



Application Assessment Panel

Agenda: *Application Assessment Panel*

Date: *Tuesday 4 November 2008*

Time: *11.00am*

Part: *One of One Part*

Item: *D1 to D2*

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

28 October 2008

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

CC: The Mayor
All Councillors

Application Assessment Panel Meeting – 4 November 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 4 November 2008 at 11.00am.**

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 28 October 2008	1
D2	DA473/2008 – 26 Chamberlain Avenue, Rose Bay – Demolition of the existing dwelling (retention of some existing walls), and the construction of a new single storey dwelling house with a double garage and associated landscaping works – 30/7/2008 *See Recommendation Page 20	2-79

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 28 October 2008**
Author: Les Windle, Manager - Governance
File No: See Application Assessment Panel Minutes
Reason for Report: The Minutes of the Meeting of Tuesday 28 October 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 28 October 2008 be taken as read and confirmed.

Les Windle
Manager - Governance

DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D2
FILE No.	DA 473/2008/1
PROPERTY DETAILS	26 Chamberlain Avenue, Rose Bay
	Lot & DP No.: LOT: 1 DP: 957378
	Side of Street: West
	Site Area (m²): 371.55
	Zoning: Residential 2(a)
PROPOSAL:	Demolition of the existing dwelling (retention of some existing walls), and the construction of a new single storey dwelling house with a double garage and associated landscaping works
TYPE OF CONSENT:	Local
APPLICANT:	Mr M N Franks & Mrs M Y Franks
OWNER:	Mrs M Y Franks
DATE LODGED:	30/07/2008
AUTHOR:	Ms E Smith

1. RECOMMENDATION PRECIS

The application is recommended for conditional approval.

2. PROPOSAL PRECIS

The proposal is for the demolition of the existing dwelling (retention of some existing walls), and the construction of a new single storey dwelling house with a double garage and associated landscaping works.

3. LOCALITY PLAN



4. DESCRIPTION OF PROPOSAL

The application proposes the demolition of the existing dwelling (retention of some existing walls), and the construction of a new single storey dwelling house with a double garage and associated landscaping works. Specifically the works proposed involve the following:

External Works

- the widening of the existing driveway cross over
- a new double garage
- modifications to the existing masonry fence, comprising of a reduction to the masonry wall to a maximum height of 1.2m and the insertion of a 0.6m high section of timber slats above
- a new pedestrian entry that is setback 1m from the front boundary with a metal framed door with timber slats
- new 1.8m high timber paling fence to the side and rear boundaries
- landscaping works

Ground Floor Level

- the provision of two bedrooms, a bathroom, an en suite, a dressing room, a laundry, a study and an open plan living, dining and kitchen area with new timber steps to the rear to provide access from the dwelling to the garden

5. SUMMARY

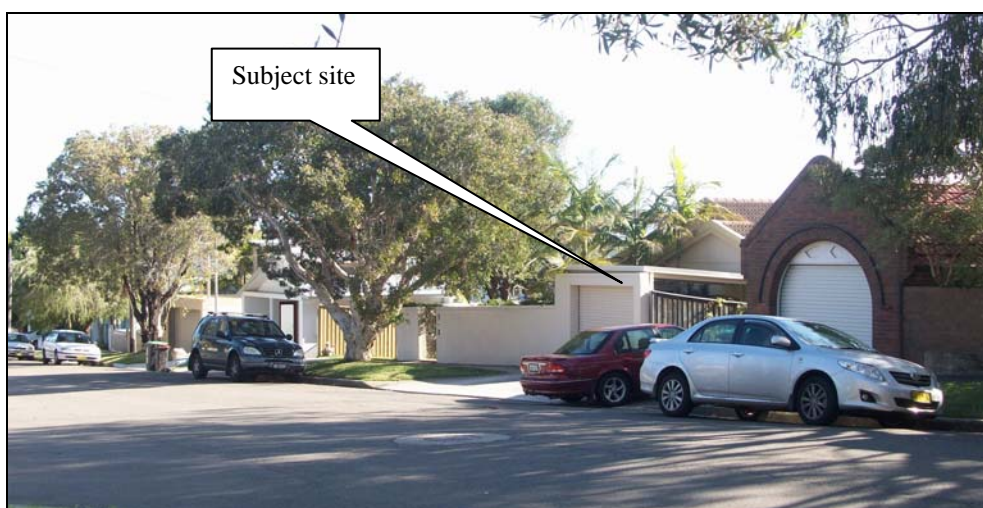
Reasons for report	Issues	Submissions
The DA does not satisfy the criteria for determination under staff delegation as objectors concerns have not been met.	<ul style="list-style-type: none"> ▪ side setbacks ▪ garage side setback ▪ building footprint ▪ excavation setback ▪ front fence height ▪ location of garage ▪ garage width ▪ objector's concerns 	One letter of objection was received

6. ESTIMATED COST OF WORKS

Council adopted (DCC 6 June 2005) administrative changes for determining DA fees based on the estimated cost of work. The applicant's estimated cost of the proposed development is \$562,000. This figure has been checked using Council's adopted practice and is considered to be accurate.

7. DESCRIPTION OF SITE OF LOCALITY





THE SITE AND LOCALITY

Physical features	The subject site is located on the western side of Chamberlain Avenue and is rectangular in shape. The site has a width of 12.19m and a depth of 30.48m with an area of 371.55m ² .
Topography	The site falls approximately 1.4m from the front (east) to the rear (west) of the site and has a slight cross fall from the north to the south of approximately 0.4m.
Existing buildings and structures	The site is occupied by a single-storey detached dwelling. A carport is located to the front of the dwelling with a width of 3.2m and a depth of 5.7m. The building was constructed circa 1918.
Environment	The locality is characterised by one, two and three storey residential development.

8. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	A single residential dwelling.
Previous relevant applications	No relevant history.
Pre-DA	No.
Requests for additional information	On 26.08.08, the following information was requested: <ul style="list-style-type: none"> ▪ a tree report.
Amended plans/ Replacement Application	On 02.09.08, the following information was received: <ul style="list-style-type: none"> • a tree report prepared by The Ents Tree Consultancy, dated 27th August 2008.
Land & Environment Court appeal	No.

9. REFERRALS

9.1 The following table contains particulars of internal referrals.

INTERNAL REFERRALS		
Referral Officer	Comment	Annexure
Development Engineer	The proposal is satisfactory, subject to the inclusion of the following conditions: A3, A4, C1, C2, C4, C8, C9, C11, C12, D6, E6, E9, E10, E11, E16, E17, F3 and H3	2
Landscaping Officer	The proposal is satisfactory in terms of tree preservation and landscaping, subject to the inclusion of the following conditions: A3, B2, C2, C10, D2, E7, E8, F2, H2 and I1	3
Heritage Officer	The proposal is satisfactory in terms of heritage impact	4

9.2 External referrals.

No external referrals.

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) 2007 ("BASIX") applies to the proposed development. The development application was accompanied by BASIX Certificate No. A34407 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. An assessment of the previous uses of the site indicates that the land is unlikely to be contaminated and as such further consideration under clause 7 (1) (b) and (c) of SEPP 55 is not required.

10.2 REPs

Sydney Regional Environmental Plan

The land is within the Sydney Harbour Catchment, but is outside the Foreshores and Waterways Area. There are no specific matters for consideration in relation to this development application.

10.3 Section 94 contribution

The Council's Section 94 Contributions Plan is not applicable to the proposal, however a monetary contribution is required under Council's Section 94A Development Contribution Plan 2005. The Section 94A contribution is calculated as follows:

$$\begin{aligned} \text{Levy} &= 1\% \text{ (levy rate)} \times \$562,000 \text{ (proposed cost of development)} \\ &= \$5,620.00 \end{aligned}$$

The total contribution = \$5,620.00

This requirement is outlined in **condition C2**.

10.4 Other relevant legislation

No other legislation is applicable to this application.

11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

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

The proposal is permissible and is consistent with the aims and objectives of the LEP and the relevant objectives of the 2(a) zone, subject to condition.

11.2 Statutory compliance table

Site Area: 371.55m ²	Existing	Proposed	Control	Complies
Site Area and Lot Frontage	371.55m ²	371.55m ²	675m ²	NO*
Overall Height	6.3m	6.6m	9.5m	YES

* existing non compliance

11.3 Site area requirements

Clause 10 (1) prevents the erection of a dwelling-house on an allotment of land that is less than the minimum allotment size as indicated on the density map associated with Woollahra LEP 1995; 675m² in this instance. The subject site has an area of 371.55m² and therefore does not comply with this requirement.

However, Clause 10 (2) states that subclause (1) does not operate to prohibit the erection of a dwelling-house on a sub-standard size allotment of land which was in existence as a separate allotment on the day this plan was gazetted (10 March 1995) if a dwelling-house could have been lawfully erected on the allotment immediately before that day.

The previous planning instruments, Woollahra LEP 27 (gazetted on 15 January 1988) and the Woollahra Planning Scheme Ordinance (gazetted on 15 December 1972) had identical exemption provisions. Prior to the Woollahra Planning Scheme Ordinance, it was lawful to erect a dwelling-house on the subject allotment of land. The subject dwelling-house was erected circa 1918, prior to the gazettal of the Woollahra Planning Scheme Ordinance.

Accordingly, Clause 10 (1) does not operate to prohibit the erection of a dwelling-house on the subject sized allotment.

11.4 Height

The proposed dwelling is a maximum height of 6.6m. This complies with the maximum height control of 9.5m which applies to the site. Furthermore, the proposal is considered to uphold the objectives underlying the height standard contained in Clause 12AA of the WLEP 1995.

11.5 Other special clauses/development standards

Clause 18 Excavation: The provisions of Clause 18 require Council, when considering a development application involving excavation, to have regard to how that excavation may temporarily or permanently affect:

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

The extent of excavation associated with the proposal includes the following:

- minimal excavation works for the proposed footings for the new dwelling-house, double garage boundary fences and landscaping works.

C5.2.16 of WRDCP 2003 stipulates that excavation is required to be setback a minimum of 1.5m from all boundaries. The proposal involves the following non-compliance:

- minimal excavation works for the proposed footings for the new dwelling-house, double garage boundary fences and landscaping works are located within the 1.5m set back.

Having regard to the above-mentioned heads of consideration, the following comments are made in relation to the impact of the proposed excavation upon the local environment:

- (a) the amenity of the neighbourhood by way of noise, vibration, dust or other similar circumstances related to the excavation process, and*

The maintenance of the amenity of the neighbourhood in terms of minimising noise, vibration and dust is addressed by **Conditions: C8, E9 and E10** requiring: an erosion and sediment management plan, the maintenance of environmental controls, and the maintenance of erosion and sediment controls. Subject to the above-mentioned conditions, the amenity of the adjoining residential properties will be maintained.

- (b) public safety, and*
- (c) vehicle and pedestrian movements, and*

Issues relating to public safety and pedestrian movements during the excavation phase are inter-related and are addressed by **Conditions: D3 and E6** requiring site fencing and the maintenance of footpath access. Subject to the above mentioned conditions, the safety of the public will be maintained.

(d) the heritage significance of any heritage item that may be affected by the proposed excavation and its setting; and

Any heritage items in the vicinity of the site are located beyond the zone of influences associated with the proposed excavation and will not be adversely affected in this instance.

(e) natural landforms and vegetation, and

The proposal would not significantly alter the topography of the site. Furthermore, subject to **Conditions: A3, B2, C2, C10, D2, E7, E8, F2, H2 and I1**, the proposal will not unreasonably impact upon the landscape character of the site or wider locality.

(f) natural water runoff patterns.

Council's Development Assessment Engineer has confirmed that the proposal is satisfactory with regards to stormwater drainage and flooding subject to the following **conditions: C12 and F3** requiring: a stormwater management plan and the commissioning and certification of systems and works.

These conditions have been included as part of the recommendation and as such the proposal is unlikely to have any unreasonable impacts in terms of stormwater drainage.

Subject to the above-mentioned conditions, the excavation associated with the proposal is considered to be satisfactory with regard to the provision of Clause 18 of WLEP 1995.

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

Clause 25 Water, wastewater and stormwater: Subject to conditions, 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, or in the immediate vicinity of any heritage items or located within a heritage conservation area. The proposal is therefore acceptable in terms of Clause 26-33 of the WLEP.

12. DRAFT AMENDMENTS TO STATUTORY CONTROLS

Woollahra Local Environmental Plan 1995 (Amendment No. 60)

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

13. DEVELOPMENT CONTROL PLANS

13.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

Site Area (371.55m ²)	Existing	Proposed	Control	Complies
Maximum Number of Storeys – Dwelling	1	1	2	YES
Building Boundary Setbacks				
Front (east)	0m-5.1m	0m-5.1m	0m-4.3m	YES
Rear (west)	7.45m	6.5m	7.62m (25% of site length)	NO*
Side (north)				
Ground Floor	0m-1m	0-1m	1.5m-2.5m	NO*
Side (south)				
Ground Floor	1.1m-8.8m	1.3m-5.36m	1.5m-2.5m	NO*
Ancillary Development (<i>Garage</i>)				
Maximum Height	2.75m	3.05m	3.6m	YES
Side Setback (north)	0m	0m	1.5m	NO*
Side Setback (south)	8.8m	5.36m	1.5m	YES
Setback from Significant Mature Trees	>3.0m	>3.0m	3.0m	YES
Building Footprint	50% (186.6m ²)	56% (210.8m ²)	49% (182m ²)	NO*
Floor Space Ratio	0.45:1 (168.3m ²)	0.46:1 (172.6m ²)	0.60:1 (222.93m ²)	YES
Floor to Ceiling Height – Habitable Rooms	2.7m	2.7m	2.7m	YES
Maximum Unarticulated Length to Street	<6.0m	<6.0m	6.0m	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)	>3.0 hours	>3.0 hours	3.0 hours	YES
Excavation Piling and Subsurface Wall Setback	N/A	<1.5m	1.5m	NO
Deep Soil Landscaping – Dwelling	>50% (94.8m ²)	>50% (94.8m ²)	50% (94.8m ²)	YES
Deep Soil Landscaping – Front Setback	58% (36.04m ²)	43% (26.8m ²)	40% (24.86m ²)	YES
Private Open Space at Ground Level – Total	>35m ² Min dimension 3m	>35m ² Min dimension 3m	35m ² Min dimension 3m	YES
Private Open Space at Ground Level – Principal Area	>16m ² Min dimension 4m	16m ² Min dimension 4m	16m ² Min dimension 4m	YES
Private Open Space at Ground Level – Maximum Gradient	<1:10	<1:10	1:10	YES
Front Fence Height	1.8m	1.6m-1.9m	1.2m	NO*
Side and Rear Fence Height	1.8m	1.8m	1.8m	YES
Minimum Number of North Facing Habitable Rooms	>1	>1	1	YES
Location of Garages and Car Parking Structures	Within Front Setback	Within Front Setback	Behind Front Setback	NO*

Site Area (371.55m ²)	Existing	Proposed	Control	Complies
Garage Frontage Width	26% (3.2m ²)	54% (6.7m ²)	40% (4.876m)	NO
Car Parking Spaces – Dwellings	1	2	2	YES
Minimum Access Driveway Width	2.9m	5.0m**	3.5m – 6.0m	YES

* Existing non-compliance

** Subject to **condition C, parts b) and c)**

Site analysis performance criteria (*Part 3*)

The submitted documentation is consistent with the site analysis objectives and the relevant performance criteria.

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

The subject site is located within the Rose Bay precinct.

The objectives of the Rose Bay precinct relate to the mitigation of adverse impacts upon the public domain, ensuring that development responds to the existing built forms in the streetscape and preserving significant views and vistas.

The replacement dwelling would be consistent with the existing built form in the streetscape. This is addressed in greater detail within the ‘building size and location performance criteria’ section of the report.

The proposal includes the construction of a double garage to the front of the dwelling. The proposed garage is to replace the existing single carport in approximately the same location. The proposed garage is assessed against the relevant performance criteria and objectives of section 4.9 below:

- the size and siting of the garage within the front setback is contrary to control C4.9.5 part B) which requires car parking structures to be located behind the building line and to be a width as presented to the street, of no greater than 40% of the site frontage width.
- the siting of the proposed garage is considered to be acceptable as there is an existing carport within the front setback. Furthermore, there are many examples of parking structures located within the front setback on the western side of Chamberlain Avenue. Notably at No.’s 18, 20, 22, 24 and 28 (see photographs below).
- the existing carport structure has a width of 3.2m. The proposed garage would be a width of 6.7m which equates to 54% of the site frontage width, which is contrary to C4.9.5 part B). However, the proposal incorporates a flat roof to the garage which minimises the bulk and mass of the structure and ensures that it would not appear unduly prominent within the streetscape.

- the proposal includes modifications to the existing front boundary fence. The impact of both the proposed garage and the modifications to the front boundary fence should be considered as a whole in terms of the impact both elements will have upon the streetscape. The front boundary of the site is marked by a 1.8m high masonry wall. The proposal includes; a reduction to the height of the wall to 1.2m, the insertion of 600mm high timber slats above the lowered wall and the insertion of a recessed pedestrian gate. **Condition C1, part a)**, has been included as part of the recommendation, which requires the timber slats above the masonry wall to be angled and fixed so the timber slats provide 50% transparency. Subject to **condition C1, part a)**, the reduction to the bulk and mass of the existing front boundary wall would adequately mitigate the impact of the additional bulk and mass of the proposed garage.
- in accordance with control C4.9.7.4, at least 40% of the area of the front set back is afforded to be deep soil landscaping.



No. 18 and No. 20 Chamberlain Avenue



No. 22 Chamberlain Avenue



No. 24 Chamberlain Avenue



No. 28 Chamberlain Avenue

Control C4.9.7.2 requires solid front fences to be a maximum height of 1.2m. Subject to **Condition C1, part a)**, the proposal will have a satisfactory streetscape outcome.

Subject to conditions, the proposal would generally uphold the aims and objectives of section 4.9.

Streetscape performance criteria (Section 5.1)

Subject to **condition C1 part a)**, the proposal generally accords with the aims and objectives of section 5.1.

Building size and location performance criteria (Section 5.2)

Front Setback

Compliance achieved.

Rear Setback

In accordance with control C5.2.3 the subject building should have a minimum rear setback of 25% of the average site length, which equates to 7.62m. The proposal will be setback 6.5m from the rear boundary, thus resulting in a maximum non-compliance of 1.12m which would extend for a width of 9.8m. Although the proposed development represents a numerical non-compliance, the proposal is acceptable for the reasons set out below:

- the existing dwelling is setback 7.45m from the rear boundary and the proposed dwelling would reduce the rear setback to 6.5m. The reduction to the rear setback relates to the sections of the north and south side elevations which project 0.95m to the rear of the proposed rear bi-fold doors. These sections of wall would not significantly add to the bulk of the building and would partially screen views to the north and south of the site from the living area of the proposed dwelling.
- the proposal would not result in any unacceptable impacts in terms of loss of visual or aural privacy to the neighbouring properties. This is addressed in greater detail in the 'acoustic and visual privacy performance criteria' section of the report
- the proposed development would not result in an unacceptable loss of significant vegetation on or adjacent to the site
- the proposal would not result in an unreasonable sense of enclosure to the neighbouring properties
- the proposed development would retain an adequate level of acoustic and visual privacy. This is addressed in greater detail in the 'acoustic and visual privacy performance criteria' section of the report
- the proposal complies with control C5.2.13 and preserves a reasonable level of sunlight access to neighbouring residents

In relation to the proposed rear setback the development accords with the wider objectives of section 5.2 as follows:

- the proposed development does not result in an unacceptable loss of significant vegetation on or adjacent to the site and provides sufficient deep soil landscaping in accordance with objective O5.2.1
- the proposed development would not result in an unacceptable loss of views. This is addressed in greater detail within the 'views performance criteria' section of the report
- the proposed development would not result in an unacceptable loss of privacy or sunlight for neighbouring residents in accordance with objective O5.2.2.
- the form and scale of the proposed development maintains the continuity of building forms in accordance with objective O5.2.3.
- the proposed development does not involve an unreasonable level of site excavation in accordance with objective O5.2.5

Side Setback

The proposal results in the following non compliances with the side setback controls:-

Side North:

- at ground floor level the proposed garage will be sited in the same location as the existing carport; 0m from the northern boundary. In accordance with control C5.2.5, a 1.5m setback is required thereby resulting in the garage breaching the side setback control by a maximum of 1.5m. The non compliance would extend for a distance of 6.07m

- the 0.95m extension to the rear of the northern side elevation will align with the existing ground floor resulting in a side setback of 1m. In accordance with control C5.2.5, a 1.5m -2.5m setback is required thereby resulting in the ground floor breaching the side setback control by a maximum of 1.5m. The non compliance would extend for a distance of 0.95m

Side South:

- at ground floor the proposed southern elevation will align with the section of the existing ground floor south elevation which is to be retained, resulting in a side setback of 1.3m. In accordance with control C5.2.5, a 1.5m-2.5m setback is required thereby resulting in the ground floor breaching the side setback control by a maximum of 1.2m.

The non compliances are considered acceptable for the following reasons:

- the existing dwelling represents a non compliance with the side setback controls. The proposed dwelling will extend no closer to the side boundaries than the existing dwelling;
- the proposed southern elevation to the front of the dwelling will result in a slight increase to the southern side setback
- the proposal would not result in any unreasonable impacts in terms of loss of visual or acoustic privacy to the neighbouring properties; and
- the proposal would not result in the loss of the existing side access; and
- the proposal includes sufficient side setbacks to ensure that the proposed dwelling would not encroach upon, or result in an unreasonable sense of enclosure to the neighbouring properties; and
- subject to conditions, the proposal would not unreasonably impact upon the existing trees and landscaping on or adjacent to the site; and
- the proposal provides sufficient landscaping within the side setbacks; and
- the non-compliance would not result in any adverse impacts to the adjoining property in terms of overshadowing, views or excessive bulk; and
- the non-compliance would not unreasonably impact upon the character of the streetscape

In this instance it would be unreasonable to enforce the side setback control as the non compliance would have a minimal impact upon the neighbouring properties and would generally comply with the objectives of section 5.2.

Building Footprint

The proposed development would exceed the maximum building footprint by 28.8m².

Although this represents a numerical non compliance with the maximum building footprint control, the proposal would uphold the objectives of section 5.2 for the reasons set out below:

- subject to **conditions: A3, B2, C2, C10, D2, E7, E8, F2, H2 and I1** the proposed development would not result in an unreasonable loss of significant vegetation on or adjacent to the site. Furthermore the proposal provides a satisfactory level of deep soil landscaping. As such the proposal generally accords with objective O5.2.1.
- the proposed development would not result in an unacceptable loss of privacy for neighbouring residents in accordance with objective O5.2.2. This is addressed in greater detail within the 'acoustic and visual privacy performance criteria' section of the report.
- the proposed development would not result in an unacceptable loss of views or sunlight for neighbouring residents in accordance with objective O5.2.2.
- subject to condition, the form and scale of the proposed dwelling maintains the continuity of building forms in accordance with objective O5.2.3.

- the proposed development does not involve significant site excavation in accordance with objective O5.2.5

In this instance it would be unreasonable to building footprint control, as subject to the conditions included as part of the recommendation, the non compliance would have a minimal impact upon the neighbouring properties and would generally comply with the objectives of section 5.2.

Floor Space Ratio

Compliance achieved.

Ancillary Development – Garage

With a maximum height of 3.05m, the proposed garage complies with the ancillary development height control, but is located within the front setback, with a 0m side setback from the northern side boundary, which is contrary to control C5.2.4. The proposed garage is satisfactory for the following reasons:

- the proposed garage would not appear unduly prominent within the streetscape and the form and scale of the proposed development maintains the continuity of building forms in accordance with objective O5.2.3
- the structure will provide secure parking for the occupants
- the proposal would result in a satisfactory streetscape outcome
- the proposed garage would not result in an unreasonable loss of significant vegetation on or adjacent to the site. Furthermore the proposal provides a satisfactory level of deep soil landscaping. As such the proposal generally accords with objective O5.2.1
- the proposed development would not result in an unacceptable loss of privacy for neighbouring residents in accordance with objective O5.2.2. This is addressed in greater detail within the ‘acoustic and visual privacy performance criteria’ section of the report
- the proposed development would not result in an unacceptable loss of views or sunlight for neighbouring residents in accordance with objective O5.2.2
- the proposed development does not involve significant site excavations in accordance with objective O5.2.5

Overshadowing

The proposal would retain sunlight to at least 35m² of the main ground level private open space of the neighbouring properties for a minimum of two hours between 9am and 3pm on June 21 in accordance with control C5.2.13.

The proposal would not reduce the sunlight to the north facing habitable room windows to less than 3 hours between 9am and 3pm on June 21 in accordance with control C5.2.14.

The proposal generally accords with objective O5.2.2 of section 5.2.

Site excavation

In accordance with control C5.2.15, the proposal does not result in a significant alteration to the topography of the site.

Control C5.2.16 specifies that the outer edge of excavation shall not be less than 1.5m from a front, side or rear boundary. The proposal results in the following non-compliance:

- minimal excavation works for the proposed footings for the new dwelling-house, double garage boundary fences and landscaping works.

Although the proposal fails to accord with control C5.2.1.6 the development, subject to a number of conditions which have been included as part of the recommendation, the proposal would uphold the relevant objective of section 5.2 for the reasons set out below;

- the proposal would not result in an unreasonable level of excavation
- the proposal would relate to the topography of the site
- the proposal would not result in any unreasonable impacts to the amenity of the adjoining properties both during and after construction
- Council's Development Engineer Team Leader – Nick Tomkins has assessed the proposal and considers the proposed excavation to be satisfactory, subject to conditions, which have been included as part of the recommendation

The proposal generally accords with the aims and objectives of section 5.2.

Open space and landscaping performance criteria (Section 5.3)

Landscaping

The proposal accords with control C5.3.2 as at least 50% of the unbuilt upon area comprises deep soil landscaping. Furthermore subject to **conditions: A3, B2, C2, C10, D2, E7, E8, F2, H2 and I1**, the proposal would not result in an unreasonable loss of significant vegetation on or adjacent to the site.

Open space

The proposed private open space provision generally accords with control C5.3.4.

Fences and walls performance criteria (Section 5.4)

The proposed 1.8m high side and rear boundary fences comply with control C.5.4.10.

The proposed front wall with timber slats breaches control C5.4.5 which requires front fences to be a maximum height of 1.2m. However, subject to **condition C1, part a)**, the proposed wall would have a satisfactory streetscape outcome.

The proposal generally accords with the aims and objectives of section 5.3.

Views performance criteria (Section 5.5)

The proposal would not unreasonably impact upon either public or private views in accordance with the aims and objectives of section 5.5.

Energy efficiency performance criteria (Section 5.6)

BASIX certificate No. A30563 was submitted with the application committing to environmental sustainability measures.

The proposal generally accords with the relevant controls and objectives of section 5.6.

Stormwater management performance criteria (Section 5.7)

Subject to condition, the site stormwater would be disposed in a controlled and sustainable manner.

The proposal generally accords with the aims and objectives of section 5.7.

Acoustic and visual privacy performance criteria (Section 5.8)

The proposed ground floor windows to the northern, eastern and western elevations are separated from the windows in the neighbouring properties by a distance greater than 9m. In accordance with control C5.8.5 this is a sufficient separation distance to ensure that an adequate level of visual privacy is maintained for both the occupants and neighbours. Although there is only 8.5m between the windows in the southern elevation of the proposed dwelling and the windows in the northern side elevation of No. 24 Chamberlain Avenue it is considered that the proposed windows would not result in any adverse impacts in terms of loss of visual privacy for the reasons set out below:

- as the windows are ground floor windows 8.5m is considered to be a sufficient separation distance
- views between the windows will be partially screened by the fence which marks the northern boundary of No. 24 Chamberlain Avenue and the proposed landscaping which is located within the southern side setback at the subject site.

An objection has been received from the owner of No. 8 Churchill Road, which is located to the north west of the site, with regards to loss of visual privacy. The concerns raised can be summarised as overlooking to the rear garden area, overlooking to the rear pool area and overlooking to the kitchen and family room. The proposal would not result in any unacceptable impacts in terms of loss of visual privacy for the reasons set out below:

- the windows to the western rear elevation of the proposed dwelling would be sited no closer to the rear boundary than the existing western facing rear windows and verandah
- the windows to the northern side elevation of the proposed dwelling would be sited no closer to the northern side boundary than the existing northern facing side windows
- the proposed rear access steps to the garden would not result in an unreasonable level of overlooking to the neighbouring properties
- the proposed landscaping to the rear and northern side setbacks is considered to be satisfactory. Control C5.8.5 requires screening to be provided where habitable room windows with a direct sightline to habitable room windows in an adjacent dwelling are within 9.0m of each other. The separation distance between the rear windows at the subject site and the rear windows at No. 8 Churchill Road significantly exceeds 9.0m. The proposal therefore accords with the requirements of control C5.8.5.

The proposal would maintain an adequate level of visual and acoustic privacy to the occupiers and neighbours in accordance with the aims and objectives of section 5.8.

Car parking and driveways performance criteria (Section 5.9)

The application proposes two car parking spaces within a double garage to the front of the site. The proposed car parking would not detract from the local streetscape in accordance with objective O5.9.3.

To ensure the proposal provides convenient and safe car parking and vehicular access in accordance with objective O5.9.2 **condition C1a) and b)** has been included as part of the recommendation. This requires the following amendments:

- The vehicle crossing is to be a total width of 5.0m
- The vehicle crossing is to comply with Council's standard drawing RF2

The proposal generally accords with the aims and objectives of section 5.9.

Site facilities performance criteria (*Section 5.10*)

The proposal generally accords with the aims and objectives of section 5.10

Access and mobility performance criteria (*Section 5.13*)

The proposal generally accords with the aims and objectives of section 5.13.

13.2 Woollahra Access

This proposal is for a Class 1 building. The Access DCP encourages, rather than requires, visitor access for older people or people with a disability. Access has not been provided in this proposal, however, this is considered acceptable under the provisions of the DCP.

13.3 Other DCPs, codes and policies

No other controls apply.

14. APPLICABLE REGULATIONS

The proposal would comply by condition.

15. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts have been addressed elsewhere in the report.

16. THE SUITABILITY OF THE SITE

The site is within a Class 5 Acid Sulphate Soil area identified in the Planning NSW Acid Sulphate Soil Risk Map. The proposed works are not likely to lower the watertable below 1 metre AHD on adjacent Class 1, 2, 3 or 4 land. The site is therefore considered suitable for the proposed development.

17. SUBMISSIONS

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

Jacqueline Robinson,
8 Churchill Road,
Rose Bay

The objector raised the following issues:

- *Acoustic and visual privacy*
 - This is addressed within the 'acoustic and visual privacy performance criteria' section of the report.

18. CONCLUSION - THE PUBLIC INTEREST

The proposal is acceptable against the relevant considerations under s79C.

19. DISCLOSURE STATEMENTS

Under S.147 of the Environmental Planning and Assessment Act, 1979 there have been no disclosure statements regarding political donations or gifts made to any councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.

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

THAT the Council, as the consent authority, grant development consent to Development Application No. 473/2008/1 for the demolition of the existing dwelling (retention of some existing walls), and the construction of a new single storey dwelling house with a double garage and associated landscaping works on land at 26 Chamberlain Avenue, Rose Bay, subject to the following conditions:

A. General Conditions

A.1 Conditions

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

Standard Condition: A1

A.2 Definitions

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

Applicant means the applicant for this Consent.

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

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

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

Council means Woollahra Municipal Council

Court means the Land and Environment Court

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

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

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

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

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

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

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

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

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

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

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

Site means the land being developed subject to this consent.

WLEP 1995 means *Woollahra Local Environmental Plan 1995*

Work for the purposes of this consent means:

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

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

Standard Condition: A2

A.3 Approved Plans and supporting documents

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

Reference	Description	Author/Drawn	Date(s)
141/01 141/02 141/03 141/04	Architectural Plans	Soctton and Yee Architects	Feb 2008 June 2008 June 2008 June 2008
A30563	BASIX Certificate	Department of Planning	13 June 2008
01	Landscape Plan	Marcia Hosking	20/05/08
	Arborist Report	Hayden Coulter	27/07/08
	Arborist Report	Hayden Coulter	27/08/08
Dwg No. H1	Stormwater disposal concept plan	PM & Associates P/L	21/05/2008

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

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

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

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

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

A.5 Prescribed Conditions

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

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

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

B.1 Construction Certificate required prior to any demolition

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

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

Standard Condition: B1

B.2 Establishment of Tree Protection Zones

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

(a) Tree Protection Zone areas

Council Reference No:	Species	Location	Radius from Trunk (Metres)*
1	<i>Melaleuca quinquenervia</i> Broad-leafed Paperbark	Council verge	In accordance with the submitted Hayden Coulter tree report dated 27/08/08
2	<i>Olea europea var. africana</i> African Olive	Rear yard north western corner	3.5
4	<i>Brachychiton acerifolius</i> Illawarra Flame tree	Rear yard adjacent rear western boundary	2
5	<i>Archontophoenix cunninghamiana</i> Bangalow Palm	Rear yard northern side	2
7	<i>Clump of Archontophoenix cunninghamiana</i> Bangalow Palm	Front yard	2
8	<i>Archontophoenix cunninghamiana</i> Bangalow Palm	Rear yard adjacent rear western boundary	2

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

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

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

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

Standard Condition: B5

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

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

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

- a. The timber slats above the masonry wall to the front eastern boundary shall be angled and fixed so the timber slats provide 50% transparency.
- b. The vehicle crossing is to be a total width of 5.0m.
- c. The vehicle crossing is to comply with Council's standard drawing RF2.

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.	\$13,250.00	No	T115
Tree Damage Security Deposit – Making good any damage caused to any public tree as a consequence of the doing of anything to which the consent relates.	\$9400.00	No	T114
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 (S94A)	\$5620.00 + Index Amount	Yes, quarterly	T96
INSPECTION FEES under section 608 of the Local Government Act 1993			
Public Tree Management Inspection Fee	\$160.00	No	T95
Public Road and Footpath Infrastructure Inspection Fee	\$375.00	No	T45
Security Administration Fee	\$175.00	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$28,980.00 Plus any relevant indexed amounts and long service levy		

Building & Construction Industry Long Service Payment

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

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

How must the payments be made?

Payments must be made by:

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

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

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

How will the section 94A levy be indexed?

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

Do you need HELP indexing the levy?

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

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

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

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

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

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

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

Standard Condition: C5

C.3 BASIX commitments

The *applicant* must submit to the *Certifying Authority* *BASIX Certificate* No. A30563 with any application for a *Construction Certificate*.

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

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

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

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

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

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

Specific works include:

- Full width vehicular crossings having a width of 5.0m in accordance with Council's standard drawing RF2.
- A design longitudinal surface profile for the proposed driveway must be submitted for assessment. The driveway profile is to start from the road centreline and be along the worst case edge of the proposed driveway. Gradients and transitions must be in accordance with Clause 2.5.3, 2.6 of AS 2890.1 – 2004, Part 1 – Off-street car parking. The driveway profile submitted to Council must be to (1:25) scale (for template checking purposes) and contain all relevant details: reduced levels, proposed grades and distances

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

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

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

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

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

Standard Condition: C13

C.5 Waste Storage - Single Dwelling House

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

- a. a storage area for 1 x 120 litre general wastes bin, 1 x 240 litre green waste bin, 2 x recycling crates behind the building line or within non-habitable areas of the dwelling
- b. a path for wheeling bins between the waste and recycling storage area and the collection point free of steps and kerbs and having a maximum grade of 1:8.
Standard Condition: C15

C.6 Utility Services Generally

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

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

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

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

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

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

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

Note: This condition has been imposed to ensure that where private sewer pipes are old, may leak or may be subject to root invasion (whether from existing or proposed private or public landscaping) that existing cast iron, concrete, earthenware or terracotta pipes be replaced with new UPVC or copper continuously welded pipes between all sanitary fixtures and Sydney Waters sewer main, such that clause 25(1) of WLEP 1995 be satisfied. Further, leaking sewer pipes are a potential source of water pollution, unsafe and unhealthy conditions which must be remedied in the public interest.
Standard Condition: C20

C.7 Provision for Energy Supplies

The applicant must provide to the *Certifying Authority* a letter from Energy Australia setting out Energy Australia's requirements relative to the provision of electricity/gas supply to the development.

Any required substation must be located within the boundaries of the site. Where an electricity substation is required within the site but no provision has been made to place it within the building and such substation has not been detailed upon the approved development consent plans a section 96 application is required to be submitted to Council. Council will assess the proposed location of the required substation.

The *Construction Certificate* plans and specifications, required to be submitted pursuant to clause 139 of the *Regulation*, must detail provisions to meet the requirements of Energy Australia.

Where the substation is required the *Construction Certificate* plans and specifications must provide:

- a. a set back not less than 3m from the road boundary and dense landscaping of *local native plants* to screen the substation from view within the streetscape,
- b. a set back not less than 3m from any other site boundary (fire source feature) and not within the areas required to be kept clear of obstructions to vehicle visibility pursuant to clause 3.2.4 of AS2890.1-1993(See: Figures 3.2 and 3.3),
- c. a set back to and not within the drip line of any existing tree required to be retained,
- d. a setback not less than the 10m from any NSW Fire Brigade booster connection as prescribed by clause 5.6.3(d)(iii) of AS 2419.1-1994 or be separated from any booster connections by a construction with a fire resistance rating of not less than FRL 90/90/90 for a distance of not less than 2 m each side of and 3 m above the upper hose connections in the booster assembly pursuant to clause 5.6.3(c)(ii) of AS 2419.1-1994, and
- e. the owner shall dedicate to the appropriate energy authority, free of cost, an area of land adjoining the street alignment to enable an electricity substation to be established, if required. The size and location of the electricity substation is to be in accordance with the requirements of the appropriate energy authority and Council. The opening of any access doors are not to intrude onto the public road reserve.

Warning: If the substation is not located within the building its location, screening vegetation, all screen walls or fire separating walls must have been approved by the grant of development consent or amended development consent prior to the issue of any *Construction Certificate* for those works. Documentary evidence of compliance, including correspondence from the energy authority is to be provided to the *Certifying Authority* prior to issue of the *Construction Certificate*. The *Certifying Authority* must be satisfied that the requirements of energy authority have been met prior to issue of the *Construction Certificate*.

Note: This condition has been imposed because the application fails to provide sufficient detail (either by plans or by the Statement of Environmental Effects) demonstrating that provision has been made to EnergyAustralia's satisfaction for the provision of electricity supply to the building. Nevertheless, Council has no reason to believe that provision cannot be reasonably made for electricity to service the development.

Note: Where it is proposed to shield any booster connection or any building from any substation pursuant to clause 5.6.3(c)(ii) of AS 2419.1-1994 or by fire resisting construction under the *BCA* respectively and this construction has not been detailed upon the approved development consent plans such works should be considered inconsistent with consent pursuant to clause 145 of the *Regulation*. The Applicant must lodge with Council details for any such construction pursuant to section 96 of the *Act* to allow assessment under section 79C of the *Act*.

Note: Substations must not be located within the minimum sight distance at driveway entrances under Australian Standard AS/NZS 2890 (Set)-2004 Parking Facilities Set whether such driveways service the site or any adjoining land.
Standard Condition: C21

C.8 Soil and Water Management Plan – Submission & Approval

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

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

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

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

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

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

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

C.9 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.10 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.11 Bicycle, Car and Commercial Parking Details

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

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

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

Standard Condition: C45

C.12 Stormwater management plan (Clause 25(2) WLEP 1995)

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

The *Stormwater Management Plan* must detail:

- (a) General design in accordance with Stormwater disposal concept plan prepared by PM & Associates P/L, dated 21/05/2008, Dwg No. H1 other than amended by this and other conditions;
- (b) The discharge of stormwater, by direct connection, to K&G;
- (c) Compliance the objectives and performance requirements of the BCA;
- (d) Any rainwater tank required by BASIX commitments including their overflow connection to the *Stormwater Drainage System*, and
- (e) General compliance with the Council's draft Development Control Plan Stormwater Drainage Management (draft version 1.1 public exhibition copy dated 14/12/2006)

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

Layout plan

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

It must include:

- All pipe layouts, dimensions, grades, lengths and material specification,
- All invert levels reduced to Australian Height Datum (AHD),
- Location and dimensions of all drainage pits,
- Point and method of connection to Councils drainage infrastructure.

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

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

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)*
1	<i>Melaleuca quinquenervia</i> Broad-leafed Paperbark	Council verge	In accordance with the submitted Hayden Coulter tree report dated 27/08/08
2	<i>Olea europea var. africana</i> African Olive	Rear yard north western corner	3.5
4	<i>Brachychiton acerifolius</i> Illawarra Flame tree	Rear yard adjacent rear western boundary	2
5	<i>Archontophoenix cunninghamiana</i> Bangalow Palm	Rear yard northern side	2
8	<i>Archontophoenix cunninghamiana</i> Bangalow Palm	Rear yard adjacent rear western boundary	2

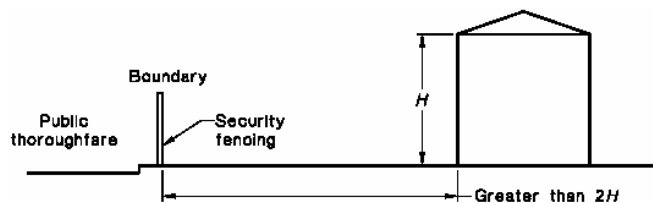
- (b) Tree Protection Zones are to be fenced with a 1.8 metre high chainmesh or weldmesh fence to minimise disturbance to existing ground conditions. The area within the fence must be mulched, to a depth of 75mm, irrigated and maintained for the duration of the construction works.
- (c) A sign must be erected on each side of the fence indicating the existence of a Tree Protection Zone and providing the contact details of the site Arborist.
- (d) 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.
- (e) Sediment control measures are to be installed around all Tree Protection Zones to protect the existing soil levels.
- (f) 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.

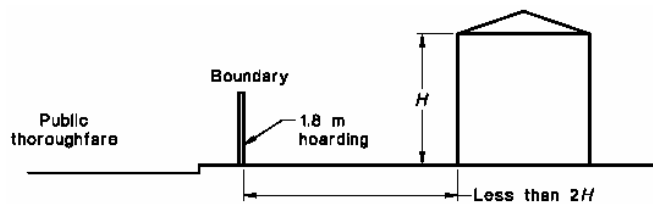
Note: Water Restrictions take precedence over this condition. Having regard to water restrictions manual hosing may be necessary.
Standard Condition: D8

D.3 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.

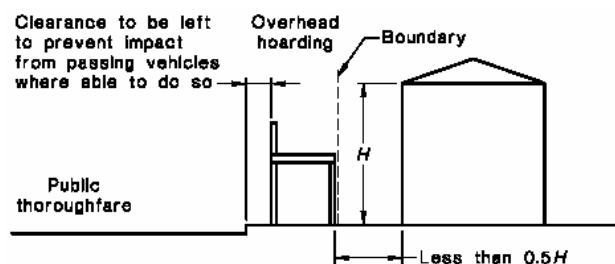


Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an *overhead protective structure* and the facing facade protected by heavy-duty scaffolding, unless either

- 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/ohheadprotstructs.htm>.

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

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

D.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 Requirement to notify about new evidence

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

Standard Condition: E4

E.4 Critical Stage Inspections

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

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

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

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

Standard Condition: E5

E.5 Hours of Work –Amenity of the neighbourhood

- a. No *work* must take place on any Sunday or public holiday,

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

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

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

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

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

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

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

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

E.6 Maintenance of Vehicular and Pedestrian Safety and Access

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

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

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

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

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

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

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

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

Part C Management of Waste:

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

Part E Public roads:

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

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

Standard Condition: E7

E.7 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 50mm 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.8 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>Olea europea var. africana</i> African Olive	Rear yard north western corner	11 x 8
4	<i>Brachychiton acerifolius</i> Illawarra Flame tree	Rear yard adjacent rear western boundary	8 x 4
5	<i>Archontophoenix cunninghamiana</i> Bangalow Palm	Rear yard northern side	11 x 5
8	<i>Archontophoenix cunninghamiana</i> Bangalow Palm	Rear yard adjacent rear western boundary	6 x 3

Trees on Council Land

Council Reference No:	Species	Location	Dimension (Metres)	Tree Value
1	<i>Melaleuca quinquenervia</i> Broad-leafed Paperbark	Council verge	9 x 9	\$9400.00

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

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

Council Reference No:	Species	Location	Dimension (Metres)
7	<i>Clump of Archontophoenix cunninghamiana</i> Bangalow Palm	As per the submitted Marcia Hosking landscape plan dated 20/05/08	5 x 3

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

c) The following trees may be removed:

Council Reference No:	Species	Location	Dimension (Metres)
3	<i>Syzygium paniculatum</i> Brush Cherry	Front yard adjacent southern boundary	11 x 10

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

- 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 Reference No:	Species	Location	Approved pruning specification (extent of pruning)
1	<i>Melaleuca quinquenervia</i> Broad-leafed Paperbark	Council verge	5% of canopy volume, pruning limbs no greater than 100mm diameter over proposed driveway extension.

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

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. Areas for future planting must be plotted on the submitted landscape or architectural plans and be protected from damage, especially soil compaction and contamination from construction activity by erecting a barrier or implementing ground protection. Where ground protection during construction activity is not implemented, remediation measures prior to planting such as soil ripping or subsoil aeration must be employed.

Any replacement plant is to be maintained in a healthy and vigorous condition until it attains a height of 5 metres or a spread of 3 metres, whereby it will be protected by Council’s Tree Preservation Order. If the replacement plant is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council’s Tree Preservation Order, it must be replaced with another of the same species which complies with the criteria outlined below.

Species/Type	Planting Location	Container Size or Size of Tree (@ time of planting)	Minimum Dimensions at Maturity
1 x <i>Magnolia grandiflora</i> ‘Exmouth’	As per the submitted Marcia Hosking landscape plan dated 20/05/08	200 litre	Natural
All replacement trees are to be NATSPEC grown.			

Level changes in the vicinity of trees

No level changes are to occur within the specified radius from the trunks of the following trees to allow for the preservation of their root zones.

Council Reference No:	Species	Location	Radius from Trunk (Metres)
2	<i>Olea europea var. africana</i> African Olive	Rear yard north western corner	3.5
4	<i>Brachychiton acerifolius</i> Illawarra Flame tree	Rear yard adjacent rear western boundary	2
5	<i>Archontophoenix cunninghamiana</i> Bangalow Palm	Rear yard northern side	2
8	<i>Archontophoenix cunninghamiana</i> Bangalow Palm	Rear yard adjacent rear western boundary	2

E.9 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.10 Erosion and Sediment Controls – Maintenance

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

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

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



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

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

Standard Condition: E15

E.11 Disposal of site water during construction

The principal contractor or owner builder must ensure:

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

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

Standard Condition: E17

E.12 Site Cranes

Site Crane(s) and hoist(s) may be erected within the boundary of the land being developed subject to compliance with Australian Standards AS 1418, AS 2549 and AS 2550 and all relevant parts to these standards.

Cranes must not swing or hoist over any public place unless the *principal contractor* or *owner builder* have the relevant approval under the *Local Government Act 1993*, *Crown Lands Act 1989* or *Roads Act 1993*.

The crane must not be illuminated outside approved working hours other than in relation to safety beacons required by the Civil Aviation Safety Authority under the *Civil Aviation Act 1988* (Cth).

No illuminated sign(s) must be erected upon or displayed upon any site crane.

Note: Where it is proposed to swing a crane over a public place the *principal contractor* or *owner builder* must make a separate application to Council under section 68 of the *Local Government Act 1993* and obtain activity approval from Council prior to swinging or hoisting over the public place.

Note: Where it is proposed to swing a crane over private land the consent of the owner of that private land is required. Alternatively, the *principal contractor* or *owner builder* must obtain an access order under the *Access to Neighbouring Land Act 2000* or easement under section 88K of the *Conveyancing Act 1919* or section 40 of the *Land & Environment Court Act 1979* as appropriate. The encroachment of cranes or the like is a civil matter of trespass and encroachment. Council does not adjudicate or regulate such trespasses or encroachments.

Standard Condition: E19

E.13 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.14 Prohibition of burning

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

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

E.15 Dust Mitigation

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

This generally requires:

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

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

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

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

E.16 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.17 Replacement of Sandstone Kerb or Gutter

Where existing sandstone kerb or gutter is to be replaced in concrete, the sandstone remains the property of Council. The stones are to be removed and handled in such a manner so as not to cause any damage to the sandstone.

The stones must be delivered on pallets between 7am to 4pm Monday to Friday by the *Principal Contractor or Owner* to:

Woollahra Council's Works Depot
52-54 O'Dea Avenue
Waterloo

Prior to delivery contact the Purchasing Officer, Mr Joe Cavagnino, on 9391 7973.
Standard Condition: E25

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

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

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

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

F.2 Amenity Landscaping

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

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

F.3 Commissioning and Certification of Systems and Works

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

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

- a. Certification from the supervising professional engineer that the requirement of the Geotechnical / Hydrogeological conditions and report recommendations were implemented and satisfied during development work.
- b. All flood protection measures.
- c. All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1 – “Off-Street car parking.”
- d. All stormwater drainage systems.
- e. All mechanical ventilation systems.
- f. All hydraulic systems.
- g. All structural work.
- h. All acoustic attenuation work.
- i. All waterproofing.
- j. 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

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.A30563.

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

H.2 Landscaping

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

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

H.3 Road Works (including footpaths)

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

- a. stormwater pipes, pits and connections to public stormwater systems within the *road*;
- b. driveways and vehicular crossings within the *road*;
- c. removal of redundant driveways and vehicular crossings;
- d. new footpaths within the *road*;
- e. relocation of existing power/light pole
- f. relocation/provision of street signs
- g. new or replacement street trees;
- h. 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.
- i. new or reinstated kerb and guttering within the *road*; and
- j. 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

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

I.1 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: 18

J. Miscellaneous Conditions

No relevant conditions

K. Advisings

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

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

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

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

Warnings as to potential maximum penalties

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

Warning as to enforcement and legal costs

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

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

K.2 Dial before you dig



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

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

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

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

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

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

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

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

Standard Advising: K3

K.4 Builders Licences and Owner Builders Permits

Section 81A of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an **owner-builder**, must 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.5 Building Standards - Guide to Standards and Tolerances

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

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

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

The Guide can be down loaded from:

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

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

Standard Condition: K6

K.6 Workcover requirements

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

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

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

Location: Workcover NSW, 92-100 Donnison Street, GOSFORD 2250 Postal address:

WorkCover NSW, Locked Bag 2906, LISAROW 2252, Phone (02) 4321 5000, Fax (02) 4325 4145.

Standard Condition: K7

K.7 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.8 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.9 Appeal

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

Eleanor Smith Assessment Officer on (02) 9391 7090

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

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

Standard Condition: K14

K.10 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.11 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.12 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.13 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

Ms E Smith
ASSESSMENT OFFICER

Mr N Economou
TEAM LEADER

ANNEXURES

1. Plans and elevation
2. Development Engineer's referral response
3. Landscape Officer's referral response
4. Heritage Officer's referral response