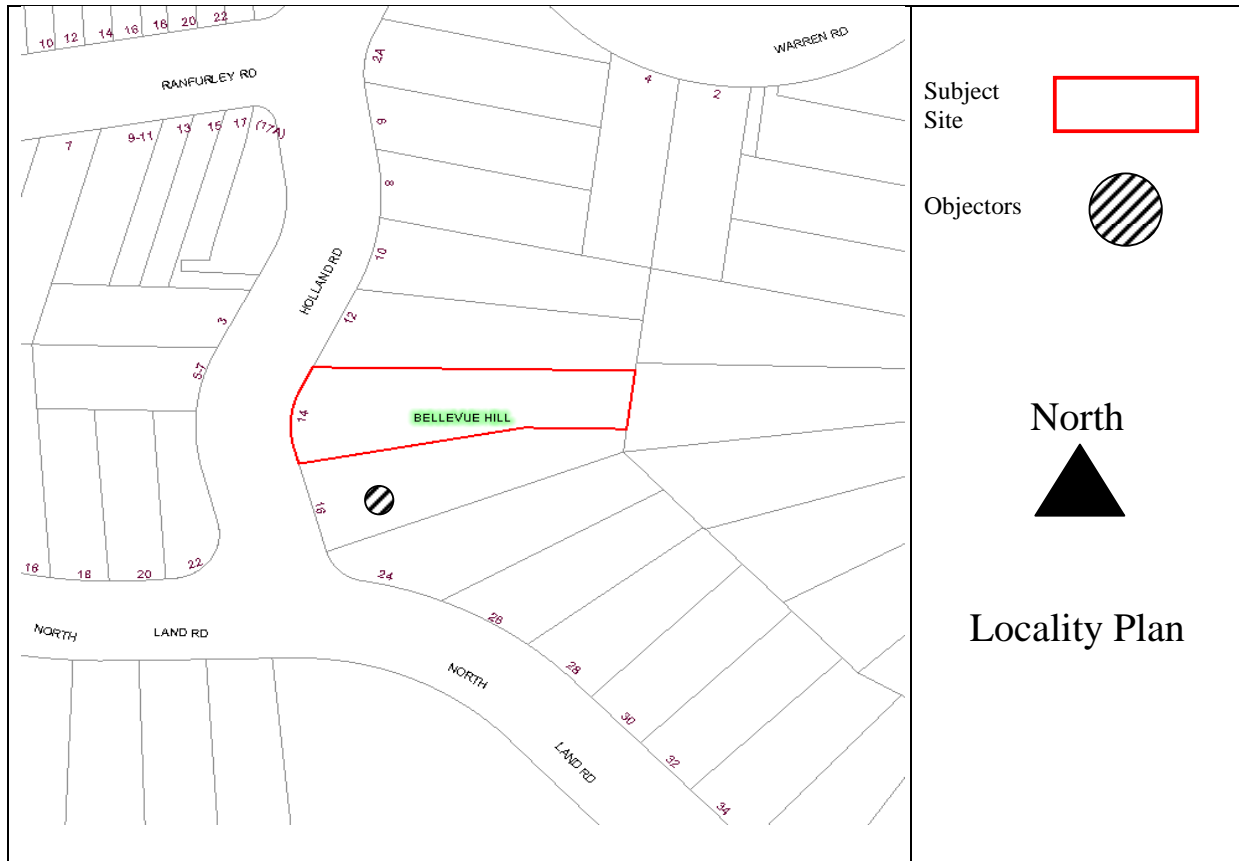
ANNEXURES

1. Plans and elevations
2. Landscape referral.
3. Tree location plan.

SECTION 96 APPLICATION ASSESSMENT REPORT

ITEM No.	D4
FILE No.	DA 710/2006/2
ADDRESS:	14 Holland Road BELLEVUE HILL 2023
EXISTING CONSENT:	Alterations and additions to existing dwelling including first floor extension.
TYPE OF CONSENT:	Local Development
DATE OF CONSENT:	03/04/2007
ZONING:	2(a) Residential
PROPOSED MODIFICATION:	Reinstatement of the double garage.
DATE S96 LODGED:	27/08/2007
CONSENT AUTHORITY:	Woollahra Municipal Council
APPLICANT:	Dukes Architects Pty Ltd
OWNER:	Mr N Vass
AUTHOR:	Ms L Northridge

LOCALITY PLAN



1. SUMMARY

Reason for report

In accordance with Council's delegations, this matter is referred to the AAP as one unresolved objection has been received.

Issues

- Visual and acoustic privacy
- Views

Objections

One objection was received.

Recommendation

The application is recommended for approval because it:

1. Is permissible within the zone
2. Complies with the relevant planning standards contained within WLEP 1995 and RDCP 2003;
3. Is of appropriate design for the site;
4. Will not have adverse effects on the amenity of adjoining properties such that refusal is justified.

2. DESCRIPTION OF APPROVED PROPOSAL

- First floor addition to provide 3 new bedrooms, 3 ensuites and walk in robes. A new terrace has also been proposed, which includes a 1.8m privacy screen to the southern side.
- A single storey addition to the rear of the existing ground floor and the reconfiguration of the ground floor.
- Demolition of part of the existing hipped roof to the rear.
- New terrace off the rear of the ground floor.
- New external entry stairs.
- New double garage on the front building alignment including new covered entry stairs.
- New skylight the southern roofslope.
- New timber pergola to ground floor terrace to front and rear.

3. DESCRIPTION OF PROPOSED MODIFICATION

This S96 application proposes to reinstate the proposed double garage and covered walkway (the proposed double garage and walkway was deleted from the approved development by **Condition No. C1**). The following works have been proposed:

- Construction of a double garage and enclosed access stair to provide internal access to the existing dwelling;
- The existing garage to the northern side of the property is to be demolished and a new stone wall to match the existing wall is to be constructed and new landscaping is to be installed in place of the existing garage;
- The Atlantic Cedar tree from the front of the site is to be removed and replaced with a *Magnolia grandiflora*;
- New portico to the front of the site.

4. DESCRIPTION OF SITE AND LOCALITY

The site is located on the western side of Holland Street, Bellevue Hill, and has an irregular shape. The site has an eastern boundary of 20.115m, a northern boundary of 69.10m, a southern boundary of 49.445m and a western boundary of 13.83m, providing a total site area of 1204.7m².

The site is occupied by a two storey residential dwelling of brick construction with a tiled, pitched roof. The site contains an inground swimming pool and a detached shed to the rear of the site. Two detached single garages are located on the front boundary. A large Atlantic Cedar tree at the front of the site is proposed to be removed to accommodate the new garage.

The site falls from the rear (RL 55.72) to the front of the site (RL46.58). The site also has a slight cross fall from the south to the north.

The subject site is surrounded by large residential dwellings of a mix of architectural styles and age. The site enjoys views to city skyline across the front of the site.

5. PROPERTY HISTORY

The application for approved development was granted by Council's Application Assessment Panel on the 3rd April 2007.

6. REFERRALS

6.1 Comments from external approval bodies

6.6 Technical Services

The following comments were received from Council's Technical Services Department:

Impacts on Council Infrastructure comments

There are 2 existing driveways and single garages each side of the site. The access and garage to south is to be widened and upgraded

The remainder of Council's assets are in serviceable condition - conditions applied.

Traffic comments

The expected traffic generation from the proposed development is typical for the zoning of the site.

Vehicle Access & Accommodation comments

The access and parking layout is satisfactory complies with AS 2890.1 – No specific conditions required

Geotechnical, Hydrogeological and/or Structural comments

A Geotechnical Report by Jeffery & Katauskas P/L Ref: 20702Srpt dated 29 November 2006 has been submitted in support of the application. The proposal involved minor excavation for the garage extension up to 3.5m. The report identified that the property was underlain with subsurface profiles of fill, sand over bedrock. Fill layers to a depth 0.3m, then sand of various densities to bedrock at a depth of 4.4m. Groundwater was encountered at depths of 3 – 4 below garage floor level and will not impact on the development.

The report made comments and recommendations on the following:

- *Existing structural stability*
- *Excavation*
- *Retaining walls, footings and slabs*
- *Monitoring of earthworks*
- *Hydrogeological considerations*

Conditions covering these matters as well as others identified by Council have been added to the Referral.

RECOMMENDATION

Council's Development Engineer has determined that the proposal satisfies Technical Services concerns, subject to the following conditions. Accordingly, the following conditions are recommended.

Comment: A3, C13, C14, D10, D11, E15 to E18, H2, F2.

6.7 Landscaping/Trees Management

The application was referred to Council's Landscape Officer. The following comments were received:

I refer to the following documents received for this report:

- *Statement of Environmental Effects, prepared by Dukes Architects Pty Ltd, dated August 2007,*
- *Survey Plan No: 49467 , drafted by Hill & Blume, dated 06/07/06,*
- *Architectural Plan, 6 sheets, drawn by Dukes Architects, dated 27/8/07 (Amended).*
- *Landscape Plan No, 1, designed by Marcia Hosking, dated 27/8/07 (Amended).*

A site inspection was carried out on the following day: 22/11/07.

RECOMMENDATIONS

Council's Tree and Landscape Officer has determined that the development proposal is satisfactory in terms of tree preservation and landscaping, subject to compliance with the following Conditions of Consent;

1. *The Cedrus atlantica to be removed from the front of the property be replaced with a Magnolia grandiflora 'exmouth' The root ball size of this tree should be a minimum 300 litres with the mature dimensions reaching at least 7metres high and 3 metres in spread. The tree must have been grown according to 'NATSPEC' specifications.*

2. *The replacement tree must be located at the front of the property, and centred at least 2 metres from the new garage or any other structure which would be affected by the roots of the tree at maturity, and in a position that will reasonably promote the growth of the tree to its full potential.*

Comment: A3, C12, E14

ASSESSMENT UNDER S96

7.3 S96 (2) Other modifications

This proposal is assessed under Section 96(2) of the Act as the potential environmental impact associated with the proposed modifications must be assessed.

7.5 Substantially the same development

Section 96(2)(a) of the Environmental Planning and Assessment Act 1979 requires Council as the consent authority to be satisfied that the development to which the consent as modified relates to substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified.

The modifications will result in substantially the same development, as the proposal relates to works that were deleted via a condition of consent on the approved development.

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:

8. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

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. The land is currently used for residential purpose and there is no evidence before Council to suggest that the land has been used for any non-residential purpose. Consequently, the possibility of the land being contaminated is substantially reduced.

It is considered that Council can be satisfied that the land is not contaminated such that remediation would be required. It is therefore considered acceptable with regard to SEPP 55.

8.2 REPs

SREP (Sydney Harbour Catchment) 2005

The development will be distantly visible from Sydney Harbour and some foreshore areas. However, the development will blend in with the surrounding built and natural environment and will not have any adverse visual impact upon Sydney Harbour or the foreshore areas. Accordingly, the proposal is considered to be satisfactory with regard to the provisions of this instrument.

8.3 Section 94 contribution

No additional Section 94 contributions would be application to this Section 96 application.

8.4 Other relevant legislation

No other legislation is applicable to this application.

9. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

9.1 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(a) Residential zone

9.2 Statutory compliance table

Site Area: 1204.7m ²	Approved Development	Proposed Modification	Control	Complies
Overall Height	9.5m	3.3m	9.5m	YES

9.4 Height

The proposed works would have a maximum height of 3.3m which is below the maximum permitted height of 9.5m, and is therefore acceptable.

9.7 Other special clauses/development standards

Cl.18 of the WLEP states the following:

- (1) *When considering an application for consent for development involving the excavation of any land, the Council shall have regard to how that excavation may temporarily or permanently affect:*
 - (a) *the amenity of the neighbourhood by way of noise, vibration, dust or other similar circumstances related to the excavation process, and*
 - (b) *public safety, and*
 - (c) *vehicle and pedestrian movements, and*
 - (d) ***the heritage significance of any heritage item that may be affected by the proposed excavation and its setting, and***
 - (e) *natural landforms and vegetation, and*
 - (f) *natural water runoff patterns.*
- (2) *The Council **may** decline to grant such a consent unless it has considered specialist reports, including geotechnical reports, structural engineering reports, hydrology reports and dilapidation reports of properties which may be affected by the proposed excavation.*

- (3) *Consent for an excavation **may** be granted when consent is granted for any other development proposal for the carrying out of which the excavation is necessary."*

The proposed modifications will involve excavation works. These excavation works are to allow for proposed new double garage and will be to a maximum depth of 3.0m.

The proposed development is not considered to create an adverse impact on the amenity of the adjoining properties as suitable conditions of consent have been recommended to ensure that the works are carried out in a manner that minimises the impact on adjoining surrounding properties. In addition according to the applications geotechnical report the excavated material will consist of mostly fill and natural soil.

The proposed works are of a scale and nature that are not considered to be detrimental to public safety or to generate significant additional vehicle movements.

The geotechnical report that has been submitted by the application is considered to be satisfactory by Council's Development Engineer subject to the imposition of conditions of consent.

In this regard, the replacement application is considered to be acceptable in terms of the Cl. 18 of the WLEP.

Clause 19 HFSPA: The proposal is acceptable in terms of Clause 19(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, nor does it fall within a Conservation Area. Accordingly the proposal is satisfactory in terms of Clauses 26-33 of the WLEP.

10. DEVELOPMENT CONTROL PLANS

10.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

Site Area (1204.7m ²)	Approved Development	Proposed Modification	Control	Complies
Floor Space Ratio	0.45:1 (541.96m ²)	0.46:1 (554.99m ²)	0.55:1 (661.65m ²)	YES
Solar Access to Open Space of Adjacent Properties (Hrs on 21 June)	> 50% (or 35m ²) for 2 hours	> 50% (or 35m ²) for 2 hours	50% (or 35m ²) for 2 hours	YES
Solar Access to Nth Facing Living Areas of Adjacent Properties (Hrs on 21 June)	> 3 hours	> 3 hours	3.0 hours	YES
Excavation Piling and Subsurface Wall Setback	n/a	<1.5m	1.5m	NO
Deep Soil Landscaping – Dwelling	> 50%	> 50%	50%	YES
Deep Soil Landscaping – Front Setback	> 40%**	> 40%	40%	YES
Garage Frontage Width	68.6%** (13.8m)	41.46% (8.38m)	30% (6.033m)	NO

Site Area (1204.7m ²)	Approved Development	Proposed Modification	Control	Complies
Height of Garage or Car Parking Structure on High Side of the Street	3.8m**	3.0m	2.5m	NO

* Existing non-compliance **Original proposal

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

The subject site is located within the Bellevue Hill North precinct.

Originally as part of the approved development the applicant proposed a wider (9.8m) and higher (3.8m) double garage and proposed to retain the existing single garage located on the northern side of the site. This development was considered to be unacceptable therefore a condition of consent that required the proposed garage and associated access stair to be deleted from the approved development.

This S96 seeks to reinstate the double garage and access stairs. However this garage is much smaller and lower than what was originally proposed (8.4m wide and 3.0m high). Also proposed as part of this S96 application is to demolish the existing garage located on the northern side of the site. These proposed works are therefore considered to be acceptable as the new garage is considered to be compatible with the general pattern of development within the area. Substantial additional landscaping has also been proposed to the front setback. In addition to further minimise the impact of the proposed development on the streetscene, part of the new garage has been set away from the front boundary and will be screened by new planting.

In this regard, the proposed development satisfies the desired future character objectives and performance criteria contained in Part 4 of the RDCP.

Streetscape performance criteria (Section 5.1)

The reinstatement of the proposed garage is not considered detrimental to the character and appearance of the streetscape for reasons stated above in Part 4 of this report. Thus, the amended proposal is considered to be satisfactory in terms of Section 5.1 of the RDCP.

Building size and location performance criteria (Section 5.2)

Floor space ratio

Pursuant to C5.2.9 the site is subject to a maximum FSR of 0.55:1. The proposed modification will comply with these maximum requirements.

Building Setbacks

Excavation: Whilst, the proposed excavation works are within 1.5 metres of the southern site boundary a number of conditions of consent have been recommended to mitigate the impacts of the excavations works on the structural stability of adjoining structures and the amenity of surrounding properties (refer to **Condition Nos.C13, D10, D11, E15, E16, E18, F2**).

Solar Access

The proposed development will not result in the loss of solar access to any adjoining private open space or north facing habitable room windows.

In this regard, the proposed development is appropriate from a solar access perspective.

Open space and landscaping performance criteria (Section 5.3)

The proposed modifications will comply with the minimum deep soil landscaping requirements.

Council's Landscape Officer has considered that the proposed removal of the Atlantic Cedar to be acceptable and has supported the applicants choice of a replacement tree (*Magnolia grandiflora*).

The additional planting that has been proposed to the front setback is considered to make a positive contribution to the streetscape.

In this respect, the proposed development is considered to be satisfactory in terms of Section 5.3 of the RDCP.

Fences and walls performance criteria (Section 5.4)

The proposed extension to the front fence will match the existing fence and would comply with Council's maximum height requirements for front fences.

The new portico and gate has an open form and is considered to be compatible with the general pattern of development within Holland Road.

In this respect, the proposed development is considered to be acceptable.

Views performance criteria (Section 5.5)

The subject site enjoys views across Holland Road towards the city skyline and Harbour Bridge. The proposed garage and associated covered walkway will not obstruct any views from surrounding properties or from the public domain.

Concern has been raised from the southern adjoining property that the proposed replacement tree (*Magnolia gradflora*) would obstruct views from this property. This tree is considered to be acceptable as Council's Landscape Officer has indicated that this tree is slow growing and would be suitable to be pruned. It was also indicated that this tree would reach a height at maturity of 10 to 12 metres with a spread of a 8 to 9 metres. This tree at maturity would be similar size to the existing tree (Atlantic Cedar). It should be noted that the Atlantic Cedar tree has been illegally lopped (a search of Council's records did not identify any approvals to prune this tree).

In this respect, the proposed development is considered to be acceptable in terms of Section 5.5 of the RDCP.

Stormwater management performance criteria (Section 5.7)

The proposed modifications do not involve any changes to the approved stormwater arrangements.

Acoustic and visual privacy performance criteria (Section 5.8)

O5.8.1 seeks to ensure that adequate acoustic and visual privacy for occupants and neighbours is provided. The proposed development is considered to be consistent with this objective for the following reasons:

- No new habitable room windows have been proposed. The only new window that that has been proposed belongs to a staircase which provides internal access from the new garage.
- A condition of consent has been recommended that requires the southern side of the covered access stairs to contain obscure glazing (refer to **Condition No. C1**);
- As this stairway is not a habitable room it is not considered to be detrimental to the acoustic privacy of the southern adjoining property.

Car parking and driveways performance criteria (Section 5.9)

The proposed new garage and driveway would comply with the objectives and performance criteria contained in Section 5.9 of the RDCP.

In addition Council's Technical Services Department has considered the proposed garage to be acceptable.

Access and mobility performance criteria (Section 5.13)

The proposed development is considered to be satisfactory in terms of Section 5.13 of the RDCP.

11.3 Woollahra Access DCP

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

This proposal is for alterations and additions. The Access DCP encourages rather than requires, visitor access for older people or people with a disability for class 1a buildings were no more than 4 dwellings are proposed. Access has not been provided in this proposal, however this is considered to be acceptable under the provisions of the DCP.

11.4 Other DCPs, codes and policies

There are no other DCPs, codes or policies applicable to the proposed development.

12. APPLICABLE REGULATIONS

None relevant.

13. THE LIKELY IMPACTS OF THE MODIFIED DEVELOPMENT

All the likely impacts of the proposed works have been assessed in earlier sections of this report.

14. SUBMISSIONS

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

The objectors raised the following issues:

Max & Nizza Siano
16 Holland Road
Bellevue Hill NSW

- **Visual Privacy**

Comment: This has been addressed above in Section 5.8 of this report.

- **Acoustic Privacy**

Comment: This has been addressed above in Section 5.8 of this report.

- **Loss of views from the planting of tree**

Comment: This has been addressed above in Section 5.5 of this report.

15. CONCLUSION - THE PUBLIC INTEREST

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

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

THAT Council, as the consent authority, modify development consent to Development Application No. DA 710/2006/2 for Section 96 Modification on land at 14 Holland Road BELLEVUE HILL 2023, in the following manner:

A. Condition No. A3 is deleted and replaced with the following:-

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

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

Reference	Description	Author/Drawn	Date(s)
L1, 1A to 5A	Architectural Plans	Dukes Architects Pty Ltd	16/08/2007
23/07/1	Landscape Plan	Marcia Hosking	24/05/07
Ref: 20702Srpt	Geotechnical Report	Jeffery & Katauskas P/L	29 November 2006
Ref: 20702Srpt	Hydrogeological Report	Jeffery & Katauskas P/L	29 November 2006

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

Standard Condition: A6

B. Condition C1 is deleted and replaced with the following:

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

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

- a. The north facing windows to bedroom 3 and ensuite 2 shall be fitted with fixed translucent glazing to a height of 1.7 metres above the floor level or shall be constructed as highlight windows with a minimum sill height of 1.7 metres above floor level.
- b. The southern side of the proposed covered entry stairs shall contain obscured glazing.

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

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

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

C. The following additions conditions have been added:

C.12 Replacement planting

The *Cedrus atlantica* to be removed from the front of the property be replaced with a *Magnolia grandiflora* 'exmouth'. The root ball size of this tree should be a minimum 300 litres with the mature dimensions reaching at least 7metres high and 3 metres in spread. The tree must have been grown according to 'NATSPEC' specifications.

The replacement tree must be located at the front of the property, and centred at least 2 metres from the new garage or any other structure which would be affected by the roots of the tree at maturity, and in a position that will reasonably promote the growth of the tree to its full potential.

C.13 Geotechnical and Hydrogeological Design, Certification & Monitoring

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

- a. Provide appropriate support and retention to ensure there will be no ground settlement or movement, during excavation or after construction, sufficient to cause an adverse impact on adjoining property or public infrastructure.
- b. Provide appropriate support and retention to ensure there will be no adverse impact on surrounding property or infrastructure as a result of changes in local hydrogeology (behaviour of groundwater).

- c. Provide foundation tanking prior to excavation such that any temporary changes to the groundwater level, during construction, will be kept within the historical range of natural groundwater fluctuations. Where the historical range of natural groundwater fluctuations is unknown, the design must demonstrate that changes in the level of the natural water table, due to construction, will not exceed 0.3m at any time.
- d. Provide tanking of all below ground structures to prevent the entry of all ground water such that they are fully tanked and no on-going dewatering of the site is required.
- e. Provide a Geotechnical and Hydrogeological Monitoring Program that:
 - i. Will detect any settlement associated with temporary and permanent works and structures;
 - ii. Will detect deflection or movement of temporary and permanent retaining structures (foundation walls, shoring bracing or the like);
 - iii. Will detect vibration in accordance with AS 2187.2-1993 Appendix J including acceptable velocity of vibration (peak particle velocity);
 - iv. Will detect groundwater changes calibrated against natural groundwater variations;

details:

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

Standard Condition: C40

C.14 Bicycle, Car and Commercial Parking Details

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

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

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

Standard Condition: C45

D.10 Dilapidation Reports for existing buildings

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

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

- 12 Holland Street
- 16 Holland Street

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

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

D.11 Adjoining buildings founded on loose foundation materials

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

Note: A failure by contractors to adequately assess and seek professional engineering (geotechnical) advice to ensure that appropriate underpinning and support to adjoining land is maintained prior to commencement may result in damage to adjoining land and buildings. Such contractors are likely to be held responsible for any damages arising from the removal of any support to supported land as defined by section 177 of the *Conveyancing Act* 1919.
Standard Condition: D6

E.14 Tree Preservation & Approved Landscaping Works

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

The following trees may be removed:

Council Reference No:	Species	Location	Dimension (Metres)
1	<i>Cedrus atlantica</i>	Front yard of property	6 x 8

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

Replacement trees which must be planted:

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

Species/Type	Planting Location	Container Size or Size of Tree (@ time of planting)	Minimum Dimensions at Maturity
<i>Magnolia grandiflora</i>	Front yard of property	300L	Normal growth

E.15 Compliance with Geotechnical/Hydrogeological Monitoring Program

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

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

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

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

E.16 Support of adjoining land and buildings

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

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

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

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

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

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

Note: The encroachment of work or the like is a civil matter of trespass or encroachment and Council does not adjudicate or regulate such trespasses or encroachments except in relation to encroachments upon any road, public place, crown land under Council’s care control or management, or any community or operational land as defined by the *Local Government Act 1993*.
Standard Condition: E13

E.17 Compliance with Council’s Specification for Roadworks, Drainage and Miscellaneous Works Road works and work within the Road and Footway

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

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

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

Note: A copy of Council’s “*Specification for Roadworks, Drainage and Miscellaneous Works*” can be downloaded free of charge from Council’s website www.woollahra.nsw.gov.au
Standard Condition: E24

E.18 Compliance with the recommendations of the geotechnical and hydrogeological, construction methodology reports

The development works are to be undertaken in accordance with the recommendations of the report/s prepared by Jeffery & Katauskas P/L Ref: 20702Srpt dated 29 November 2006

H.2 Road Works (including footpaths)

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

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

Note: Security held by Council pursuant to section 80A(6) of the Act will not be release by Council until compliance has been achieved with this condition. An application for refund of security must be submitted with the *Final Occupation Certificate* to Council. This form can be downloaded from Council's website www.woollahra.nsw.gov.au or obtained from Council's customer service centre.
Standard Condition: H13

D. Condition F2 is deleted and replace with the following:

F.2 Commissioning and Certification of Systems and Works

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

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

- a. Certification from the supervising professional engineer that the requirement of the Geotechnical / Hydrogeological conditions and report recommendations were implemented and satisfied during development work.
- b. All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1 – "Off-Street car parking."
- c. All stormwater drainage systems.
- d. All mechanical ventilation systems.
- e. All hydraulic systems.
- f. All structural work.
- g. All acoustic attenuation work.
- h. All waterproofing.
- i. Such further matters as the *Principal Certifying Authority* may require.

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

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

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

Standard Condition: F7

Ms L Northridge
ASSESSMENT OFFICER

Mr G Fotis
TEAM LEADER

ANNEXURES

1. Plans and elevations.