

Application Assessment Panel

Agenda: *Application Assessment Panel*

Date: *Tuesday 23 December 2008*

Time: *3.00pm*

Part: *One of One Part*

Item: *D1 to D4*

Outline of Meeting Protocol & Procedure:

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

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

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

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

WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

15 December 2008

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

CC: The Mayor
All Councillors

Application Assessment Panel Meeting – 23 December 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 23 December 2008 at 3.00pm.**

Gary James
General Manager

Meeting Agenda

Part One of One Part

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

Items to be Decided by this Committee using its Delegated Authority

D1	Confirmation of Minutes of Meeting held on 16 December 2008	1
D2	Da701/2006 Part 3 – 48 Coolong Road, Vaucluse – Section 96 Application Proposed modification removal of 8 trees & replacement with 4 trees of more appropriate native species (insertion of Condition No. A.7, modification to Condition Nos B.3, E.8 & H.2) – 22/8/2008 *See Recommendation Page 9	2-22
D3	DA551/2008 – 698-704 Old South Head Road, Rose Bay – Use of shop 1 as an Indian restaurant including new fitout & seating – 1/9/2008 *See Recommendation Page 35	23-58
D4	DA209/2005 Part 2 – 3/8 Wolseley Road, Point Piper – Section 96 Application – Proposed modification raise retaining wall by 400mm – 29/8/2008 *See Recommendation Page 70	59-78

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 16 December 2008**
Author: Les Windle, Manager - Governance
File No: See Application Assessment Panel Minutes
Reason for Report: The Minutes of the Meeting of Tuesday 16 December 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 16 December 2008 be taken as read and confirmed.

Les Windle
Manager - Governance

SECTION 96 APPLICATION ASSESSMENT REPORT

ITEM No.	D2
FILE No.	DA 701/2006/3
ADDRESS:	48 Coolong Road Vaucluse 2030
EXISTING CONSENT:	Demolition of the existing dwelling-house and swimming pool; construction of a new dwelling, swimming pool and ancillary structures; landscaping and siteworks
TYPE OF CONSENT:	Local Development
DATE OF CONSENT:	17 April 2007
ZONING:	Residential 2(a)
PROPOSED MODIFICATION:	Removal of 8 trees & replacement with 4 trees of more appropriate native species (insertion of condition A7, modification to conditions B3, E8 and H2)
DATE S96 LODGED:	22/08/2008
CONSENT AUTHORITY:	Council
APPLICANT:	Tanner Architects
OWNER:	Mr M & Mrs J Waked
AUTHOR:	Mr M Bolduan

1. SUMMARY

Reason for report

The proposed modifications have attracted a letter of objection which is not comprehensively addressed by the recommendation.

Issues

Overshadowing due to the mature height of one of the proposed trees.

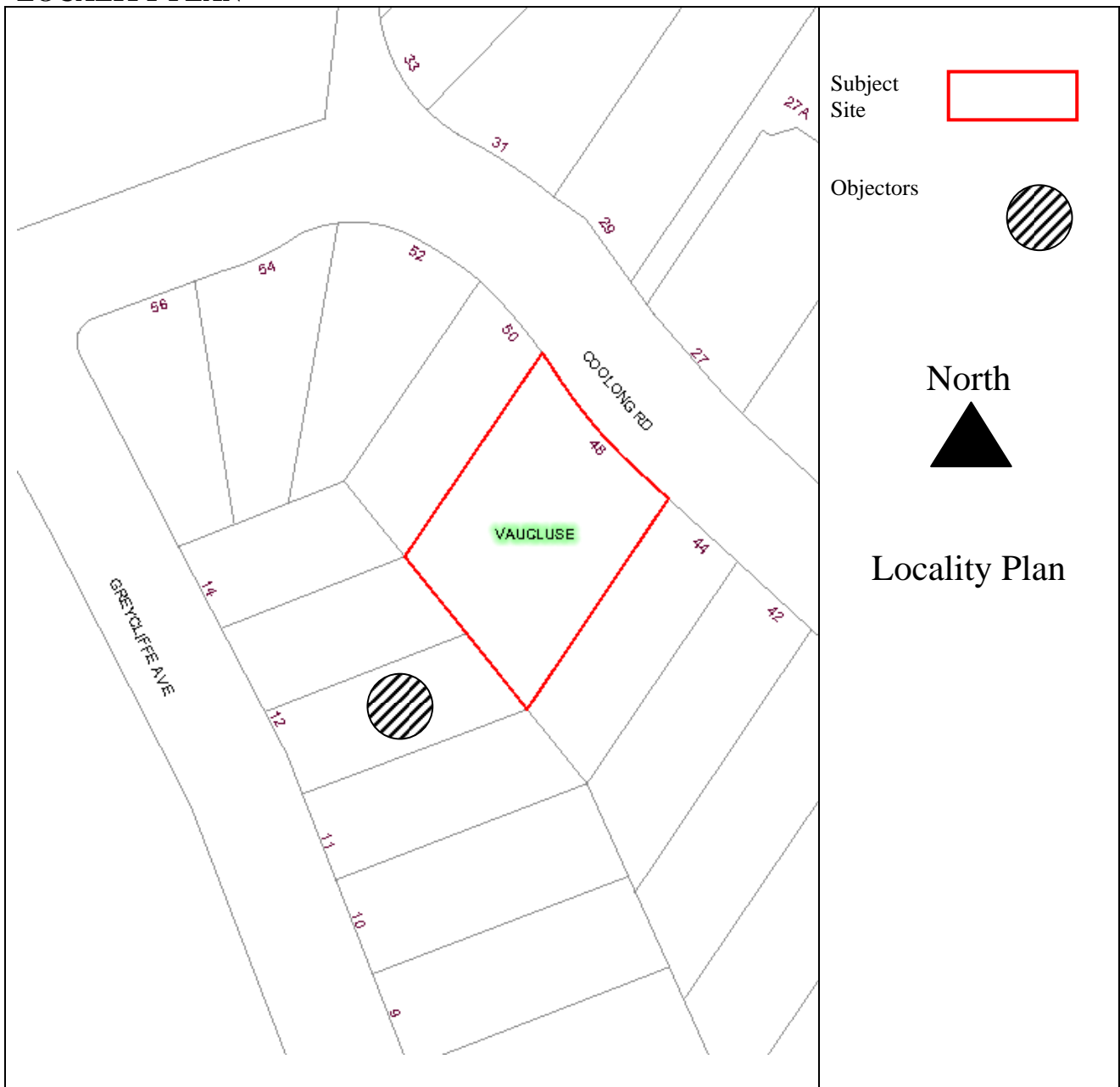
Objections

One objection lodged by email on 18 September 2008 by Mr Barry Pritchard of 12 Greycliffe Ave, Vaucluse.

Recommendation

Approve the proposed modifications in full as they are considered to be satisfactory with regard to the relevant provisions of S79C and S96 of the Environmental Planning and Assessment Act 1979.

LOCALITY PLAN



2. DESCRIPTION OF APPROVED PROPOSAL

Demolition of the existing dwelling-house and swimming pool; construction of a new dwelling, swimming pool and ancillary structures; landscaping and siteworks.

3. DESCRIPTION OF PROPOSED MODIFICATION

The proposed amendment involves deletion of reference to the Trees Council References No's T3, T4, T5, T6, T7, T8, T9 and T23 in Conditions B3 and E8 and inclusion of reference to the Statement of Environmental Effects by Tzannes Associates dated August 2008 in Condition H2.

4. DESCRIPTION OF SITE AND LOCALITY

The frontage to Coolong Road is 34.5m in length, the rear boundary is 35.0m in length, the side (eastern) boundary is 45.8m in length and the side (western) boundary is 44.6m in length. The site area is 1483.1m².

The site is comprised of Lot 1 DP 1114343.

There is a two storey dwelling-house on the subject property. Adjoining development also consists generally of 2 storey dwelling-houses.

5. PROPERTY HISTORY

On 17 April 2006, Council granted consent to DA 701/2006/1 for demolition of the existing dwelling house, construction of a new dwelling with basement parking, relocation of the swimming pool and tennis court and associated landscaping works.

On 17 July 2007, Council approved modifications to the consent in terms of the deletion of the requirement for on-site detention of stormwater (OSD) within Conditions C.12, H.5 and I.3.

6. REFERRALS

6.1 Landscaping/Trees Management

The matter was referred to Council's Landscaping /Trees Section. Council's Tree and Landscape Officer has determined that the proposed modifications are satisfactory in terms of tree preservation and landscaping, subject to compliance with conditions.

ASSESSMENT UNDER S96

7.1 S96 (1A) Modification involving minimal environmental impact

The proposed amendment involves deletion of reference to the Trees Council References No's T3, T4, T5, T6, T7, T8, T9 and T23 in Conditions B3 and E8 and inclusion of reference to the Statement of Environmental Effects by Tzannes Associates dated August 2008 in Condition H2. Council's Tree and Landscape Officer is satisfied that the relevant trees may be replaced as discussed above and has raised no objection to the deletion or amendment of the relevant conditions.

As such, it is recommended that the relevant conditions be modified or deleted as necessary.

7.2 Substantially the same development

The development consent, as modified previously and as proposed to be further modified, is considered to be substantially the same development as that originally approved.

7.3 Threatened Species

The proposal is satisfactory with respect to threatened species regulation.

ENVIRONMENTAL ASSESSMENT UNDER S.79C

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

8. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

8.1 SEPPs

State Environmental Planning Policy No. 55

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

8.2 REPs

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The land is within the Sydney Harbour Catchment area and within the Foreshores and Waterways area therefore the proposal must comply with the planning principles set out in the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. It is considered that the proposal complies with these principles.

9. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

9.1 Aims and objectives of WLEP 1995 and zone

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

9.2 Other special clauses/development standards

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

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

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

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

Clause 25D Acid Sulfate Soils: The subject site is within the Class 5 Acid Sulphate Soil area identified in the Planning NSW Acid Sulphate Soil Risk Map. However, the subject works are not likely to lower the water table below 1 m AHD on any land within 500 m with a 1, 2, 3 or 4 land classification and therefore, there is no issue of acid sulphate affectation in this instance.

Clauses 26-33 Heritage and conservation area provisions: The proposal is acceptable in terms of Clauses 26 to 33.

10. DEVELOPMENT CONTROL PLANS

10.1 Woollahra Residential DCP

Site analysis performance criteria (*Part 3*)

Part 3 of the WRDCP 2003 requires adequate analysis of documentation for development applications. The proposal is considered to be satisfactory in this regard.

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

The subject site is located within the Vacluse West precinct under Section 4.13 of the WRDCP 2003. The proposal is considered to be satisfactory with regard to the relevant desired future character objectives and performance criteria of the Vacluse West precinct (see below).

Building size and location performance criteria

C5.2.13 WRDCP 2003 requires that sunlight is provided to at least 50% (or 35m² with minimum dimension 2.5m, whichever is smaller) of the main ground level private open space of adjacent properties for a minimum of two hours between 9am and 3pm on June 21.

The Lillypilly proposed to be planted near the rear boundary of the applicant's property will stand alone and therefore compliance with the above would be maintained with regard to neighbouring properties.

Open space and landscaping

C5.3.12 WRDCP 2003 requires that existing significant trees and vegetation are incorporated into proposed landscape treatment.

The proposed Lillypilly will replace a Golden Cypress, which was proposed in this S96 application to be removed but, since the date of lodgement of the application, has apparently fallen down in a storm. There is therefore no significant vegetation along the rear boundary of the property, and the proposed Lillypilly will not adversely affect any significant vegetation. Furthermore, the proposed Lillypilly will have a maximum height at maturity of 6m to 8m, and this is considered to be an appropriate size in relation to the surrounding vegetation.

The proposed Sydney Red Gums will replace the existing Bhutan Cypresses and American Arborvitae and will match the existing Sydney Red Gum at the front of the property and those situated in the nearby Nielson Park.

For the above reasons, it is considered that the proposal complies with C5.3.12 WRDCP 2003.

C5.3.15 WRDCP 2003 requires that the landscape design:

- uses vegetation types and landscaping styles which blend the development into the streetscape;
- does not adversely affect the structure of the proposed buildings or buildings on adjoining properties;
- considers personal safety by ensuring good visibility along paths and driveways and avoiding shrubby landscaping near thoroughfares;

- contributes to energy efficiency and amenity by providing substantial shade in summer, especially to west-facing windows and open car park areas, and admitting winter sunlight to outdoor and indoor living areas;
- improves privacy between dwellings;
- minimises risk of damage to overhead power lines and other services;
- provides adequate sight lines for vehicles and pedestrians, especially near street corners and intersections; and
- uses planting that is complementary to the desired future character objectives for the locality as described in Part 4

The proposal will comply with the above performance criteria as follows:

- The Lillypilly and Sydney Red Gums are common species in the precinct;
- The Lillypilly and Sydney Red Gums will not adversely affect the structure of the applicant's dwelling or buildings on adjoining properties;
- The Lillypilly and Sydney Red Gums will not affect visibility along paths and driveways and will not cause shrubby landscaping near thoroughfares;
- The Lillypilly will improve privacy between the applicant's property and the objector's property. The Sydney Red Gums will not affect the privacy of the subject dwelling or neighbouring dwellings;
- The Lillypilly and Sydney Red Gums will not cause risk of damage to overhead power lines and other services;
- The Lillypilly and Sydney Red Gums will not affect sight lines for vehicles and pedestrians;
- The Lillypilly and Sydney Red Gums will be complementary to the desired future character objectives for the locality as described in Part 4. The applicant's property lies within the Vaucluse West Precinct. The desired future character objectives for that locality are as follows:
 - a) To retain the scenic qualities provide by the dramatic topography, natural vegetation and low scale built elements that provide an attractive setting on Sydney Harbour;
 - b) To reinforce the precinct's landscape setting by minimising alterations to the landform and preserving the existing tree canopy;
 - c) To maintain mature street trees, grassed verges and garden plantings;
 - d) To protect important views from the public spaces of the precinct to the harbour, the city skyline and to the surrounding districts;
 - e) To maintain the evolution of low rise residential building styles through the introduction of good contemporary buildings.

The proposed Lillypilly and Sydney Red Gums will comply with these desired future character objectives as follows:

- a) They will contribute to the vegetation of the streetscape and the precinct;
- b) They will not cause alterations to the landform and will enhance the tree canopy;
- c) They will add to mature trees and garden plantings;
- d) They will not obscure important views.

For the above reasons, it is considered that the proposal complies with C5.3.15 WRDCP 2003.

Acoustic and Visual Privacy

C5.8.6 WRDCP 2003 requires that balconies, terraces, etc within a development are suitably screened to prevent direct views into habitable rooms or private open space of adjacent dwellings.

The proposed Lillypilly will assist in achieving privacy for the applicant's dwelling, particularly for the first floor bedroom balconies. While the privacy of balconies is not of paramount concern, especially as those balconies face east, not south toward the objector's property, it is considered that the applicant is entitled to some privacy and that the proposed Lillypilly is not unreasonable in the circumstances.

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

Not relevant.

10.3 Woollahra Access DCP

The 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.

10.4 Other DCPs, codes and policies

None relevant.

11. APPLICABLE REGULATIONS

None relevant.

12. THE LIKELY IMPACTS OF THE MODIFIED DEVELOPMENT

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

13. SUBMISSIONS

The proposal was advertised and notified in accordance with the regulations and in accordance with the Council's Advertising and Notifications DCP. One submission was received from Mr Barry Pritchard of 12 Greycliffe Ave (to the rear of the subject property), lodged by email on 18 September 2008.

Mr Pritchard's submission concerned the *acmena smithii* Lillypilly proposed to be planted at the rear of the property. Mr Pritchard stated: "My concern is that should the Lillypilly grow to a height of more than 4 metres, the tree would take early morning sunlight from the back of my property." Mr Pritchard suggested that the tree should be a species which would grow no higher than 4m.

It is proposed to reject this submission for three reasons:

1. The proposed Lillypilly will replace a *cupressus macrocarpa* Golden Cypress, which was proposed in this S96 application to be removed but since the date of lodgement of the application has apparently fallen down in a storm. Golden Cyresses typically have a height at maturity of 30m, and Mr Pritchard has verbally confirmed that the specimen on the subject property was very tall. The Lillypilly has a height at maturity of 6-8m, which is obviously significantly smaller. In the circumstances, the proposed Lillypilly does not appear out of place with the existing character of the neighbourhood.

2. The proposed Lillypilly will stand alone and therefore no parts of the objector's property will be deprived of direct sunlight for more than 3 hours each day because of overshadowing caused by the Lillypilly.
3. The applicant has responded to the objector's submission by stating: "A tree of 4m tall would not be sufficient in achieving enough privacy, particularly for the first floor balconies." While the privacy of balconies is not of paramount concern, especially as those balconies face east, not south toward the objector's property, it is considered that the applicant is entitled to some privacy and that a tree of 6-8m is not unreasonable in the circumstances.

14. CONCLUSION - THE PUBLIC INTEREST

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

15. 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.

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

THAT Council, as the consent authority, modify development consent to Development Application No. 701/2006 for work on land at 48 Coolong Road Vacluse, in the following manner:

The addition of the following Condition:

A.7 Approved Amended (s96) Plans and supporting documents

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

Reference	Description	Author/Drawn	Date(s)
Revised Planting plan for S96	Landscape Plan	Tony Ward	August 2008

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

Standard Condition: A6 (Autotext AA6)

The deletion of Condition B.3 and replacement of that clause with the following:

B.3 Establishment of Tree Protection Zones

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

- a) Tree Protection Zone areas

Council Reference No:	Species	Location	Radius from Trunk (Metres)*
1	Coast Banksia (<i>Banksia integrifolia</i>)	North-west of existing driveway to Lot 6 (eastern allotment) in road reserve	5.5m
2	Sydney Red Gum (<i>Angophora costata</i>)	Centre of road reserve	4m
2a	Jacaranda (<i>Jacaranda mimosifolia</i>)	Western most tree in road reserve	2m
23	Golden Cypress (<i>Cupressus macrocarpa</i> 'Aurea')	Adjacent western corner of existing tennis court	7.0m
24	Canary Island Palm (<i>Phoenix canariensis</i>)	In southern corner of property, adjacent eastern boundary	5.0m
25	Row of 13 x Bhutan Cypress (<i>Cupressus torulosa</i>)	Adjacent eastern boundary of site	3.0m

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

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

Standard Condition: B5

The deletion of Condition E.8 and replacement of that clause with the following:

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:

Council Reference No:	Species	Location	Dimension (Metres)
1	Coast Banksia (<i>Banksia integrifolia</i>)	North-west of existing driveway to Lot 6 (eastern allotment) in road reserve.	H: 9m W: 8m Ø: 0.45m
2	Sydney Red Gum (<i>Angophora costata</i>)	Centre of road reserve.	H: 8m W: 7m Ø: 0.35m
2a	Jacaranda (<i>Jacaranda mimosifolia</i>)	Western most tree in road reserve.	H: 5m W: 4m Ø: 0.2m
12	Cheese Tree (<i>Glochidion ferdinandi</i>)	Adjacent eastern boundary.	H: 6m W: 8m Ø: 0.2m & 2x0.17m
24	Canary Island Palm (<i>Phoenix canariensis</i>)	In southern corner of property, adjacent eastern boundary.	H: 8m W: 8m Ø: 0.6m
25	Row of 13 x Bhutan Cypress (<i>Cupressus torulosa</i>)	Adjacent eastern boundary of site.	H: 9m W: 2m Ø: 0.2m

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)
18	Frangipani (<i>Plumeria acutifolia</i>)	Adjacent northern corner of existing dwelling.	H: 4m W: 6m Ø: 0.28m

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	American Arbovitae (<i>Thuja occidentalis</i>)	Adjacent northern (front) boundary.	H: 5m W: 5m Ø: 0.18m & 0.2m
4	Bhutan Cypress (<i>Cupressus torulosa</i>)	Adjacent northern (front) boundary.	H: 10m W: 3m Ø: 0.24m
5	Bhutan Cypress (<i>Cupressus torulosa</i>)	Adjacent northern (front) boundary.	H: 9m W: 3m Ø: 0.18m
6	Bhutan Cypress (<i>Cupressus torulosa</i>)	Adjacent northern (front) boundary.	H: 9m W: 3m Ø: 0.2m
7	Bhutan Cypress (<i>Cupressus torulosa</i>)	Adjacent northern (front) boundary.	H: 9m W: 3m Ø: 0.2m
8	Bhutan Cypress (<i>Cupressus torulosa</i>)	In eastern corner, adjacent northern (front) boundary.	H: 8m W: 3m Ø: 0.18m
9	Bhutan Cypress (<i>Cupressus torulosa</i>)	In eastern corner, adjacent northern (front) boundary.	H: 8m W: 3m Ø: 0.18m
10	Lemon –scented Tea Tree (<i>Leptospermum petersonii</i>)	In eastern corner, adjacent northern (front) boundary.	H: 7m W: 7m Ø: 0.35m
11	Bangalow Palm (<i>Archontophoenix cumminghamii</i>)	Adjacent eastern corner of existing tennis court.	H: 5m W: 3m Ø: 2x0.14m
13	Bangalow Palm (<i>Archontophoenix cumminghamii</i>)	Adjacent northern boundary of existing tennis court.	H: 5m W: 2m Ø: 0.12m
14	Bangalow Palm (<i>Archontophoenix cumminghamii</i>)	Adjacent northern boundary of existing tennis court.	H: 5m W: 4m Ø: 3x0.16, 0.14 & 0.12m
15	Bougainvillea spp. (<i>Bougainvillea spp.</i>)	Adjacent northern boundary of existing tennis court.	H: 5m W: 5m Ø: 0.16 & 0.1m
16	Bangalow Palm (<i>Archontophoenix cumminghamii</i>)	Adjacent northern boundary of existing tennis court.	H: 6m W: 4m Ø: 3x0.17m
17	Italian Cypress (<i>Cupressus sempervirens</i>)	Adjacent northern corner of existing tennis court.	H: 11m W: 4m Ø: 0.35m
18a	Row of 9x Golden Brunnings Cypress (<i>Cupressus macrocarpa</i> 'Brunniana Aurea')	Adjacent western boundary of site.	H: 5m W: 3m Ø: 0.1m
19	Cocos Palm (<i>Syagrus romanzoffianum</i>)	Adjacent western corner of site.	H: 10m W: 6m Ø: 0.24m
20	Cocos Palm (<i>Syagrus romanzoffianum</i>)	Adjacent western corner of site.	H: 11m W: 6m Ø: 0.3m
21	Cocos Palm (<i>Syagrus romanzoffianum</i>)	Adjacent western corner of site.	H: 7m W: 6m Ø: 0.2m

Council Reference No:	Species	Location	Dimension (Metres)
22	Arfican Olive (<i>Olea africana</i>)	Adjacent southern corner of exiting swimming pool.	H: 4m W: 6m Ø: 2x0.28m
23	Golden Cypress (<i>Cupressus macrocarpa</i> 'Aurea')	Adjacent western corner of existing tennis court.	H: 7m W: 7m Ø: 0.55m
24a	Row of 9x Hibiscus (<i>Hibiscus spp.</i>)	Adjacent southern (rear) boundary of site.	H: 6m W: 5m Ø: x0.1m

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

Replacement trees which must be planted

The following compensatory replacement plantings must be planted to ensure the preservation of the landscape character of the area. 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
3 x <i>Angophora costata</i> Sydney Red Gum	As per the submitted Tony Ward landscape plan dated August 2008	As per the submitted Tony Ward landscape plan dated August 2008	As per the submitted Tony Ward landscape plan dated August 2008
1 x <i>Acmena smithii</i> Lillypilly	As per the submitted Tony Ward landscape plan dated August 2008	As per the submitted Tony Ward landscape plan dated August 2008	As per the submitted Tony Ward landscape plan dated August 2008

All replacement trees are to be NATSPEC grown.

Standard Condition: E9

The deletion of Condition H.2 and replacement of that clause with the following:

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, subject to the modifications set out in the Statement of Environmental Effects by Tzannes Associates dated August 2008. 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

Mr M Bolduan
ASSESSMENT OFFICER

Mr David Booth
ACTING TEAM LEADER

ANNEXURES

1. Modified landscape plan
2. Trees and Landscape Officer's comments

DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D3
FILE No.	DA 551/2008/1
PROPERTY DETAILS	698-704 Old South Head Road, Rose Bay
	Lot & DP No.: LOT: CP SP: 75997
	Side of Street: Western
	Site Area (m²): 1004.6
	Zoning: Neighbourhood Business 3(c)
PROPOSAL:	Use of Shop 1 as an Indian restaurant including a new fitout and seating
TYPE OF CONSENT:	Local Development
APPLICANT:	Mr A Kadasani
OWNER:	THE PROPRIETORS OF STRATA PLAN 75997
DATE LODGED:	01/09/2008
AUTHOR:	Mr D Barber

1. RECOMMENDATION PRECIS

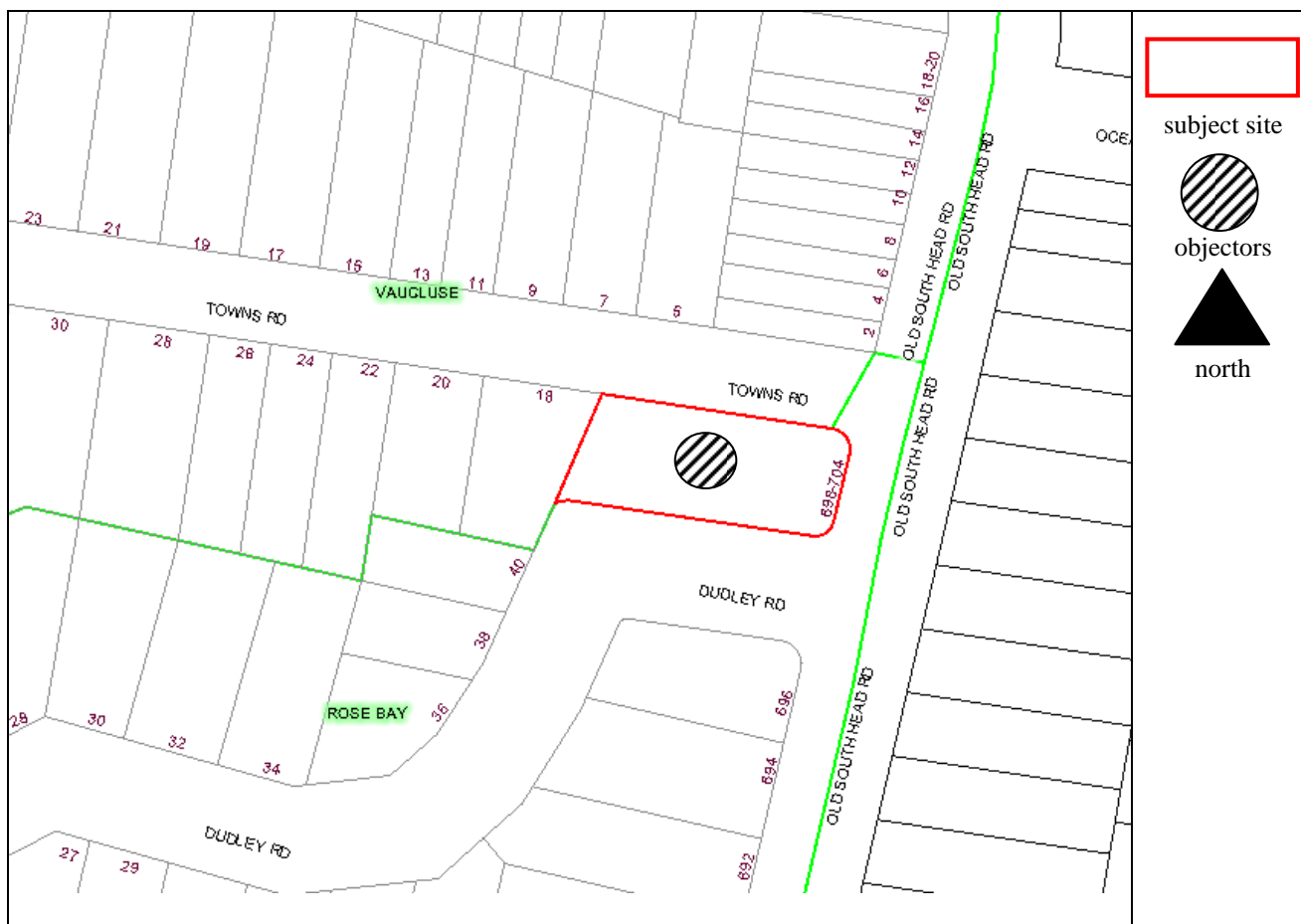
The application is recommended for conditional approval because it:

1. Is permissible under the zoning.
2. Satisfies the underlying objectives of the relevant planning standards contained in WLEP 1995 & WRDCP 2003.
3. Is an appropriate use of the premise.
4. Would not have adverse effects on the amenity of adjoining properties or the general locality such that refusal is justified.

2. PROPOSAL PRECIS

The proposal involves use of Shop 1 as an Indian restaurant including a new fitout and seating.

3. LOCALITY PLAN



4. DESCRIPTION OF PROPOSAL

The proposal involves the following: -

- Change of use from an existing vacant retail tenancy into an Indian restaurant.
- Internal fit out as a commercial kitchen.
- Seating for approximately 72 people including: -
 - Internal seating comprising 2 tables seating 16 people each, 4 tables seating 4 people each, 8 tables seating 2 people each and a large bench seating 8 people for take-away (total of 56 people).
 - Additional outdoor seating comprising 3 tables seating 2 people each and 2 tables seating two people each (total of 16 people).
- Eight staff.
- Operating hours 7am to 12am 7 days.

5. SUMMARY

Reasons for report	Issues	Submissions
<ul style="list-style-type: none"> • The DA does not satisfy the criteria for determination under staff delegation. • Objectors concerns are not resolved by the recommendation. 	<ul style="list-style-type: none"> • Off-street parking non-compliance • Objectors' concerns 	Seven (7) submissions were received. Five (5) in support and (2) objecting

6. ESTIMATED COST OF WORKS

Council adopted (DCC 6 June 2005) administrative changes for determining DA fees based on the estimated cost of works of 2,000m². The stated cost of the proposed work of \$80,000 has been checked using this criteria and is considered to be accurate.

7. DESCRIPTION OF SITE OF LOCALITY



THE SITE AND LOCALITY	
Physical features	The site is located on the western side of Old South Head Road, Rose Bay and has a triple frontage. The eastern frontage to Old South Head Road is approximately 18m in length; the northern frontage to Towns Road is approximately 48 m in length; the southern frontage to Dudley Road is approximately 52 m in length and the western (rear) boundary is 23.6m in length. The site area is 999.1m ² . The site contains a 7 storey mixed residential/retail building with associated on site parking. The proposed restaurant area is located at ground level on the corner of Dudley Road and Old South Head Road.
Topography	The site falls approximately 1.5m from the front (northern) boundary to the front (southern) boundary.
Existing buildings and structures	The adjoining property to the west (No 18 Towns Road) is occupied by a single dwelling-house. The former Kings Theatre building, a heritage item, which has been redeveloped as a mixed development consisting of a Coles supermarket and residential apartments, is located on the southern side of Dudley Road, opposite the subject site.
Environment	The local business neighbourhood zone consists of 2, 3 and 4 storey mixed retail, commercial and residential developments.

8. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	Retail (vacant)
Previous relevant applications	<p>DA158/2006/1 was approved by the Application Assessment Panel on 27 June 2006. It involved the use of the Shops 26 and 27 within the subject building as a cafe, including: -</p> <ul style="list-style-type: none"> • Internal fit out as a commercial kitchen. • Dining area including 42 internal seats and three internet terminals. • The installation of a soft child's play area with a low height glass partition. • Construction of a new baby change area with exhaust and toilet facility. <p>Condition 2 included the deletion of the footpath seating because RTA approval is required under Section 91A of the EP&A Act 1979.</p> <p>DA266/2006/1 was refused on 28 June 2006, as a 'restaurant' is not a permissible use within the Business Neighbourhood 3(c) zone. The DA proposal involved converting an existing retail tenancy into a Thai restaurant, new fit-out, outdoor seating and new signage.</p>
Pre-DA	No.
Requests for additional information	9/10/2008 - Confirmation from the applicant, Antony Kadasani, that alcohol would not be sold on the premise.
Amended plans/ Replacement Application	No.
Land & Environment Court appeal	No.

9. REFERRALS

9.1 The following table contains particulars of internal referrals.

INTERNAL REFERRALS		
Referral Officer	Comment	Annexure
Environment Health Officer	Environmental health matters are satisfactory, subject to conditions.	2

ENVIRONMENTAL ASSESSMENT UNDER S.79C

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

10. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

10.1 SEPPs

State Environment Planning Policy 55–Remediation of Land

Under Clause 7(1)(a) of SEPP 55 – Remediation of Land, consideration has been given as to whether the land is contaminated. An assessment of the initial site evaluation provided by the applicant indicates the land does not require further consideration under Clause 7(1)(b) and (c) of SEPP 55.

10.2 REPs

SREP (Sydney Harbour Catchment) 2005

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

11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

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

Clause 8(5) of WLEP 1995 prescribes that Council shall not grant consent to development unless it is satisfied that the proposal is consistent with such aims and objectives of the LEP as set out in Clause 2 and such objectives of the zone within which the development is proposed to be carried out that apply to the proposed development.

The proposed use is considered to be within the definition of “restaurant” rather than “café” under the WLEP 1995 given that seating facilities are provided, food and beverages can be purchased and consumed on the premises or taken away. On the 28 November 2008 draft amendment No.60 was gazetted, which now permits the use of land for a “restaurant” in Zone No 3(c) Neighbourhood Business.

The proposal satisfies the requirements of Clause 8(5) of WLEP 1995 given that ‘restaurants’ are permitted within the Neighbourhood Business 3(c) zone and is consistent with the aims and objectives of the LEP as set out in Clause 2 and the specific objectives of the Neighbourhood Business 3(c) zoning, which are:

- (a) *to establish a neighbourhood shopping centre zone which allows a less intensive form of development than occurs in the main commercial centres and which does not prejudice the viability of those main centres*
- (b) *to provide for development of a scale and type compatible with the amenity of the surrounding residential area*
- (c) to allow for residential development mixed with non-residential purposes in order to promote urban consolidation

The proposed hours of operation (7am to 12pm, seven days a week), however, are inconsistent with the intent of the Neighbourhood 3(c) zone, particularly as the recent approval for the Mamacino cafe within the subject building was required to close at 8:00pm. As such, in order to maintain the amenity of the commercial and residential precinct in Old South Head Road and Dudley Road and in accordance with the aims and objectives of the Neighbourhood Business 3(c) zone in Clause 8(3) of Woollahra LEP 1995, the trading hours of the proposed restaurant are limited to 7am to 10pm seven days a week, with out door seating limited from 9am to 9pm seven days a week in **Condition I.1**

7.2 Statutory compliance table

Site Area: 999.1m ²	Existing	Proposed	Control	Complies
Overall Height	18.5m	<9.5m to top of proposed works	12m	Yes

7.3 Height

Clause 12 of WLEP 1995 stipulates a maximum height of 12m. The proposal does not alter the overall height of the building and the proposed works comply with this requirement and are consistent with the height objectives outlined under Clause 12AA of WLEP 1995.

11.7 Other special clauses/development standards

Clauses 26-33 Heritage and conservation area provisions: Clause 27 requires Council to consider the impact of a proposed development upon the heritage significance of surrounding heritage items. The adjacent building to the south (894 -896 Old South Head Road, Rose Bay) is listed as a heritage item under Schedule 3 of WLEP 1995.

The proposed development primarily consists of a change of use and shop fit out, which will not adversely impact upon the significance of the adjoining heritage item. The proposal is therefore acceptable with regard to Clause 27 of WLEP 1995.

13. DEVELOPMENT CONTROL PLANS

13.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

Not relevant as the proposed does not involve any change to the existing built form and therefore involve no change to the existing numerical data pertaining to the existing on site structure (ie. unbuilt upon area, setbacks, soft landscaping, external wall height).

Site analysis performance criteria (*Part 3*)

Part 3 of WRDCP 2003 requires adequate site analysis documentation for development applications. The application is considered to be satisfactory in this regard.

C. 3.2.1 requires development to fit into the surrounding environment and pattern of development by responding to the surrounding neighborhood character and streetscape.

The locality is characterised by a mix of 2, 3 and 4 storey mixed commercial/residential developments of various architectural styles. The proposed commercial use as an Indian restaurant shop is to be consistent with the other commercial uses within the locality and will not have any significant adverse impact upon the amenity of the locality. Accordingly, the proposal is considered to be satisfactory with the above-mentioned criteria.

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

The subject site is located within the Rose Bay Precinct (Street Section 4). The relevant future character objectives of the Rose Bay Precinct aim to encourage development scale to relate to the function and role of the streets to which the development addresses, larger development scale on the major streets including Old South Head Road adjacent to the commercial centre, to reinforce a consistent building scale across both sides of the street, to reinforce the topography of the precinct, to encourage well-designed contemporary buildings and to protect important public views.

The proposal is for fit-out and use and does not propose to change the external elements of the existing building with the exception of outdoor seating. Accordingly the proposal is considered to be satisfactory with regard to the objectives and performance criteria of Part 4.9.

Building size and location performance criteria (Section 5.2)

The proposal will not alter the existing building envelope of the mixed use building. Accordingly, the proposal is considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under Part 5.2 of WRDCP 2003.

Streetscape performance criteria (Section 5.1)

The proposed commercial use as an Indian restaurant and fit-out will be at street level and will provide a service to the local community. It will provide an active street frontage and will facilitate neighbourhood surveillance. In addition, the proposed outdoor seating is considered minor and will not impact on the scale of the development, the role of the street or pedestrian circulation.

Deliveries for the restaurant will be through the rear access door via the car park entrance, with access via Dudley Road, and will not interfere with the amenity of residents in the building. An appropriate condition has been recommended by Council's Health Officer with regard to exhaust emissions so that no interference is caused to the amenity of residents, refer to **Condition C.4**.

Accordingly, the proposal is considered to be consistent with the objectives and performance criteria of Part 5.1.

Acoustic and visual privacy performance criteria (Section 5.8)

No objections have been received from adjoining property owners with regard to loss of visual and acoustic privacy. Notwithstanding this, the proposal is considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under Part 5.8 of WRDCP 2003 for the following reasons:

- **Condition I.6** requires noise levels not to exceed background noise levels.
- **Condition I.1** requires the hours of operation to be (7am to 10pm seven days a week) which will provide additional service to local residents without adversely impacting on the amenity of the area, given that the closing time of 10pm is typical for the commercial zoning of the shop.
- **Condition I.1** requires the hours of use of the outdoor seating to be limited to 9am – 9pm seven days a week.

Subject to the above mentioned condition, the proposal accords with the provisions of Part 5.8 of WRDCP 2003.

Mixed development in business zones performance criteria (Section 5.12)

This part of the WRDCP applies to development within the Neighbourhood Business 3(c) zone, and therefore applies to the subject building. The DCP recognises the importance of maintaining use of such buildings and the benefits they provide to surrounding residences.

The relevant objectives for this part seek state:

“O5.12.1 The mix of residential and non-residential land uses helps preserve the commercial viability of neighbourhood shopping areas and is consistent with the availability of services and public transport in the locality

O 5.12.2 Development provides an active street frontage and facilitates neighbourhood surveillance”

With regard to the relevant objectives for this part, it is considered that the proposal is satisfactory for the following reasons:

- The proposed use will be confined to the ground level front section of the building, thereby complying with the “Land use mix” criteria stipulated under C 5.12.1 and C 5.12.2.
- The building is located at the street frontage, provides an active relationship with the streetscape and maintains the existing awning, to provide shelter for pedestrians, thereby complying with the “Street frontage” criteria stipulated under C 5.12.3, C 5.12.4 and C 5.12.6.
- The development will maintain the predominant built form character of the immediate locale and building proportions of the street, thereby complying with the “Identity and character” criteria stipulated under C 5.12.17, C 5.12.4 and C 5.12.18.

It is considered that the proposal is satisfactory and will not result in adverse impacts on surrounding properties. As such, it is considered that the proposal is satisfactory with respect to Part 5.12 of WRDCP 2003.

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

Retail premises are required to provide 3.3 car parking spaces per 100m² of gross floor area which is multiplied by 0.8 for the Rose Bay North precinct. The subject premises (shop 1), has a gross floor area of 130m², thereby requiring 4 car spaces (spaces rounded up as per DCP). Restaurants are required to provide 15 car parking spaces per 100m² of gross floor area which is multiplied by 0.8 for the Rose Bay North precinct. The subject premises (shop 1), has a gross floor area of 130m², thereby requiring 16 car spaces (spaces rounded up as per DCP).

Part 6.7 of the Car Parking Development Control Plan stipulates where a change of use of a building or premises will require additional car spaces due to an intensification of use, the Council will require additional spaces to those already in existence equivalent to the difference between the requirements of the new use and the current use, provided that any deficiency in parking spaces existing at the time of the proposed change of use will be excluded from the calculation. Given the existing retail use has a credit of 4 car parking spaces and the proposed restaurant use is to provide 16 car parking spaces, there is an additional requirement of 12 car parking spaces.

The mixed use development on the subject site (DA580/2004/1) was approved on 6 December 2004 and comprised the following: -

“... a total of 31 adequately dimensioned off-street car parking spaces are provided; 23 spaces at Parking Level 1 and 8 spaces at Dudley Road Level. Vehicular access to the off-street car parking is via Dudley Road. The 8 spaces at Dudley Road Level are to be allocated to the retail component of the development.”

Condition 83 states the following: -

83. Allocation of retail car parking spaces

In order to ensure the adequate allocation of off-street car parking spaces to the retail component of the development, all 8 and spaces at Dudley Road Level are to be used exclusively by customers of the three retail areas.

Given there are (3) retail tenancies on the Dudley Road level, Condition 83 of DA580/2004 would allocate 2 spaces to the subject premises.

Having regard to the (2) spaces required to be allocated to the premise there is a shortfall of (10) car parking spaces.

Having regard to the shortfall, the performance of the proposal is assessed against the objectives outlined in Clause 1.3(b) of Council's car parking policy.

The scale and nature of the development and its traffic generation

The scale and nature of the proposal is considered to be compatible with existing commercial and residential developments in the surrounding area. Councils Development Engineer has raised no objection to the proposal on traffic generations grounds.

The availability of other public parking areas in the vicinity of the development.

There is provision of on-street parking on nearby roads. Many of the customers will live in the residential part of the building at the site or within the local neighbourhood and will not require parking. In addition, the NSW Road and Traffic Authority's October 2002 Guide to Traffic Generating Development Issue 2.2 states '*suburban restaurants with take-away facilities often have significant levels of trading occurring near the end of the evening peak period*'. The proposed restaurant is located within suburban locality and will be providing take-away facilities. As commercial uses tend to close within the evening, the demand for car parking spaces within the locality will be alleviated.

Traffic volumes on the road network in the area of the development

It is not considered that the proposal will result in a significant increase in additional traffic given that many customers will live locally or will use the restaurant whilst visiting other businesses. In addition, customers may use public transport which is available within the vicinity of the site. Councils Development Engineer has raised no objection to the proposal on traffic generations grounds.

The probable mode of transport of users to and from the development.

It is likely that many customers will live locally and will walk to the restaurant. There is also adequate public transport within the vicinity of the site. Those customers who drive to the premises will be able to use the on-street parking in the vicinity of the site.

The characteristics of the streetscape and site, particularly the subdivision pattern, topography, street design and width, street tree planting, on street parking or loading spaces and any existing arrangements.

The site fronts three roads, Towns Road, Old South Head Road and Dudley Road. Deliveries for the restaurant will be through the rear access door via the car park entrance to the development accessed via Dudley Road.

In summary, notwithstanding the (10) car space shortfall in terms of Council's car parking code, it is considered that the proposal is satisfactory in this regard given that many customers are likely to live locally and will walk to the premises, adequate buses service the area and on-street parking is available in the vicinity of the site for those customers who choose to drive. Furthermore, Council Development and Traffic Engineer raised no objections to this issue.

Accordingly, the proposal is considered to satisfy the requirements of the Car Parking DCP.

Other DCPs, codes and policies

Footway License Policy and Procedures

The objectives of this Policy are to ensure that any activity on Council's footway:

1. *Contributes to the improvement of the streetscape.*
2. *Provides attractive and safe surroundings in which people may enjoy food and refreshments.*
3. *Does not adversely affect surrounding properties.*
4. *Does not obstruct pedestrian traffic.*

The following comments are made in relation to the above-mentioned objectives:

- The proposed outdoor seating would provide a pleasant outdoor eating environment with minimal disturbance to pedestrian circulation (subject to **Condition A5**).
- The proposed tables and chairs are considered to be satisfactory in terms of visual amenity.
- The proposed footpath restaurant will improve the liveliness of the locality which is considered to be desirable under the provisions of Council's WRDCP.
- Subject to **Condition I.1** limiting hours of the footpath restaurant to the approved hours of trading to Monday to Sunday 9am–9pm and **Conditions I.6 and I.7** imposed by Council's Environmental Health Officer mitigating excessive noise generation, the proposal will not have any significant adverse impact upon the amenity of residential properties located to the east.

The above-mentioned conditions address a number of the requirements stipulated under the Policy. In relation to other matters for consideration stipulated under the Policy, the following comments are provided:

- Council's Development Engineer raises no objection to the proposal on the basis of the state of the footpath, traffic generation or off-street car parking demand.

Subject to the above-mentioned conditions, the proposal is considered satisfactory with regard to the provisions of Council's Footway License Policy and Procedures.

13.3 Woollahra Access

Under the provisions of the Environmental Planning and Assessment Act 1979 (NSW), the Building Code of Australia and the Disability Discrimination Act 1992 (CTH) the consent authority is required to consider access for people with a disability.

Under Council's Access Development Control Plan, Class 6 buildings (as defined by the provisions of the Building Code of Australia) are required to have facilities fully accessible and are encouraged to be upgraded for visitor access for people with a disability.

It is noted that the front entry to the restaurant has a gradual ramp from the footpath to the shop entry, thereby achieving compliance with the requirements of the Access DCP and the Disability Discrimination Act 1992. As such, the proposal is considered to be satisfactory with regard to the Access DCP.

Part F2.3 of the Building Code of Australia 2008 Food Safety Standards, requires that the toilets are always accessible during business operating hours and shall be suitably located for use by both staff and customers. Concerns are raised by Councils Environment health Officer, Louie Salvatore, as to whether the toilets facilities within the 'main building' are for the exclusive use by patrons of the proposed restaurant; are open at all times during operating hours (10am-10pm, seven days a week) and the location in providing a reasonable distance to access the toilets. Christine Kelly, of Imagescope Interiors Design Studio, advised Council that the sanitary facilities on same level, can be accessed via the rear door within approximately 4 to 5 metres in distance. Accordingly, the proposal is considered to be satisfactory in this regard, subject to **Conditions C5**.

14. APPLICABLE REGULATIONS

Part F.4 of the Building Code of Australia and Australian Standards relates to the ventilation of the premises. This had been addressed by standard conditions of consent. Refer to **Condition C.2** and **C.4**.

15. THE LIKELY IMPACTS OF THE PROPOSAL

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

16. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

17. SUBMISSIONS

The proposal was advertised and notified in accordance with Council's Advertising and Notifications DCP. Eight (8) submissions were received.

Six letters of support were received from:

Serge Golman, Unit 6, 2-16 Towns Road, Rose Bay
Marina Mirkina, Unit 15, 2-16 Towns Road, Rose Bay
Andrew Starr, Unit 2, 698-704 Old South Head Road, Rose Bay
Paul Hadida, Unit 3, 739 Old South Head Road, Vaucluse
Elia Leis, Unit 1, 2-16 Towns Road, Rose Bay

The supporters raised the following benefits:

- The shop has been vacant for over two years.
- The proposed use will contribute to a positive streetscape appearance and lively village atmosphere.
- The proposed use will provide a greater diversity and choice for residents.
- The proposed use will improve safety by increasing passive surveillance.
- The proposed use is part of a mixed use developed which permits the use.

Two objections were received from:

Gary Rev, Unit 10, 2-16 Towns Road, Rose Bay
Mr A and Mrs T Surany, Unit 9, 698-704 Old South Head Road, Rose Bay

The objectors raised the following issues:

- Impact of fumes from the kitchen exhaust.

The proposed Indian restaurants exhaust air and spill shall be discharged to atmosphere in such a manner as not to cause danger or nuisance to occupants in the building, occupants of neighbouring buildings or members of the public. The proposed exhaust air-discharge system is required by **Condition C.5** and Clause 3.7.2 and 3.7.3 of AS 1668.2-1991 for mechanical ventilation and air-conditioning of building. In addition, the proposed restaurant is required to meet **Condition C.5** which will ensure any significantly adverse impact upon the amenity of neighbouring properties associated with the fumes will be addressed.

- Inappropriate noise levels.

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

- Lack of parking.

This is addressed within the 'site suitability' and 'DCP for off-street car parking provision and servicing facilities' section of the report.

- Traffic congestion.

This is addressed within the 'site suitability' and 'DCP for off-street car parking provision and servicing facilities' section of the report.

18. CONCLUSION - THE PUBLIC INTEREST

The proposal, as conditioned, is considered to be acceptable against the relevant considerations under s79C.

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. 551/2008 for use of Shop 1 as a restaurant including a new fitout and seating on land at 698-704 Old South Head Road, 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)
CD02PL & CD03SE, issue 5	Architectural Plans	Imagespace Design Studios	8 July 2008
Pages 1-5	Statement of Environmental Effects	Imagespace Design Studios	6 August 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 Prescribed Conditions

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

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

Standard Condition: A30

A.5 Property and Projects

1. Development consent only gives approval to the use. Prior to any footpath seating or tables being installed, the Applicant must first complete a S125 Roads Act approval form (available from customer services). A fee is payable as prescribed by Council's adopted fees and charges.
2. The proposed footpath dining must at all times comply with the standards contained in Woollahra Council Footway Licence Policy and Procedures as amended. This condition has been imposed to ensure the objectives of this code are maintained at all times.
3. The licence agreement sets out the terms and conditions under which that use may be carried out. As well as those terms and conditions the following is also included:
 - (i) At all times, the tables and chairs must be arranged strictly in accordance with any approval.
 - (ii) Proposed tables and seating are to be fully removable and must not encroach onto neighbouring property frontages.
 - (iii) The additional tables and chairs must be of a high quality and maintained to a high standard.
4. The area to be occupied under the licence, and the dimensions of the tables and chairs on the footpath, must be strictly in accordance with the development consent. Occupation of areas outside the licence area or installation of more than the approved number of seats and tables may result in fines and or termination of the licence.

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

B.1 Construction Certificate required prior to any demolition

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

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

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

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

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

- a. The sanitary facilities being made available for the use by patrons during the approved operating hours of 7am to 10pm, Monday to Sunday.

- b. Sanitary facilities for the proposed 72 seating area of the proposed restaurant being provided in accordance with Part F2.3 of the Building Code of Australia 2008.
- c. The bar area being provided with hand washing facilities (hand basin) in a position that can be easily accessed by food handlers. The hand basin being provided with warm running potable water supplied through a common outlet or mixer tap.

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.	\$4,000	No	T115
INSPECTION FEES under section 608 of the Local Government Act 1993			
Security Administration Fee	\$175	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$4,175 Plus any relevant indexed amounts and long service levy		

Building & Construction Industry Long Service Payment

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

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

How must the payments be made?

Payments must be made by:

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

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

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

Standard Condition: C5

C.3 Waste Storage – Mixed Developments (both commercial and residential)

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

- a. the storage of waste and recycling bins behind the building line or within non-habitable areas of the building,
- b. two separate centralised waste and recycling rooms or areas, one for commercial waste and one for residential waste. They must be self-contained and have separate keys and locking systems.
- c. the path for wheeling bins between the waste and recycling storage area and the collection point must be free of steps and kerbs and having a maximum grade of 1:8. The waste storage area must be as close as possible to the service road collection point.
- d. bins to be stored with lids down to prevent vermin from entering the waste containers.
- e. smooth impervious floor graded to a floor waste and provided with a tap and hose to facilitate regular cleaning of the bins. A waste storage area that is located internal to the building must be fitted with both a hot and cold water supply and hose cocks. Wastewater must be discharged to the sewer in accordance with the requirements of Sydney Water.
- f. walls and ceilings of the waste storage area must be constructed of an impervious material with a smooth finish. The junction between the walls and the floor must be covered with a minimum radius of 25mm to prevent the accumulation of waste matter.
- g. the garbage storage area must be well lit to enable use at night. A timer switch must be fitted to the light fitting to ensure the light is turned off after use.
- h. Odour problems must be minimised by exhaust ventilation.

- i. Both putrescible and recycling bins/crates must be stored together. Recycling bins must never stand alone. They must always be located beside putrescible waste bins. Putrescible bins must be located closest to the entrance to the waste storage room.
- j. Signage on the correct use of the waste management system and what materials may be recycled must be posted in the communal waste storage cupboard/ room or bin bay.

Standard Condition: C18

C.4 Professional Engineering Details

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

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

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

C.5 Light & Ventilation

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

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

Standard Condition C59

C.6 Acoustic Certification of Mechanical Plant & Equipment

The *Construction Certificate* plans and specification required to be submitted pursuant to clause 139 of the *Regulation* must be accompanied by a certificate from a *professional engineer* (acoustic engineer) certifying that noise from the operation of mechanical plant and equipment, namely the kitchen exhaust ventilation will not exceed the background noise level when measured at any boundary of the site.

Where sound attenuation is required this must be detailed.

Note: Further information including lists of Acoustic Engineers can be obtained from:

1. **Australian Acoustical Society**—professional society of noise-related professionals (www.acoustics.asn.au/index.php).
2. **Association of Australian Acoustical Consultants**—professional society of noise related professionals (www.aaac.org.au).

C.7 Food Premises – Construction Certificate Plans & Specifications

The person with the benefit of this consent must submit to Council details for the construction and fit out of food premises. Such details must demonstrate compliance with the *Food Act 2003*, *Food Regulation 2004*; the *Food Standards Code* as published by Food Standards Australia and New Zealand and Australian Standard AS 4674-2004: *Construction and fit out of food premises*.

No *Construction Certificate* relating to the construction or fitout of food premises must be issued until Council's Environmental Health Officers' have advised in writing that the plans and specification are considered satisfactory.

The details for the construction and fit out of food premises, as considered satisfactory by Council's Environmental Health Officers' must form part of any *Construction Certificate*.

Note: The assessment of food premises fitout plans and specifications is subject to an adopted fee. The construction and fitout of food premises is not listed under clause 161 of the *Environmental Planning & Assessment Regulation 2000* as a matter that a *Certifying Authority* may be satisfied as to. Hence, the detailed plans & specifications must be referred to Council and be to Council's satisfaction prior to the issue of any *Construction Certificate* for such works.
Standard Condition: C65 (Autotext CC65)

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

D.1 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

E. Conditions which must be satisfied during any development work

E.1 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

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

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

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

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

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

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

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

E.2 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.3 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.4 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 (Autotext EE23)

E.5 Food Premises – Construction & Fitout

The *principal contractor* or *owner builder* must ensure that all construction and fitout of the food premises complies with the details for the food premises submitted to and considered satisfactory by Council's Environmental Health Officers but no less compliant than with the *Food Act 2003, Food Regulation 2004*; the *Food Standards Code* as published by Food Standards Australia and New Zealand and AS 4674-2004: *Construction and fit out of food premises*.

This condition has been imposed to protect public health and ensure that food premises are easily maintained in a clean condition fit for food preparation and consumption.

Standard Condition: E29

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 Food Premises - Inspection and Registration

Prior to the issue of any *Occupation Certificate* or occupation or use of any food premises:

- a. the *Principal Contractor* or *owner* must arrange an inspection of the fit out of the Food Premises by Council's Environmental Health Officer;
- b. a satisfactory final inspection must have been undertaken by Council's Environmental Health Officer; and
- c. the *owner* or *occupier* must have registered the Food Premises (Notification of conduct under section 100 of the *Food Act 2003*).

Note: Notification can be done on-line at www.foodnotify.nsw.gov.au

Note: Inspections are subject to payment of the adopted inspection fee.

Note: Section 100 of the *Food Act 2003* requires:

“100 Notification of conduct of food businesses

(1) The proprietor of a food business must not conduct the food business unless the proprietor has given written notice, in the approved form, of the information specified in the Food Safety Standards that is to be notified to the appropriate enforcement agency before the business is conducted. Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.”

Note: *Accredited Certifiers* are unable to issue *Compliance Certificates* in relation to compliance with the *Food Act 2003*, *Food Regulation 2004*; the Food Standards Code and the Australian Standard AS 4674-2004: *Construction and fit out of food premises*; since these are not matters which an *Accredited Certifier* can be satisfied in relation to under Clause 161 of the *Regulation*. This condition can only be satisfied following an inspection and sign off from Council’s Environmental Health Officers.

Standard Condition: F15 (Autotext FF15)

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

Nil

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

Nil

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

I.1 Trading hours

- a. The trading hours are limited to 7am – 10pm seven days a week
- b. The hours of use of the outdoor seating are limited to 9am – 9pm seven days a week

Reason: This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

Note: Deliveries to or dispatches from the site must not be made outside these hours. Trading Hours may be more onerous than these general hours of use. This condition does not apply to activities such as cleaning which takes place wholly within the building and which are not audible within any adjoining residential dwelling. If internal activities are audible within any adjoining residential dwelling such that they cause a nuisance to the occupiers of such dwelling than such internal activities must not occur outside these hours of use. This condition does not restrict the operation of noise pollution laws.

Standard Condition: I1

I.2 Delivery hours

The hours of delivery are limited to:

- a. Monday to Sunday 7am to 7pm

Reason: This condition has been imposed to mitigate amenity impacts upon the neighbourhood by commercial or retail trading including, but not limited to, external impacts associated with clients attending the site for business or otherwise.

Note: This condition does not apply to deliveries to, or dispatches from, the site of wholesale goods or internal activities that occur under the approved hours of use. General use and deliveries or dispatches may be restricted by hours of use conditions. This condition does not restrict the operation of noise pollution laws.

Standard Condition: I2

I.3 Waste Management - Commercial

Waste Management must comply with the *approved Waste Management Plan*.

Waste and recycling bins/crates must be removed from the road or footpath within 1 hour of collection or otherwise in accordance with the *approved Waste Management Plan*.

This condition does not apply to the extent that Activity Approval exists under the Local Government Act 1993 or the Roads Act 1993 and subject that all conditions of such approval(s) are complied with.

Reason: This condition has been imposed to ensure that all waste and recycling receptacles are removed from public places following collection to ensure there is no unnecessary obstruction of footpaths or roads and no unnecessary visual amenity impacts.
Standard Condition: I15

I.4 Food Premises - Maintenance of Food Premises

The food premises must be maintained in accordance with the *Food Act 2003, Food Regulation 2004*; the Food Standards Code as published by Food Standards Australia & New Zealand and Australian Standard AS 4674-2004: *Construction and fit out of food premises*.

Reason: This condition has been imposed to protect public health.

Note: The provisions of the Food Act 2003 may change over time and irrespective of this condition compliance with this *Act*, regulations, food standards and other standards adopted under the Food Act (as amended) are mandatory. The *Food Act* and applicable regulations can be accessed free of charge at www.legislation.nsw.gov.au.
Standard Condition: I30 (Autotext I130)

I.5 Outdoor lighting – Commercial

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

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

Note: Council may consider, subject to an appropriate section 96 application relaxation of this condition where it can be demonstrated, by expert report, that the level of lighting in the existing area already exceeds the above criteria, where physical shielding is present or physical shielding is reasonably possible.
Standard Condition: I43

I.6 Noise from mechanical plant and equipment

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

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

Note: Words in this condition have the same meaning as in the:

NSW Industrial Noise Policy (http://www.environment.nsw.gov.au/resources/ind_noise.pdf) ISBN 0 7313 2715 2, dated January 2000, and
Noise Guide for Local Government (<http://www.environment.nsw.gov.au/noise/nglg.htm>) ISBN 1741370671 , dated December 2004.

I.7 Noise Control

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

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

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

Useful links:

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

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

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

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

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

Department of Gaming and Racing - (www.dgr.nsw.gov.au).
Standard Condition: I50

I.8 Use of outdoor dining area

The chairs and table's area must at all times:

- (i) Comply with the standards contained in Woollahra Municipal Council Footpath Restaurant Code as amended.
- (ii) Be arranged strictly in accordance with the DA 'approved' plan.
- (iii) Be fully removable and not encroach onto neighbouring property frontages.
- (iv) Be clean and maintained to a high standard.

Note: This condition is imposed to ensure that the seating and tables do not cause nuisance to the public, create a hazard, or appear unsightly.

J. Miscellaneous Conditions

Nil

K. Advising

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

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

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

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

Warnings as to potential maximum penalties

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

Warning as to enforcement and legal costs

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

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

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

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

Standard Advising: K1

K.2 Builders Licences and Owner Builders Permits

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

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

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

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

Standard Condition: K5

K.3 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.4 Workcover requirements

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

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

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

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

Standard Condition: K7

K.1 Appeal

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

Daniel Barber, Assessment Officer on (02) 9391 7126

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.2 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.3 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.4 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

Mr Daniel Barber
ASSESSMENT OFFICER

Mr David Booth
ACTING TEAM LEADER

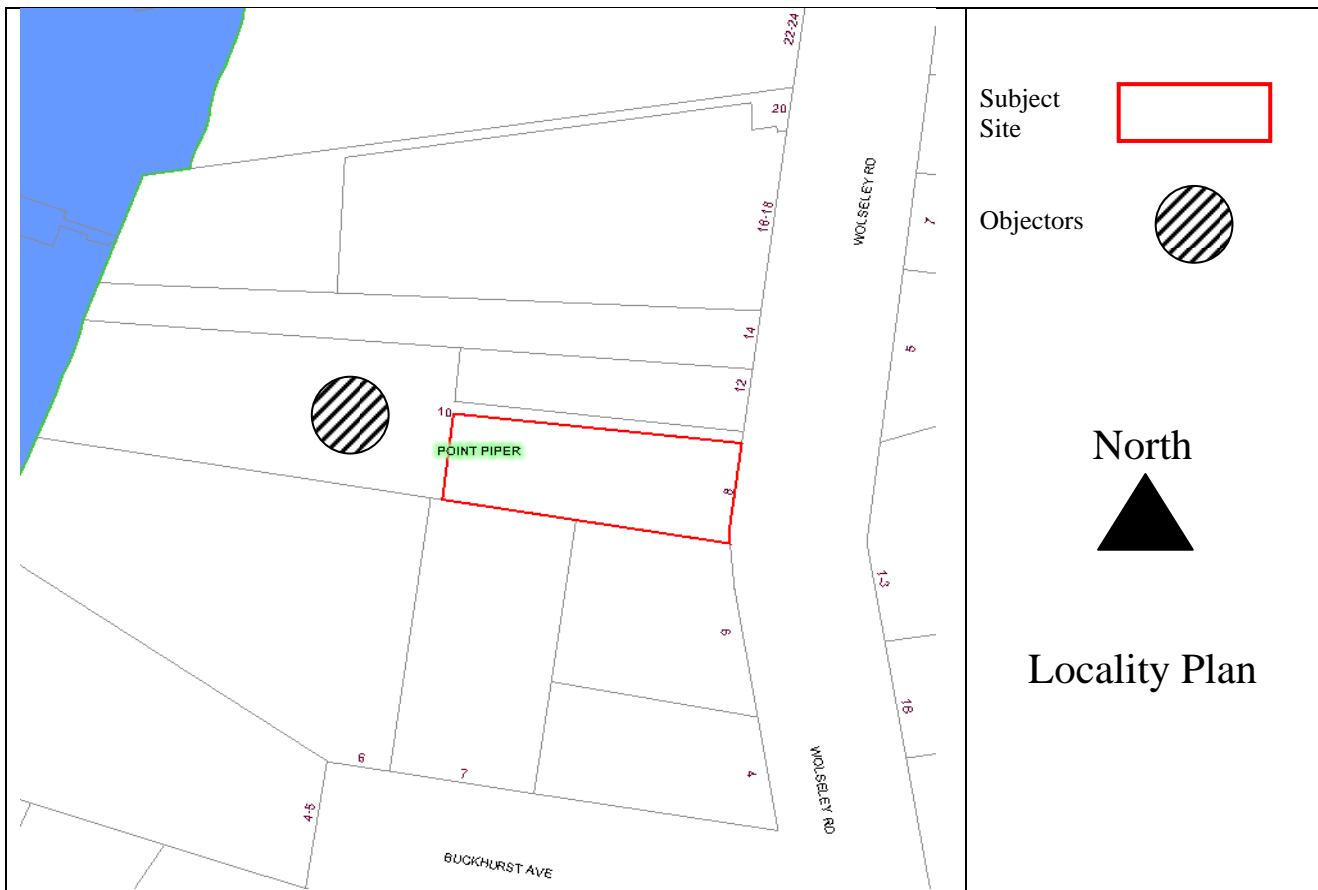
ANNEXURES

1. Plans and elevation
2. Internal Environmental Health referral response

SECTION 96 APPLICATION ASSESSMENT REPORT

ITEM No.	D4
FILE No.	DA 209/2005/2
ADDRESS:	3/8 Wolseley Road, Point Piper
EXISTING CONSENT:	Alterations and additions including retaining wall
TYPE OF CONSENT:	Local
DATE OF CONSENT:	22 May 2006
ZONING:	Residential 2b
PROPOSED MODIFICATION:	Raise retaining wall by 400mm
DATE S96 LODGED:	29/08/2008-original application 8/10/2008-amended Plans
CONSENT AUTHORITY:	Council
APPLICANT:	Mrs A McKillop
OWNER:	Mr B A Mc Killop
AUTHOR:	Ms B Thomas

LOCALITY PLAN



1. SUMMARY

Reason for report

The application does not satisfy the criteria for determination under staff delegation as there are unresolved objections. Accordingly, the application is referred to the Application Assessment Panel for determination.

Issues

- Height of retaining wall
- Visual Impact

Objections

One objection was received to the original proposal.

In response to notification of the amended plans (received 8th October 2008), one further written objection was received from the previous objector (No.10 Wolseley Road) reiterating previous concerns. These issues are discussed in this report.

Recommendation

The application is recommended for approval, subject to conditions.

2. DESCRIPTION OF APPROVED PROPOSAL

The approved development includes the following works:

- Provision of a level grassed area (approximately 102.4m²) at the rear of an existing two storey residential flat building by excavation for footings increasing the height of the existing concrete retaining wall along the rear boundary from 2.3 metres to 3.97 metres (from the varying levels external to the site at the rear).
- Infilling behind this wall with soil to raise the ground level to that adjacent to the rear terrace of the ground floor unit.
- An iron palisade fence is proposed to the rear boundary (atop the new retaining wall) and the rear section of the northern side boundary which includes a sandstone faced blockwork arch with timber gate to replace an existing brushwood fence and open accessway.
- A new window to the wall of the rear residential unit on the southern side to increase levels of natural light to an existing bedroom.

3. DESCRIPTION OF PROPOSED MODIFICATION

The original Section 96 application proposed to raise the western and northern edge of the retaining wall and lower terrace by 200mm.

The applicant amended the proposal and the modification involves the following works:

- Raising the western and northern edge of the retaining wall and lower terrace by 400mm

4. DESCRIPTION OF SITE AND LOCALITY

The subject site is known as No.8 Wolseley Road, Point Piper. The site comprises Lot 1 in DP735314 and is located on the western side of Wolseley Road with a site area of 626.8m². The allotment is rectangular in shape, sloping steeply (approx 7 metres) from the street level to the rear boundary.

Existing on site is a two storey residential flat building with garaging on the street. The building is of brick construction with a tiled roof. The rear private open space of the subject site is currently formed as two terrace levels retained by stone block retaining walls with proposed grass on the upper level and lower level.

The subject site is separated from the 2 storey dwelling to the north (No.8 Wolseley Road) by a public footway and flight of steps leading to a paved courtyard area, adjacent to a four storey block of units to the rear (No.10 Wolseley Road) which is flanked by a series of terraced garden beds that slope down from the rear boundary of the subject site.

Surrounding development is predominantly residential, comprising a mix of residential flat buildings and large dwellings.

5. PROPERTY HISTORY

- DA469/2003 for a new concrete block retaining wall with steel balustrade and landscaping was refused on 26/9/03.
- The original development application was on an agenda for the application assessment panel on 24th January 2006.

The DA was called by Councillors Rundle & Cullen for height & loss of amenity to be considered by the Development Control Committee on Monday 6 February 2006.

A memo was forwarded by the assessment officer for the DCC meeting which stated the following:

It should be noted that the current proposal is for a maximum wall height of 3.97m (existing ground level external to the site RL16.83 to top of proposed retaining wall RL20.80 + 1.2m fence)

At the Development Control Committee on Monday 6 February 2006 Councillor's Rundle and Shoebridge resolved: **THAT** the matter be referred to a site inspection meeting to be held on 8 February 2006.

At the Development Control Committee on 20th February 2006 Councillor's Rundle and Comino Recommended:

THAT the Council, defer consideration of Development Application No. 209/2005 for alterations and additions including retaining wall on land at 8 Wolseley Road Point Piper, for the applicant to confer with staff and neighbours on an alternative design for the retaining wall, preferably a concave design cutting into the north western corner of the wall incorporating an intermediate terraced garden level that aligns closer to the contours of the site.

Amended plans were submitted on 1 March 2006, including the following amendments:

- Reduction in the proposed height of the retaining wall on the western (rear) boundary (and subsequently north-western corner) by **800mm**;
- “Stepping” of the proposed rear lawn area, resulting in two levels to facilitate reducing the height of the proposed retaining wall at the rear boundary;
- Rebuilding the existing stone wall in the centre of the rear yard to retain the two levels proposed; and
- Retention of the existing stone retaining wall on the northern side boundary “as is” for the section extending from the new gate adjacent to the dwelling to the existing planter towards the rear.

The application was approved at the Development Control Committee on 22nd May 2006.

6. REFERRALS

No comments required from internal or external approval bodies.

ASSESSMENT UNDER S96

7.1 S96 (1A) Modification involving minimal environmental impact

Not applicable.

7.2 S96 (2) Other modifications

The proposed modification would have some impact on the amenity of adjoining property owners and the environment. Accordingly, the proposal falls under the ambit of Section 96(2).

7.3 S96AA Modification of a consent granted by the Court

Not applicable.

7.4 Substantially the same development

It was considered that the proposed modification is within the essence of the approval and the proposed modification is relative to the scope of the approved works. Accordingly, the proposal would be substantially the same development to that which was originally approved, thus satisfying the relevant criteria prescribed by the Act.

7.5 S96 (2) (b) Consultation with Minister, public authority or approval body

Not applicable.

7.6 Threatened species

Not applicable.

ENVIRONMENTAL ASSESSMENT UNDER S.79C

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

8. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

8.1 SEPPs

State Environmental Planning Policy No.55 – Remediation of Land

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

8.2 REPs

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

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

The proposed modifications to the retaining wall would be located below the dwelling house and would be distantly visible from the Harbour but would not have an adverse visual impact and is consistent with the scale of adjoining buildings and the objectives of the SREP. It is therefore considered that the proposal meets the relevant requirements of the SREP and is acceptable.

8.3 Section 94 contribution

Not additional contributions are required.

8.4 Other relevant legislation

None relevant.

9. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

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

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

9.2 Statutory compliance table

Site Area: 626.8m ²	Approved Development	Proposed Modification	Control	Complies
Overall Height - (retaining wall)	3.17m	3.57	9.5m	Yes

* Existing non-compliance

9.3 Height

The proposed works would have a maximum height of 3.57m which complies with Council's statutory height requirement of 9.5m under Clause 12 of WLEP 1995.

It is considered that, subject to conditions of consent, the proposal is consistent with Clause 12AA being the objectives of the building height standard of the Woollahra LEP 1995.

9.4 Other special clauses/development standards

Clause 18 Excavation: The natural landform had already been altered with the original approval. The proposed works will raise the ground level by 400mm but will not alter the natural form. No excavation is required for the proposed works.

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

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

10. 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.

10.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

Site Area (626.8m ²)	Approved Development	Proposed Modification	Control	Complies
Side and Rear Fence Height	1.2m	1.2m	1.8m	Yes
Palisade Fence	4.37m	4.77m	1.8m	No*
Palisade fence and retaining wall				

* Existing non-compliance

Site analysis performance criteria (Part 3)

The submitted documentation generally accords with the objectives of Section 3.1 of the WRDCP 2003.

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

The site is contained within the Point Piper Precinct. The works are not contrary to the objectives and performance criteria of the Precinct.

Streetscape performance criteria (Section 5.1)

The proposed works would be restricted to the rear of the subject site and would not be visible from the streetscape.

Fences and walls performance criteria (Section 5.4)

The S96 modification is to increase the retaining wall height by 400mm, (2 courses of bricks) to a maximum height of 3.57m, (RL20.4), refer to **Condition 35**.

C5.4.10 stipulates that where there is a difference in ground level in excess of 1.2m either side of the boundary, the height of the boundary fence may increase to 1.15m from the level of the high side. The proposal is non compliant with this control.

The proposed increase in height of the retaining wall is acceptable for the following reasons:

- The retaining wall is not visible from the streetscape
- The increase in height is equivalent to 2 rows of bricks. The increase in height would result in a significant gain for the amenity of the subject site by providing level private open space without adversely impacting on the amenity of adjoining properties
- The top of the adjacent retaining wall at the adjoining property No 7 Buckhurst Avenue is RL21.82; 1.42m higher than the proposed retaining wall-(refer to Photo 1)
- The increase in height would not increase overlooking to 10 Wolseley Road as it is already prevalent and there is 13metre separation between the retaining wall and No. 10 Wolseley Road which is a significant distance within a dense urban environment
- The retaining wall does not adversely impact on any view loss
- Adjacent to the retaining wall is access stairs for No. 10 Wolseley Road the retaining wall would provide a visual impact to these stairs. The stair/accessway is a thoroughfare which is 2metres wide and people would not utilise this space other than for site access, therefore the visual impact is perceived to be minimal- (refer to Photo 2)
- Existing dense vegetation is located in front of the retaining wall (to the west and north) mitigating views of the retaining wall particularly from No. 10 Wolseley Road- (refer to Photo 2, 3 and 4)
- The stability of the retaining wall is ensured through **Conditions 33 and 34**
- **Condition 3** is imposed to ensure the wall at the rear boundary shall consist of sandstone faced reinforced concrete block or similar to match the materials of the retaining wall to the northern boundary retaining wall
- The area surrounding the retaining wall is unusable space due to the access stairs, dense vegetation and topography of the surrounding land- (refer to Photo 2 and 4)
- It is perceived that the increase in the height for the wall by 0.4m would not create any additional amenity impacts



Photo 1-view of open space of subject site



Photo 2-view of north west section of retaining wall



Photo 3-view of western section of retaining wall

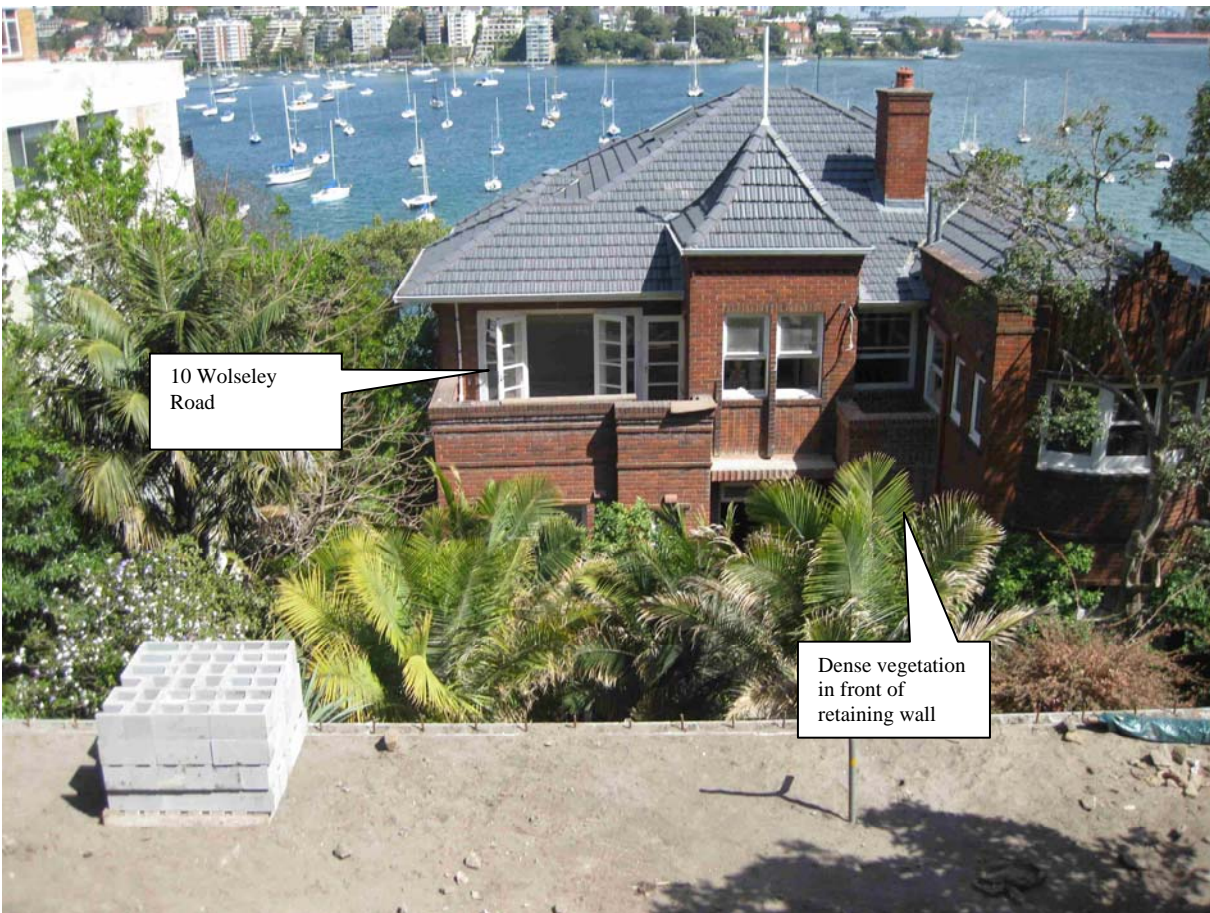


Photo 4-view from subject site looking towards 10 Wolseley Road

Considering the proposed increase is only 0.4m in height and there are no perceived amenity impacts, the retaining wall is considered to be acceptable.

Views performance criteria (Section 5.5)

It is not envisaged that the proposal would result in a reduction of views to the harbour or existing vistas from the public domain.

Stormwater management performance criteria (Section 5.7)

Stormwater runoff from the proposed works is to drain to the existing stormwater drainage system via proposed stormwater pits at the rear corners of the site. The amount of impervious surfaces on the site would not be increased as a result of the proposal.

The proposal is considered acceptable in regards to the objectives and relevant specific performance criteria for *stormwater management*, subject to condition (see **Condition No.5**).

Acoustic and visual privacy performance criteria (Section 5.8)

It is considered that the proposed lawn area at the rear boundary of the site would increase the potential for overlooking of balconies and windows of the residential flat buildings to the west (rear) of the site. Privacy impacts would be lessened by the distance between the two properties of approximately 13m. Existing overlooking is already significant (refer to Photo 4) and by increasing the height people standing at the edge of the property would look over and above the window line of No. 10 Wolseley Road.

Condition 4 requires a 1m wide garden bed at the rear boundary of the site restricting occupants from standing at the rear boundary fence would reduce opportunities for overlooking of the residential flat building to the rear.

Combined with the distance of separation (13m) and the planter box the works would ensure privacy would be maintained to No. 10 Wolseley Road.

10.2 Other DCPs, codes and policies

No other DCPs, codes and policies are applicable.

11. APPLICABLE REGULATIONS

No other regulations are applicable.

12. THE LIKELY IMPACTS OF THE MODIFIED DEVELOPMENT

All the likely impacts of the modified development have been addressed elsewhere in this report.

13. SUBMISSIONS

The proposal was advertised and notified in accordance with Council's Advertising and Notifications DCP on 10-24th September 2008.

A submission was received from:

B and A Howarth from 4/10 Wolseley Road Point Piper

The amended plans were renotified on 14th-28th October 2008.

Submissions were received from:

- **David Roseman** from Unit 5 and 6/10 Wolseley Road Point Piper- supporting the application.
- **B and A Howarth** from 4/10 Wolseley Road Point Piper

The objectors raised the following issues:

- Height and Bulk of the retaining wall-the fence is approved at NW corner at 4.4m including palisade fence and is not set back 1.5m from the boundary.

Comment: Refer to Fences and walls performance criteria (*Section 5.4*)

- Loss of Amenity

Comment: Refer to Section Acoustic and visual privacy performance criteria (*Section 5.8*)

- Geotechnical Stability of retaining wall

Comment: To ensure the structural stability of the wall **Conditions 33** and **34** have been imposed. Condition 34 requires a certificate from a professional engineer (Structural Engineer), certifying the adequacy of the existing supporting structure to support the additional loads proposed to be imposed by the development, must be submitted with the Construction Certificate application.

14. CONCLUSION - THE PUBLIC INTEREST

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

15. 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.

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

THAT Council, as the consent authority, modify development consent to Development Application No. 209/2005 part 2 for alterations and additions including retaining wall on land at 8 Wolseley Road Point Piper, in the following manner:

The addition of the following conditions:

1.a Approved Amended (s96) Plans and supporting documents

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

Reference	Description	Author/Drawn	Date(s)
2005-28/1A 2005-28/2B 2005-28/3B 2005-28/4A 2005-28/5B 2005-28/6B 2005-28/7A	Architectural Plans	Drawtech Group Pty Limited	Stamped Amended and Received 8/10/08

Note: These plans and supporting documentation may be subject to conditions modifying the development imposed under section 80A(1)(g) of the *Act* (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)
Standard Condition: A6

This consent relates to the work, shown in colour, on plans numbered 2005-28/1A, 2005-28/2B, 2005-28/3B, 2005-28/4A, 2005-28/5B, 2005-28/6B and 2005-28/7A, dated 27/2/06, drawn by Drawtech Group Pty Limited, all of which carry a Council stamp “**Approved DA Plans**” and the signature of a Council officer, except where amended by the following conditions:

33. Structural Adequacy of Existing Supporting Structures

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

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

34. 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

35. Height of Retaining wall

The retaining wall at the rear (west) and side (northern) boundaries shall reach a maximum height of RL20.40. This condition is imposed to ensure the retaining wall reaches a maximum height and does not create additional bulk and scale.

Ms B Thomas
ASSESSMENT OFFICER

Mr D Waghorn
TEAM LEADER

ANNEXURES

1. Plans and elevation