



# Application Assessment Panel

**Agenda:** *Application Assessment Panel*

**Date:** *Tuesday 10 July 2007*

**Time:** *3.00pm*

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

## **Outline of Meeting Protocol & Procedure:**

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

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

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

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

# WOOLLAHRA MUNICIPAL COUNCIL

## Notice of Meeting

2 July 2007

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

CC: The Mayor  
All Councillors

### **Application Assessment Panel Meeting – 10 July 2007**

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Application Assessment Panel** to be held in the **Committee Room, 536 New South Head Road, Double Bay, on Tuesday 10 July 2007 at 3.00pm.**

Gary James  
General Manager

# Meeting Agenda

## Part One of One Part

Item	Subject	Pages
1	Apologies	
2	Late Correspondence	
3	Declarations of Interest	
<b>Items to be Decided by this Committee using its Delegated Authority</b>		
D1	Confirmation of Minutes of Meeting held on 3 July 2007	1
D2	DA175/2003 Part 2 – 18 Edgecliff Road, Woollahra – Section 96 Application – Proposed modification to delete Condition No. 2 to allow deck & increase height of roof – 27/3/2007 <b>*See Recommendation Page 3</b>	2-18
D3	DA170/2004 Part 5 – 98 Birriga Road, Bellevue Hill – Section 82A Review Refusal of Section 96 modification – 20/4/2007 <b>*See Recommendation Page 27</b>	19-41
D4	DA603/2006 – 13 Glenview Street, Paddington – Alterations & additions to existing terrace – 18/9/2006 <b>*See Recommendation Page 52</b>	42-80
D5	DA804/2006 – 124 Boundary Street, Paddington – New boundary walls to rear courtyard – Retractable awning – Reflection pond & garbage bin enclosure to the laneway – 29/11/2006 <b>*See Recommendation Page 91</b>	81-116

**Item No:** D1 Delegated to Committee  
**Subject:** **Confirmation of Minutes of Meeting held on 3 July 2007**  
**Author:** Les Windle, Manager - Governance  
**File No:** See Application Assessment Panel Minutes  
**Reason for Report:** The Minutes of the Meeting of Tuesday 3 July 2007 were previously circulated. In accordance with the guidelines for Committees' operations it is now necessary that those Minutes be formally taken as read and confirmed.

**Recommendation:**

That the Minutes of the Application Assessment Panel Meeting of 3 July 2007 be taken as read and confirmed.

Les Windle  
Manager - Governance

# Application Assessment Panel Report

Meeting 10 July 2007

Item No. D2  
Date 29 June, 2007  
File No. DA 175/2003/2  
To Application Assessment Panel  
From Mr D Lukas  
Address **SECTION 96 APPLICATION - 18 EDGECLIFF ROAD  
WOOLLAHRA 2027**

Woollahra  
Municipal  
Council



ABN 32 218 483 245

Redleaf Council Chambers  
536 New South Head Road  
Double Bay NSW 2028

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## Preamble:

The original application was presented to the Application Assessment Panel on 26 June 2007. The Panel resolved as follows:

*THAT Development Application No. 175/2003/2, for proposed modification to delete Condition No. 2 to allow deck & increase height of roof on land at No. 18 Edgecliff Road Woollahra, be referred to the meeting of the Application Assessment Panel to be held on 10 July 2007 for further consideration to allow Council's Heritage Officer to comment in respect of the proposed condition regarding the proposed balcony over the original roof form.*

Following this resolution, the application, together with the recommended condition, was referred to Council's Heritage Officer, Louise Thom for comment.

## Consideration:

The application was referred to Council's Heritage Officer with the recommended condition (refer to the original report attached as Annexure 1) who provided the following comments:

*The proposal to shorten the deck to 2.1 metres and erect two side privacy screens of 1700mm will decrease the visibility of the persons on the deck considerably. The privacy screens will be partially visible but not to such an extent that they will be intrusive given that the rest of the roof addition is already visible.*

*The amended condition is considered to be acceptable.*

The applicant addressed the Panel and requested a variation to the wording of the condition so that the proposed deck can rest on the existing roof without penetration. This recommended variation to the wording of the condition would have no consequential impact on the intent of the recommended condition.

**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. 175/2003 part 2 for alterations and additions to existing dwelling on land at 18 Edgecliff Road Woollahra, in the following manner:

**Condition No. 1 is deleted and replaced with:**

**1. Approved Plans**

This consent relates to the work, shown in colour, on plans numbered DA-02-C, DA-03-C, DA-04-C, DA-05-C, dated 18 July 2003, drawn by Hill Thalys, all of which carry a Council stamp “*Approved DA Plans*” and the signature of a Council officer; as amended by works shown coloured on plan number DA-03C and DA04C, date received 27 March 2007, drawn by drawn by Hill Thalys Architecture, and which carry a Council stamp “*Approved Section 96 Plans*” and the signature of a Council officer, except where amended by the following conditions.

**Condition No. 2 is deleted and replaced with:**

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

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

- The deck is to be limited to a length of 2.1metres, with an additional 900mm of seating provided to its northern end, and should not extend in width any greater than the projecting walls to the north facing fenestration to the approved first floor study/living room.
- The original principal roof to the front of the terrace house is to be retained and should not be altered or penetrated.
- Privacy screens can be provided to a height of 1.7metres above the finished floor level of the deck to its east and west ends.

**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.

Mr D Lukas  
**SENIOR ASSESSMENT OFFICER**

Mr M Schofield  
**TEAM LEADER**

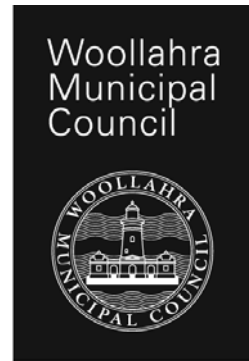
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ANNEXURES

1. Original Assessment Report dated 26 June 2007

# Memorandum

Item No. D3  
Date 2 July, 2007  
File No. DA 170/2004/1  
To The Mayor & all Councillors  
CC All Staff  
From Mr L Adey  
Address **98 BIRRIGA ROAD BELLEVUE HILL 2023**



ABN 32 218 483 245

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At the Application Assessment Panel dated 26 June 2007 the Panel resolved in the following manner:

*THAT Development Application No. 170/2004/5, for Section 82A Review of refusal of Section S96 modification, on land at No. 98 Birriga Road, Bellevue Hill, be deferred to the Application Assessment Panel meeting, to be held 10 July 2007, at the request of the applicant.*

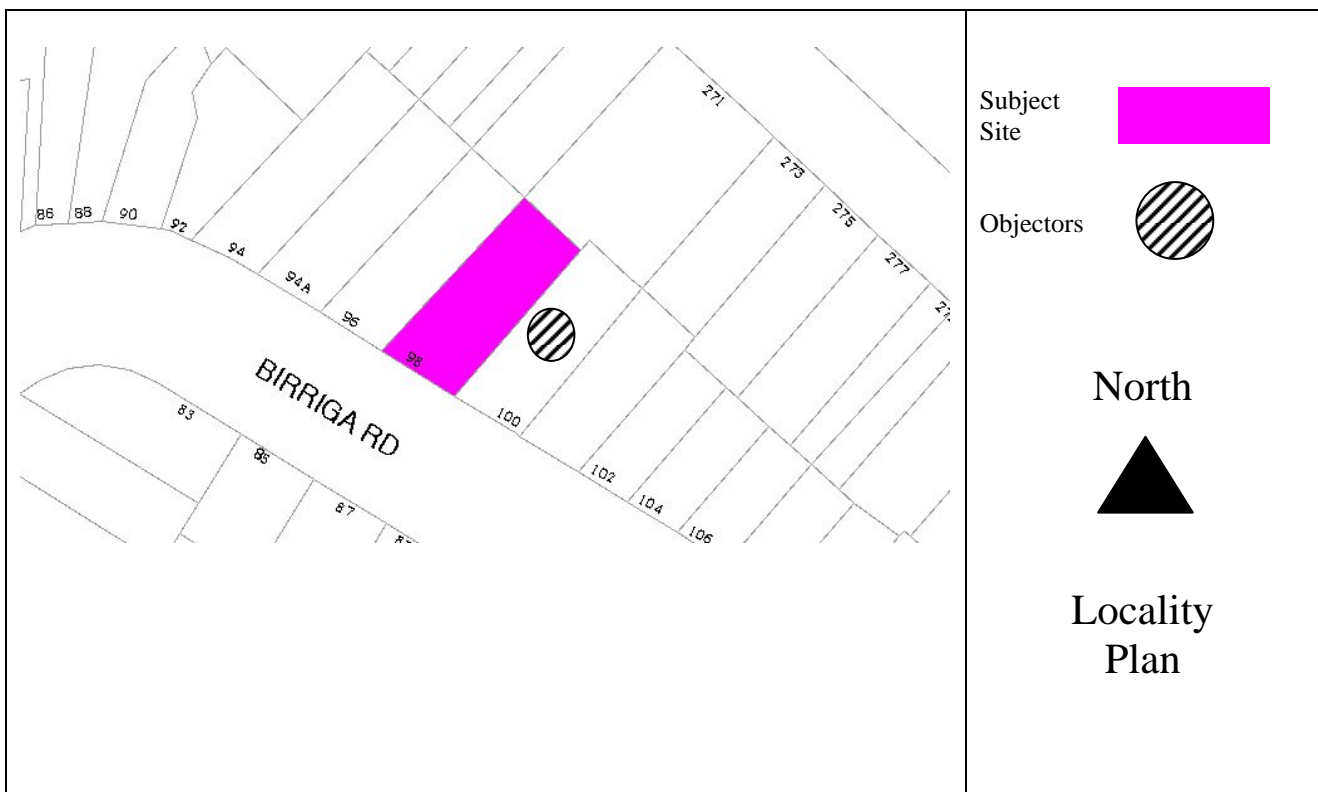
Regards

Sue O'Connor  
Secretarial Support - Governance

## SECTION 82A REVIEW OF DETERMINATION REPORT

<b>ITEM No.</b>	D3
<b>FILE No.</b>	DA 170/2004/5
<b>ADDRESS:</b>	98 Birriga Road BELLEVUE HILL 2023
<b>PROPOSAL:</b>	Addition of roof access and balustrade and deletion of metal screens
<b>DATE DA DETERMINED:</b>	20 September 2004
<b>SUBJECT OF REVIEW:</b>	Refusal of Section 96 modification
<b>DATE S82A REVIEW APPLICATION LODGED:</b>	20/04/2007
<b>APPLICANT:</b>	Ms E Knight
<b>OWNER:</b>	Lily Liu Designs Pty Limited & Mr R H Steele
<b>REVIEW OFFICER:</b>	Ms J Askin

### LOCALITY PLAN



## 1. SUMMARY

### Reason for report

The proposal seeks to review the refusal of the Section 96 application to DA170/2004 (being DA170/2004/5). As this application was refused under delegated authority, the application is referred to the Application Assessment Panel for determination.

### Issues

- Privacy

### Objections

One objection received.

### Recommendation

Refusal.

## 2. BACKGROUND

DA170/2004 was approved on 20 September 2007 for the demolition of the existing residential flat building and the construction of a five storey residential flat building comprising 3 x 3 bedroom units with car parking.

DA170/2004/2 was approved on 8 November 2005 for various internal and external modifications.

DA170/2004/3 was approved on 6 October 2006 for the correction of a minor error relating to Condition No. 3 of the development consent.

DA170/2004/4 was approved on 8 November 2006 for the deletion of Condition No. 3 relating to the height of the front fence and the imposition of a new Condition No. 3.

DA170/2004/5 was refused on 15 February 2007 for the addition of roof access and balustrade and deletion of metal screens (roof terraces) for the following reasons:

### 1. *Roof Terraces*

*The roof terrace will allow for an unacceptable level of overlooking to the adjoining property to the south east (100 Birriga Road) and is therefore contrary to Clause 11AA(c) and Clause 12AA(c) of Woollahra LEP 1995 and objective O5.8.1 and C5.8.6 of Section 5.8 of Woollahra RDCP 2003.*

## 3. DESCRIPTION OF PROPOSAL SUBJECT OF REVIEW

DA170/2004/5 sought development consent for the following works:

- Addition of an uncovered roof terrace with 1 metre high balustrade
- Addition of a staircase (with enclosure) servicing the roof terrace

The subject proposal seeks development consent for the above works but has reduced the uncovered roof terrace to an area of 14.4m<sup>2</sup> to be located on the north-western section of the roof.

#### **4. DESCRIPTION OF PROPOSED REVIEW**

The proposal seeks to review the refusal of the Section 96 Application DA170/2004/5 and has submitted amended plans to address the reasons for refusal.

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

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

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

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

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

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

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

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

#### **6. CONSIDERATION OF REVIEW**

This section of the report addresses the reasons for refusal and the comments provided by the applicant:

##### **6.1 Reasons for Refusal**

The Section 96 modification to allow for the construction of the staircase providing access to the roof and the provision of a roof terrace area was refused for the following reasons:

## **1. Roof Terraces**

*The roof terrace will allow for an unacceptable level of overlooking to the adjoining property to the south east (100 Birriga Road) and is therefore contrary to Clause 11AA(c) and Clause 12AA(c) of Woollahra LEP 1995 and objective O5.8.1 and C5.8.6 of Section 5.8 of Woollahra RDCP 2003.*

## **6.2 Applicant's Comments**

The applicant provided the following comment with the Section 82A Review:

*"We propose a significantly reduced balustraded area, deleting the whole of the area to the east of the proposed access stair.*

*The whole of the remaining accessible area will be approximately 20 metres away from the 100 Birriga Road and the access stair will form a physical barrier between the roof terrace and 100 Birriga Road.*

*The original size of the "roof terrace" proposed was 37.4m<sup>2</sup>.*

*The modified size proposed in this Section 82A review is 14.4m<sup>2</sup>.*

*The rooftop access is primarily for maintenance, providing safe access for:*

- *Maintenance of the air-conditioning condenser unit for the subject unit*
- *Access to the abseiling hooks required by work cover for window cleaning. Birriga Road being a major road, windows at the upper levels will require monthly cleaning at the least*
- *Regular maintenance of stormwater drains on roof to prevent blockages*

*The windows on the north western façade of the subject property are four storeys above ground level and the only way to clean these windows is from above, using the hooks provided.*

*The amended area of balustraded roof encompasses the abovementioned air conditioning units and 2 of the 5 stormwater outlets. The balustrade will allow for these points to be accessed safely, and with safety harnessing, the rest of the stormwater outlets and the abseiling hooks will also be accessible.*

*As the application is being assessed as a potential entertaining space, issues have also been raised in Council's assessment report. We are now addressing these issues in the following ways:*

- ***Overlooking of No. 100 Birriga Road (FSR and height)***

*The proposed 20 metre separation between the roof terrace and the closest balcony of 100 Birriga Road is very close to the planning principle established in Meriton v Sydney City Council (2004) NSWLEC 313 which suggests 24 metres between habitable rooms for tall buildings.*

*The separation between the two buildings is significant, with both buildings having vehicular access along their common boundary.*

*The access stair will act as an acoustic and physical barrier between the trafficable roof area and private open space of 100 Birriga Road.*

▪ ***Roof terraces are not typical in the area***

*In Super Studio v Waverley Council (2004) NSWLEC 91, the Senior Commissioner stated*

*The surrounding houses do not have roof terraces, so a roof terrace would be a new element in the area. This does not mean that it is inappropriate, only that its impact should be assessed with heightened sensitivity. A roof terrace would be acceptable only if its impact were minor or negligible.*

*The assessment report assesses the original roof terrace application as supportable in terms of desired future precinct character and streetscape criteria.*

*The assessment report states:*

*The form and scale of the proposed development is maintained as the staircase enclosure is considered to be minimal in size, particularly in terms of width. The amenity of adjoining properties is maintained in terms of views and solar access. However, the extent of overlooking from the roof terrace itself to 100 Birriga Road is considered excessive and unreasonable.*

*We consider safe and permanent access to the rooftop of this building is a necessity due to maintenance and work cover issues. The minimal size of the reduced roof terrace and the separation from 100 Birriga Road addresses the main concerns of Council with the original proposal.*

*In its amended format, the impact of the roof terrace is minor, as it is a small access structure with minimal effect on the amenity of properties either side.*

▪ ***WRDCP 2003 requires that .. terraces.. within a development are suitably screened to prevent direct views into habitable rooms or private open space of adjacent dwellings:***

*The access stair will act as a privacy screen between No. 98 and No. 100 Birriga Road both in directing any potential overlooking towards the property's own rear garden and being a physical barrier between the remaining accessible area of roof and 100 Birriga Road.*

*The outlook on the western side is to the roof top of No. 96 and Council's original report states:*

*The roof terrace does not present any undue impact to overlooking .. of 96 Birriga Road*

*Due to the relative levels of the two properties and the setback of the balustrading by 1.2 metre from the external wall, there are no potential sightlines into any window of No. 96 Birriga Road from the proposed terrace. The setback of the balustrade by 1 metre from the rear will prevent any overlooking into the adjacent garden (5 storeys below).*

*As discussed in Council's report, and our original application, provision of vertical structures as privacy screens is not an option in this case as it is important to minimise the apparent bulk of the building.*

*The application as regards the mesh screening to the main access stair (levels 1-4) remains the same. Council's report on this states that "the deletion of metal privacy screens is considered to be acceptable".*

### *Conclusion*

*The reduction of the area of the roof terrace, apart from mitigating the potential privacy and overlooking impacts on the adjoining property at No. 100 also renders it far less attractive as a potential entertainment area.*

*In its reduced format, the impact of the proposed terrace is minor and is therefore in keeping with the Senior Commissioner's ruling in Super Studio v Waverley Council (2004) NSWLEC 91."*

## **6.3 Response to Applicant's Comments and Assessment**

### ***Overlooking of No. 100 Birriga Road***

The proposal has been modified to reduce the potential impact on the privacy of No.100 Birriga Road in terms of acoustic and visual privacy. The useable roof area has been significantly reduced and is located to the west of the proposed stair enclosure.

It is acknowledged that this goes some way to reducing the impact on the adjoining property due to the distance created. However, the proposal does not seek consent to use the terrace as an extension of existing private open space and therefore, an assessment in terms of privacy is not required at this stage.

It is acknowledged that such a proposal would raise serious concerns.

### ***Roof Terraces are not typical in the area***

The applicant acknowledges that the planning principle from Super Studio v Waverley Council (2004) requires that impact of such a roof terrace should be assessed with heightened sensitivity and that this should apply in this instance.

Whilst the original assessment of the proposed terrace concluded that the form and scale of the proposed development is maintained as the staircase enclosure is minimal in size, the issue relates to the actual provision of a roof terrace and for which purpose.

The applicant has indicated that the proposal will be used for providing access for maintenance purposes only. However, the construction of such a high level of access and the ability to use the terrace safely would allow for the area to be used for entertaining purposes and this would introduce amenity issues for adjoining property owners. The stairs provides access directly from one unit and not from a common area and could easily be used as private open space.

The proposed works for the purposes of maintenance access only are considered to be excessive and are not typical for the area and therefore cannot be supported.

### ***Screening in accordance with RDCP 2003***

The proposed measures outlined in RDCP 2003 are required where a roof terrace is proposed to be used as private open space and has the potential for overlooking into private open space and habitable rooms of adjoining properties. As this application only seeks the area to be used for maintenance purposes, such measures are not required.

#### **6.1 Substantially the same development**

The subject proposal has been amended since the determination of the original Section 96 modification, in terms of the area provided

The proposed modifications are minor relative to the scope of the proposal under the Section 96 modification and the proposal under the Section 82A Review is considered to be substantially the same as that originally submitted.

#### **7. SUBMISSIONS**

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

1. S Tspiris, 13/100 Birriga Road, Bellevue Hill

The objections raised the following issues:

- **Loss of visual and acoustic privacy:**

The proposal seeks to provide access for the purposes of maintenance only. As this would not be a highly trafficable area, the proposal would not affect the privacy of adjoining properties, to the same extent that an area of private open space at roof level would. However, the proposal is not supported in its current form as the level of access and the provision of balustrading to the roof area would allow for this area to be used as private open space.

#### **8. CONCLUSION**

The proposal has been amended since the Section 96 modification to address the reasons for refusal. However, the proposal is still considered to be unsatisfactory, as such works would allow the area to be used for a purpose beyond which the proposal is seeking consent for. The claim that the reduction in the space to 14.4m<sup>2</sup> renders unattractive for private use is not considered valid.

Maintenance can still be undertaken on the building without the need for an access stair, enclosure and balustrade.

The proposal has been assessed against the reasons for refusal and it is considered that these reasons are valid and the refusal be reaffirmed.

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

THAT Council, as the consent authority, having considered the application for review of its determination, resolve to maintain its refusal of the Section 96 determination to development consent to Development Application No. 170/2004 for the demolition of an existing residential flat building and the erection of a five storey, residential flat building containing 3 x 3 bedroom apartments with associated parking for 6 vehicles and landscaping works on land at 98 Birriga Road Bellevue Hill, for the following reasons:

**1. Roof terrace**

The roof terrace and associated works are considered to be unnecessary in terms of allow access for maintenance purposes and will allow for an unacceptable level of overlooking to adjoining properties. This is therefore contrary to Clause 11AA (c) and Clause 12AA (c) of Woollahra LEP 1995 and objective O5.8.1 and C5.8.6 of Section 5.8 of Woollahra RDCP 2003.

Ms J Askin  
**REVIEW OFFICER**

Mr G Fotis  
**TEAM LEADER**

**ADVISINGS**

**1. Appeal**

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Mr G Fotis. 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, 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 assessor having the full authority to completely determine the matter at the conference.

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**ANNEXURES**

1. Original assessment Report
2. Plan and Elevations

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>ITEM No.</b>	D4
<b>FILE No.</b>	DA 603/2006/1
<b>PROPERTY DETAILS</b>	13 Glenview Street PADDINGTON 2021
	<b>Lot &amp; DP No.:</b> LOT: A DP: 108228
	<b>Side of Street:</b> Northern
	<b>Site Area (m<sup>2</sup>):</b> 1126.58m <sup>2</sup>
	<b>Zoning:</b> Residential 2(a)
<b>PROPOSAL</b>	Alterations and additions to existing terrace
<b>TYPE OF CONSENT:</b>	Local Development
<b>APPLICANT:</b>	Mr B J Carpenter & Mrs S R Carpenter
<b>OWNER:</b>	Mr B J & Mrs S R Carpenter
<b>DATE LODGED:</b>	18/09/2006 (original proposal) 2/4/2007 (replacement application) 12/6/2007 (revised application)
<b>AUTHOR:</b>	Mr G Fotis

### 1. RECOMMENDATION PRECIS

The application is recommended for conditional approval.

### 2. PROPOSAL PRECIS

The proposal is for alterations and additions to existing terrace.

### 3. LOCALITY PLAN



Ⓢ The Paddington Society

### 4. DESCRIPTION OF PROPOSAL

The proposed works include alterations and additions to the existing single storey cottage. The mid section of the existing dwelling would be almost totally reconstructed while the rear part of the house would have a new roof line and rear alignment. Specifically the works would include:

#### Ground Floor:

- Demolition of a number of internal walls to result in; study, reading room, open kitchen and dining room and lounge and WC
- Modification of existing fireplace for use with new heater
- Demolition of existing spiral staircase and new stairs to first floor
- Existing lightwell would be extended by 'stepping in' existing side boundary wall
- Rear extension and new stairs down to new lower level garage

#### First Floor:

- Alteration and additions to create new first floor level, which runs the whole length of the ground floor level with. To provide 3 bedrooms (one with ensuite bathroom and rear facing enclosed balcony), storage area and bathroom

#### Garage Level:

- New single garage accessed off Glenview Lane, with internal stairs leading up to ground floor level

External:

- An outdoor courtyard would be constructed on the roof of the proposed garage
- The existing corrugated roofing would be replaced with terracotta tiles
- The existing rear chimney would be demolished
- A rainwater tank would be located under the rear courtyard

A replacement application was submitted on the 2 April 2007. The following changes were made:

- The proposed garage, the stairs into the garage and the associated excavation was deleted
- The proposed privacy screen to rear elevation has been made lighter & transparent

Revised plans submitted on the 12 June 2007 including detailed shadow diagrams. The following changes were made:

- A privacy screen is to be installed to the window of bedroom No. 3
- The rear ridge was lowered and the roof over the rear section of the building was subsequently lowered

## 5. SUMMARY

Reasons for report	Issues	Submissions
The DA does not satisfy the criteria for determination under staff delegation	<ul style="list-style-type: none"> <li>• Loss of light/overshadowing</li> <li>• Heritage related concerns</li> </ul>	Two submissions were received.

## 6. ESTIMATED COST OF WORKS

The applicant's estimated cost of the proposed development at \$408 000 has been checked using our adopted practice and is considered to be accurate.

## 7. DESCRIPTION OF SITE OF LOCALITY

THE SITE AND LOCALITY	
<b>Physical features</b>	The subject site is located on the northern side of Glenview Street. The site has a irregular shape and a total area of 155m <sup>2</sup> .
<b>Topography</b>	The subject site does not contain any significant site features or vegetation. The site is relatively flat.
<b>Existing buildings and structures</b>	The subject site contains a single storey Federation terrace which is the first of a row of seven terraces.
<b>Environment</b>	The surrounding area is dominated by two storey terrace houses.

## 8. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	Residential
Previous relevant applications	N/A
Pre-DA	N/A
Requests for additional information	A Geotechnical and Hydrogeological Investigation was requested on the 21 September 2006 - Given the deletion of the garage structure the report is no longer required.
Amended plans/ Replacement Application	A replacement application was submitted on the 2 April 2007 and revised plans were received on the 12 June 2007.
Land & Environment Court appeal	N/A

## 9. REFERRALS

### 9.1 The following table contains particulars of internal referrals.

INTERNAL REFERRALS		
Referral Officer	Comment	Annexure
Heritage Officer	Satisfactory	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. STATE/REGIONAL INSTRUMENTS AND LEGISLATION

### 10.1 SEPPs

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

*State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* ("BASIX") does not apply to the proposed development.

#### State Environmental Planning Policy No. 55

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

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

### 10.2 REPs

#### Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

## 11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

### 11.1 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.

## 11.2 Statutory compliance table

Site Area (155m <sup>2</sup> )	Existing	Proposed	Control	Complies
Overall Height (metres)	7.2m	6.2m	9.5m	YES

## 11.4 Height

Clause 12 of the WLEP imposes a statutory height limit of 9.5m in respect to development on this land. No change is proposed to the existing height of the dwelling, with the works confined to below the main ridgeline of the building.

## 11.7 Other special clauses/development standards

**Clause 18 Excavation:** The proposed excavation is minor and is therefore acceptable in terms of Clause 18.

**Clause 19 HFSPA:** The proposal is not located within the HFSPA.

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

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

**Clauses 26-33 Heritage and conservation area provisions:** The subject site does not contain any heritage items. However the site is located within the Paddington Heritage Conservation Area. The amended proposal is considered to be sympathetic to the character and appearance of the conservation area.

## 12. DRAFT AMENDMENTS TO STATUTORY CONTROLS

N/A.

## 13. DEVELOPMENT CONTROL PLANS

### 13.1 Compliance table Paddington Development Control Plan

Site Area (155m <sup>2</sup> )	Existing	Proposed	Control	Complies
Height of Rear Addition to Single Storey Building (metres)	Below Ridgeline of Main Roof Over Existing Building	Below Ridgeline of Main Roof Over Existing Building	Below Ridgeline of Main Roof Over Existing Building	YES
Private Open Space (m <sup>2</sup> )	-	52m <sup>2</sup>	1/6 of Site Area or 26m <sup>2</sup>	YES
Soft Landscaping at Ground Level (%) or (m <sup>2</sup> )	-	37m <sup>2</sup>	50% of Required Private Open Space or 13m <sup>2</sup>	YES
Solar Access to Habitable Rooms, Private Open Space and Public Domain (Hours in mid winter)	> 2 hours	> 2 hours	2 Hours Between 9am and 3pm in Midwinter	YES

## **Street frontages**

No changes to the front façade of the building or to the front fence have been proposed as part of this development.

## **Rear elevations and yards**

The subject group of terraces were constructed with single storey rear sections as demonstrated by the majority of the terraces, which maintain single storey sections at the rear. The subject terrace and neighbouring terrace at 9 & 11 Glenview Street have been significantly altered to include a first floor addition. The proposal will conform to the design and proportions of the neighbouring terrace so that the impact of the altered form of the terraces will not be increased. In this regard, the proposal will match the established rear building alignments, and will not be out of scale with the surrounding development.

Opportunities for new alterations in a contemporary manner are afforded by the fact that the rear elevations of the group have a low degree of original integrity and it is not prominent from the public domain. In such “appropriate circumstances” the conservation area is best served through ensuring a high quality of new design, thus contributing a significant new layer to the conservation area. The building will never be read in pure elevation, and therefore one needs to consider how the additions will be perceived from Glenview Lane. Firstly, the rear elevation has little visibility from Glenview Lane. Secondly, because of the perspective from the lane the transparent screen element will be prominent, and very little glazing will be visible.

Therefore, the rear additions will be perceived as having a high degree of solidity from the public domain. As such the solid to void ratio of the rear of the building is considered to be satisfactory, particularly on the first floor that is visible from the public domain. A substantial rear courtyard will also be retained to be compatible with the rest of the group.

## **Roofs**

The original roof to the front section of the subject building will not be altered and the proposed rear additions will maintain the pitch of the rear roof form. The existing ridgelines will not be effected and the pitch of the rear roof will be lower than the ridge of the adjoining altered roof form at 9 Glenview Street

## **Site coverage, setbacks and levels**

The proposed development will not alter the levels of the site and will maintain the setbacks to the front and rear (increased setback to the central courtyard). The rear setback will continue to conform to the established rear alignment of the group. The proposal will retain the front garden area as well as the rear courtyard so that the site coverage will be proportionate to the neighbouring properties. Consequently, the proposal is considered to conform to the established levels and siting pattern of the group of terraces and complies with the requirements of this control.

## **Landscaping and private open space**

The majority of the private open space will be retained by the proposed development. The rear courtyard will be directly accessible from the main living areas and has a favourable northerly aspect. This area will also be capable of acting as an extension of the entertaining and recreational areas.

## **Building height, bulk and scale**

The height of the building will not be increased (revised plans) as the proposed alterations and additions will be below the existing ridgelines. As a result, the height of the building at the street frontage will remain unaltered and the two storey rear section will continue to be hidden from view from Glenview Street. The bulk of the building will be increased by the extension of the rear section towards the rear and into the central section although the proposed bulk will match the scale and bulk of the altered form of No's 7 and 9 Glenview Street. The additions will continue to be set lower than the adjoining terrace and will not dominate the single storey forms of the other terraces. The proposed additions will not extend past the established rear building alignment so that an increase in overshadowing will be contained to the roof area of 11 Glenview Street due to the orientation of the site.

The proposed bedroom 2 extension at the first floor level will result in a reduction in solar access to the small central courtyard and adjoining habitable rooms of No.11 Glenview Street. However, detailed shadow diagrams submitted by the architect clearly demonstrates that between 11am and 1 pm during the winter months direct sunlight will be retained to these areas.

As the proposed additions will continue to conform to the established heights and alignments the existing views towards the north from the surrounding properties will also be preserved. The proposal is considered to be satisfactory in regard to the requirements of this control.

## **Acoustic and visual privacy**

The proposed extension of the ground floor and the addition of bi-fold doors will not provide any additional overlooking opportunities. However, the proposed first floor bedrooms (B3 and B2) will result in some privacy being lost to the central courtyard of No. 11 Glenview Street. For this reason the applicant as part of his revised plans has incorporated a privacy screen to B3. This should also be provided to B2, which will ensure the privacy to No. 11 is preserved (refer to **Condition C1** of the recommendation). Consequently, it is considered that the proposal will not result in a loss of visual privacy to the adjoining properties.

## **Stormwater management**

The proposed development is consistent with 5.1.10 of the PDCP.

## **Water conservation**

The Paddington DCP seeks to incorporate measures to reduce the demand on domestic water supplies. As a new kitchen and bathrooms have been proposed a condition of consent has been recommended to ensure that low flow regulators, water saving shower heads and taps, and dual flushing toilets are installed in the development. Refer to **Condition C4** of the recommendation. In this regard, the proposed development is considered to satisfy Part 5.1.11 of the PDCP.

## **Chimneys**

The existing chimneys are to be retained.

## **Windows, doors and shutters**

As discussed above, the rear elevation is not a significant elevation, therefore there is opportunity for openings of contemporary proportion and materials.

## **Verandahs and balconies**

The proposed new balcony is considered to be of a design, which complements the form of the building and its context. The revised proposal incorporates a transparent screen to assist to minimise impacts on the visual privacy of surrounding properties.

In this respect, the proposed development is considered to be satisfactory in terms of Part 5.2.4 of the PDCP.

## **Materials and details**

The design of the alterations and additions responds to the historic context through reinterpreting historic forms in a contemporary manner. The sensitivity of the design rests in its simplicity. The rear forms are simple and modulated to create a rear wing form, while wall areas are kept solid, and balconies provided with depth and shading. The projecting roof forms are simple and unadorned.

## **Building types**

The existing building presents to Glenview Street as a single storey terrace although, as discussed previously, has been altered at the rear to incorporate a first floor level. The form of the front section of the building will not be altered and the height of the link section and two storey rear section will not be affected, so that the buildings contribution to the streetscape of Glenview Street will be preserved. The proposed alterations will not further detract from the character of the group as the works will conform to the adjoining modified terrace to present as a uniform pair. The rear additions are considered satisfactory in this regard and the character of the single storey terrace group will be maintained.

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

N/A

### **13.3 Woollahra Access DCP**

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

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

### **13.4 Other DCPs, codes and policies**

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

## **14. APPLICABLE REGULATIONS**

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

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

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

All the likely impacts of the proposed development have been addressed in the body of this report.

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

### Acid Sulphate Soil Area

The site is within a Class 5 Acid Sulphate Soil area identified in the Planning NSW Acid Sulphate Soil Risk Map. Classification 5 prescribes that that works within 500mm of adjacent Class 1, 2, 3 or 4 land requires preliminary testing is required to be conducted to confirm the presence of potential or actual acid sulphate soils in accordance with the Acid Sulphate Soil Manual 1998 Assessment Guidelines issued by DUAP, now Department of Infrastructure Planning and Natural Resources.

The proposal is not located within the vicinity to any other class of Acid Sulphate Soil.

## **17. SUBMISSIONS**

The proposal was advertised and notified in accordance with Council's Advertising and Notifications DCP. Two (2) submissions were received from:

1. The Paddington Society
2. Rachel Lynch from No. 11 Glenview Street Paddington

The objections raised the following issues:

- Overshadowing
- Privacy
- Heritage related concerns

### **Comment:**

The above concerns have been addressed in the body of this report.

The replacement application (as defined by Clause 90 of the *Environmental Planning and Assessment Regulation 2000*) was re-notified under clause 5.1 of the DCP.

As a result of the re-notification, submissions were received from:

- Paddington Society - Resubmitted
- Rachel Lynch from No 11 Glenview Street Paddington

The objections raised the following issues:

- Overshadowing
- Privacy
- Heritage related concerns

**Comment:**

The above concerns have been addressed in the body of this report.

**18. CONCLUSION - THE PUBLIC INTEREST**

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

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

THAT the Council, as the consent authority, grant development consent to Development Application No. 603/2006 for alterations and additions to existing terrace on land at 13 Glenview Street Paddington, 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)
Drawing No. DA10 to DA13 Revision D	Architectural Plans	Rob Design Office	6/6/2007

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

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

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

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

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

### A.5 Prescribed Conditions

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

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

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

## **B.1 Construction Certificate required prior to any demolition**

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

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

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

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

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

- a. A privacy screen (identical to the privacy screen provided to Bedroom No 3) is to be provided to the window of Bedroom No 2.

**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 Drainage to Lightwell Garden**

A double system of stormwater drainage shall be employed within the lightwell garden in order to avoid flooding of the subject and the adjoining property.

Details of this change shall be indicated on the plans submitted for a Construction Certificate to Council or the Accredited Certifier.

### **C.3 Materials**

Details of the colour, texture and substance of all external materials must be submitted to Council or the accredited certifier prior to the issue of a Construction Certificate and are to be to the satisfaction of an authorised Council assessment officer or the accredited certifier. For properties that are located in a Conservation Area or that are Heritage Items, the proposed materials must be to the satisfaction of Council's Heritage Officer.

#### C.4 Water conservation

In ensure compliance with Part 5.1.11 of the Paddington Development Control Plan, 1999, the use of low flow water regulators, dual flushing toilets and water saving shower heads shall be incorporated into the design of the development.

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

#### C.5 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
<b>LONG SERVICE LEVY</b> under Building and Construction Industry Long Service Payments Act 1986			
<b>Long Service Levy</b> Use Calculator: <a href="http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm">http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm</a>	Contact LSL Corporation or use their online calculator	No	
<b>SECURITY</b> under section 80A(6) of the Environmental Planning and Assessment Act 1979			
<b>Property Damage Security Deposit -</b> Making good any damage caused to any property of the <i>Council</i> as a consequence of the doing of anything to which the consent relates.	\$8 200	No	T600
<b>DEVELOPMENT LEVY</b> under Woollahra Section 94A Development Contributions Plan 2005 This plan may be inspected at Woollahra Council or downloaded from our website <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a> .			
Development Levy	\$4080 + Index Amount	Yes, quarterly	T94
<b>INSPECTION FEES</b> under section 608 of the Local Government Act 1993			
Security Administration Fee	\$163	No	T16
<b>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</b>	\$8 443 <b>Plus any relevant indexed amounts and long service levy</b>		

## **Building & Construction Industry Long Service Payment**

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

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

### **How must the payments be made?**

Payments must be made by:

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

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

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

### **How will the section 94A levy be indexed?**

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

### **Do you need HELP indexing the levy?**

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

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

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

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

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

- a. the guarantee is by an Australian bank for the amount of the total outstanding contribution;

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

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

Standard Condition: C5

### **C.6 Structural Adequacy of Existing Supporting Structures**

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

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

Standard Condition: C35

### **C.7 Professional Engineering Details**

The *Construction Certificate* plans and specifications, required by clause 139 of the Regulation, must include detailed *professional engineering* plans and 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 specifications must be submitted to the *Certifying Authority* with the application for any *Construction Certificate*.

Standard Condition: C36

### **C.8 Stormwater discharge to existing *Stormwater Drainage System* (Clause 25(2) WLEP 1995)**

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

- a. the location of the existing *Stormwater Drainage System* including all pipes, inspection openings, surface drains, pits and their discharge location,
- b. the state of repair of the existing *Stormwater Drainage System*,
- c. any remedial works required to upgrade the existing *Stormwater Drainage System* to comply with the BCA,
- d. any remedial works required to upgrade the existing *Stormwater Drainage System* crossing the footpath and any new kerb outlets,
- e. any new *Stormwater Drainage System* complying with the BCA,
- f. interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath,
- g. any rainwater tank required by BASIX commitments including their overflow connection to the *Stormwater Drainage System*, and

- h. general compliance with the Council's draft Development Control Plan Stormwater Drainage Management (draft version 1, public exhibition copy dated 23 August 2004)

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

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

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

**Note:** Stormwater Drainage Systems must not discharge to any Sewer System. It is illegal to connect stormwater pipes and drains to the sewerage system as this can overload the system and cause sewage overflows. See:  
<http://www.sydneywater.com.au/Publications/Factsheets/SewerfixLookingAfterYourSewerPipes.pdf>

**Note:** Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* dated January 2003 and Council's draft Development Control Plan Stormwater Drainage Management (draft version 1, public exhibition copy dated 23 August 2004) can be downloaded from Council's website:  
[www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)  
Standard Condition: C49

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

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

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

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

This condition does not apply:

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

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

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

## D.2 Construction Management Plan – Approval & Implementation

A construction management plan must be submitted to and approved by Council's Development Engineer before the commencement of demolition, excavation or construction works.

The Plan must:-

- a. describe the anticipated impact of the construction works on:
  - i. local traffic routes,
  - ii. pedestrian circulation adjacent to the building site,
  - iii. the public place including crown land and community land,
  - iv. and on-street parking in the local area.
- b. describe the means proposed to:
  - v. manage construction works to minimise such impacts,
  - vi. provide for the standing of vehicles during construction, and
  - vii. provide for the movement of trucks to and from the site, and deliveries to the site.
- c. show the location of:
  - viii. all proposed site sheds and any anticipated use of cranes and concrete pumps,
  - ix. any areas of Council property on which it is proposed to install a Work (construction) Zone, and
  - x. proposed structures such as hoardings, scaffolding or shoring, or to excavate.

The Plan must make provision for all materials, plant, etc. to be stored within the development site at all times during construction. Structures or works on Council property such as hoardings, scaffolding, shoring or excavation need separate approval from Council under the Roads Act 1993. Standing of cranes and concrete pumps on Council property or the road will need consent on each occasion.

**Note:** Separate approval is required for any proposed site crane, hoarding, work zone, road opening, road closure or the standing of any plant (crane or pump or the like) in any public place.  
Standard Condition: D9

## D.3 Site Signs

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

“Erection of signs

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

- b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - c. stating that unauthorised entry to the work site is prohibited.
3. Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
4. This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
5. This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws."

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

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

#### **D.4 Toilet Facilities**

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

Each toilet provided:

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

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

In this condition:

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

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

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

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

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

## D.5 Erosion and Sediment Controls – Installation

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

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

Where there is any conflict The Blue Book takes precedence.

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

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

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

**Note:** Section 257 of the *Protection of the Environment Operations Act 1997* provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution” **Warning**, irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.  
Standard Condition: D14

## D.6 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

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

- a. a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited Certifier, and
- b. the person having the benefit of the development consent has:
  - i. appointed a principal certifying authority for the building work, and
  - ii. notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- b1. the principal certifying authority has, no later than 2 days before the building work commences:
  - i. notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and

- ii. notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- b2. the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
- i. appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
  - ii. notified the principal certifying authority of any such appointment, and
  - iii. unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
  - iv. given at least 2 days' notice to the council of the person's intention to commence the erection of the building.

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

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

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

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

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

## **D.7 Notification of Home Building Act 1989 requirements**

- a. For the purposes of section 80A (11) of the *Act*, the requirements of this condition are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the Home Building Act 1989.
- b. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
  - i. in the case of work for which a *principal contractor* is required to be appointed:
    - the name and licence number of the principal contractor, and
    - the name of the insurer by which the work is insured under Part 6 of that *Act*,
  - ii. in the case of work to be done by an owner-builder:
    - the name of the owner-builder, and

- if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- c. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.
- d. This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.  
Standard Condition: D17

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

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

#### **E. Conditions which must be satisfied during any development work**

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

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

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

This condition does not apply:

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

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

Standard Condition: E1

## E.2 Compliance with Australian Standard for Demolition

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

Standard Condition: E2

## E.3 Compliance with Construction Management Plan

All development activities and traffic movements must be carried out in accordance with the approved construction management plan.

All controls in the Plan must be maintained at all times. A copy of the Plan must be kept on-site at all times and made available to the *PCA* or *Council* on request.

**Note:** Irrespective of the provisions of the Construction Management Plan the provisions of traffic and parking legislation prevails.

Standard Condition: E3

## E.4 Critical Stage Inspections

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

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

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

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

Standard Condition: E5

## E.5 Hours of Work –Amenity of the neighbourhood

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

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

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

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

**Note:** The delivery and removal of plant, equipment and machinery associated with wide loads subject to RTA and Police restrictions on their movement 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](http://www.epa.nsw.gov.au/resources/ci_build_sheet7.pdf)  
Standard Condition: E6

## **E.6 Maintenance of Vehicular and Pedestrian Safety and Access**

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

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

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

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

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

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

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

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

Part C Management of Waste:

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

Part E Public roads:

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

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

## E.7 Erosion and Sediment Controls – Maintenance

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

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

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



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

**Note 2:** Section 257 of the Protection of the Environment Operations Act 1997 provides that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”. **Warning,** irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of the occupation of the land being developed whether or not they actually cause the pollution.  
Standard Condition: E15

## E.8 Disposal of site water during construction

The principal contractor or owner builder must ensure:

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

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

Standard Condition: E17

## **E.9 Placement and use of Skip Bins**

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

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

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

Standard Condition: E21

## **E.10 Prohibition of burning**

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

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

Standard Condition: E22

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

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

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

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

## **F.2 Commissioning and Certification of Systems and Works**

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

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

- a. All stormwater drainage systems.
- b. All structural work.
- c. All waterproofing.
- d. Such further matters as the *Principal Certifying Authority* may require.

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

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

**Note:** The *PCA* must submit to Council, with any *Occupation Certificate*, copies of works-as-executed (“WAE”) plans, *Compliance Certificates* and evidence of suitability in accordance with Part A2.2 of the *BCA* upon which the *PCA* has relied in issuing any *Occupation Certificate*.  
Standard Condition: F7

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

No relevant conditions

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

### **H.1 Removal of Ancillary Works and Structures**

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

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

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

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

No relevant conditions.

## **J. Miscellaneous Conditions**

No relevant conditions.

## **K. Advisings**

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

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

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

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

#### **Warnings as to potential maximum penalties**

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

#### **Warning as to enforcement and legal costs**

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

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

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

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

Standard Advising: K1

### **K.2 Dial before you dig**



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

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

Standard Advising: K2

### **K.3 Builders Licences and Owner Builders Permits**

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

Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder): <http://www.dft.nsw.gov.au/building.html> .

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

Standard Condition: K5

### **K.4 Building Standards - Guide to Standards and Tolerances**

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

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

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

The Guide can be down loaded from:

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

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

Standard Condition: K6

## K.5 Workcover requirements

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

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

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

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

Standard Condition: K7

## K.6 Asbestos Removal, Repair or Disturbance

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

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

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

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

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

Standard Advising: K8

## K.7 Lead Paint

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

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

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

Standard Advising: K9

## **K.8 Appeal**

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

**George Fotis, Team Leader** on (02) 9391 7089

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

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

Standard Condition: K14

## **K.9 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.10 Owner Builders**

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

Standard Condition: K18

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

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

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

Standard Condition: K19

## **K.12 Compliance with the Building Code of Australia**

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

Part 3.3.4 - Weatherproofing of masonry

Part 3.4.1 - Sub floor ventilation

Part 3.7 - Fire safety

Part 3.7.1 Fire separation

Part 3.7.2 Smoke alarms

Part 3.8 - Health and amenity

Part 3.8.1 Wet areas

Part 3.8.3 Facilities

Part 3.8.4 Light

Part 3.8.5 Ventilation

Part 3.8.6 Sound insulation

Part 3.9 - Safe movement and access

Part 3.9.1 Stair construction

Part 3.9.2 Balustrades

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

Standard Condition: K20 (Autotext KK20)

Ms L Northridge  
**SENIOR ASSESSMENT OFFICER**

Mr G Fotis  
**TEAM LEADER**

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## **ANNEXURES**

1. Plans and elevations
2. Heritage Officer referrals

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>ITEM No.</b>	D5
<b>FILE No.</b>	DA 804/2006/1
<b>PROPERTY DETAILS</b>	124 Boundary Street PADDINGTON 2021
	<b>Lot &amp; DP No.:</b> LOT: D DP: 440463
	<b>Side of Street:</b> South-eastern
	<b>Site Area (m<sup>2</sup>):</b> 120
	<b>Zoning:</b> Residential 2(a)
<b>PROPOSAL</b>	New boundary walls to the rear courtyard; retractable awning; reflection pond and garbage bin enclosure to the laneway
<b>TYPE OF CONSENT:</b>	Local
<b>APPLICANT:</b>	Brian Van Der Plaat Design
<b>OWNER:</b>	Mr G A Lacey & Ms C T Toth-Lacey
<b>DATE LODGED:</b>	29/11/2006 Amended plans received on 17/5/2007
<b>AUTHOR:</b>	Mr T Wong

### 1. RECOMMENDATION PRECIS<sub>[d2]</sub>

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

### 2. PROPOSAL PRECIS<sub>[d3]</sub>

The proposal seeks Council approval for various works to the rear yard including new bin enclosure and replace of new rear pedestrian gate accessible from Boundary Lane.

### 3. LOCALITY PLAN



### 4. DESCRIPTION OF PROPOSAL

The original proposal included the following works to the rear yard:

- New pond
- New bin enclosure to the rear southwestern side with roller shutter upon the rear laneway
- New concrete fence to the side (NE and SW) boundaries
- New timber gate to the rear laneway
- New concrete paving
- New retractable awning to be attached to the rear of the building

Amended plans were received on 17/5/2007 with the following changes:

- The pond is deleted
- The existing SE side boundary timber fence is to be retained
- The rear yard is to be covered by concrete pavers
- The New bin enclosure is relocated to the rear northeastern side with the timber gate located to the rear southwestern side

### 5. SUMMARY

Reasons for report	Issues	Submissions
<ul style="list-style-type: none"> <li>▪ The DA does not satisfy the criteria for determination under staff delegation</li> </ul>	<ul style="list-style-type: none"> <li>▪ Sunlight</li> <li>▪ Soft landscaping</li> </ul>	2 submissions were received.

## 6. ESTIMATED COST OF WORKS

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

The applicant's estimated cost of the proposed development at \$10,000 has been checked using our adopted practice and is considered to be accurate. [d8]

## 7. DESCRIPTION OF SITE OF LOCALITY



### THE SITE AND LOCALITY

<b>Physical features</b>	The subject site is located on the south-eastern side of Boundary Street, Paddington, between Boundary Lane and Macdonald Street (the Cutler Footway). The site with an area of approximately 120m <sup>2</sup> is bound by Boundary Lane at the rear, which is accessible by vehicle but is not a thoroughfare.
<b>Topography</b>	The site slopes from the rear (RL26.25) to the front (RL24.00). The rear yard area is relatively flat.
<b>Existing buildings and structures</b>	Existing on the site is a two storey house.

**Environment**

The area is dominated by two storey residential terrace development with terrace groups facing Boundary Street, Glenview Street, and Liverpool Street backing onto Boundary Lane. The subject site is part of a group of 16 similar terraces that extend between 112 Boundary Street and 142 Boundary Street. The terrace group has been preserved at the front and has retained the significant rear form of skillion roofs over single storey rear wings. The subject terrace forms a pair with 126 Boundary Street. The group has maintained the rear first floor building alignment and the main roof forms have not been altered except for skylights at 118, 128, and 136 Boundary Street. The rear of the terraces and in particular the roof scape of the group is clearly visible from the Culter Footway, which is raised above the terrace group.



*Existing rear yard*



*Existing rear yard*



*Existing SW boundary fence to be retained (the tree is largely on the neighbouring property at No. 126)*



*Existing rear of the site viewing from Boundary Lane*

## 8. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	Residential
Previous relevant applications	<ul style="list-style-type: none"> <li>DA1164/2000 for alterations and additions including a new attic room was approved on 3/9/2001</li> <li>Two subsequent modifications applications were approved on 1/2/2006 and 25/10/2006 respectively</li> </ul>
Pre-DA	N/A
Requests for additional information	N/A
Amended plans/ Replacement Application	Amended plans received 17/5/2007
Land & Environment Court appeal	N/A

## 9. REFERRALS

### 9.1 The following table contains particulars of internal referrals.

INTERNAL REFERRALS		
Referral Officer	Comment	Annexure
Tree Officer	Satisfactory (Refer to Conditions C.1 and E.1)	2
Environmental Health Officer	Satisfactory (Refer to Conditions C.3)	3

### 9.2 The following table contains particulars of external referrals.

Not applicable.

## ENVIRONMENTAL ASSESSMENT UNDER S.79C

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

## 10. STATE/REGIONAL INSTRUMENTS AND LEGISLATION

### 10.1 SEPPs

Not applicable.

### 10.2 REPs

Not applicable.

### 10.3 Section 94 contribution

Not applicable.

### 10.4 Other legislation

None applicable.

## 11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

### 11.1 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

### 11.2 Statutory compliance table

Site Area (120m <sup>2</sup> )	Existing	Proposed	Control	Complies
Overall Height (metres)	4.5 (existing rear addition of building)	2.4	9.5	YES

### 11.3 Site area requirements

Not applicable.

### 11.4 Height

The proposal does not exceed the statutory height control and will comply with the objectives of the control.

### 11.5 Floor space ratio

Not applicable.

### 11.6 FSBL

Not applicable.

### 11.7 Other special clauses/development standards

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

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

**Clauses 26-33 Heritage and conservation area provisions:** The subject site does not contain a heritage item but is located within the Paddington Heritage Conversation Area. The proposal is limited to works to the rear courtyard and will not effect the front elevation of the terrace. Council's Heritage Officer has no objection to the proposal. The proposal is therefore considered satisfactory in terms of Clause 27.

## 12. DRAFT AMENDMENTS TO STATUTORY CONTROLS

Not applicable.

### 13. DEVELOPMENT CONTROL PLANS

#### 13.1 Compliance table Paddington Development Control Plan

Site Area (120m <sup>2</sup> )	Existing	Proposed	Control	Complies
Private Open Space (m <sup>2</sup> )	Approx. 20m <sup>2</sup>	No change	1/6 of Site Area or 20m <sup>2</sup>	YES
Proportion of Private Open Space to be Porous and Semi-Porous (%) or (m <sup>2</sup> )	Nil	Nil	50%	NO**
Solar Access to Habitable Rooms, Private Open Space and Public Domain (Hours in mid winter)	< 2 hours	< 2 hours	2 Hours Between 9am and 3pm in Midwinter	NO*
Laneway Gates (metres)				
• Height	1.8	1.8	2.2	YES
• Pedestrian Gate Width	0.9	0.9	0.9	YES
Laneway roller door ***				
• Height (metres)	-	2.0	2.7	YES
• Door Height (metres)	-	1.8	2.2	YES
• Door Width (metres)	-	2.3	2.3-3.3	YES
• Side Pillar Width (metres)	-	.15	0.47	NO
Rear Fences (metres)				
• Solid Height	1.8	1.8	2.2	YES
• Total Height	1.8	1.8	2.7	YES

\* existing non-compliance

\*\* Condition C.1a

\*\*\* referring to the control for Laneway Garages with Parapet Roof

#### Site coverage, setbacks and levels

The proposal does not affect the existing site coverage, building setbacks or levels.

#### Landscaping and private open space

The proposal will retain the amount of the existing private open space on site. It is noted that the existing rear yard is all paved with no soft landscaping provided. The proposed concrete pavers will not alter the existing situation of the rear yard.

The existing rear yard is currently largely paved so that the proposal will not further reduce the provision of the soft landscaping area on site. Notwithstanding this, **Condition No. C.1(a)** is recommended requiring porous pavers for the rear yard in order to allow for on site disposal of surface drainage

The area of the allotment is less than 130m<sup>2</sup> (120m<sup>2</sup>). Given the limited site area available, the shortfall to the soft landscaping requirement is considered acceptable in this circumstance.

#### Building height, bulk and scale

The height, bulk and scale of the rear roller door to the proposed bin enclosure is considered compatible with the existing developments viewed from the rear lane. For the purpose of assessment, the controls for laneway garage with roof parapet have been taken into account with regard to the proposed roller door. The proposed rear roller door will largely comply with the controls prescribed under Part 5.2.6 of the Paddington DCP except for the pillar width. However, the non-compliance is not considered excessive given that:

- the rear laneway mainly serves as a vehicular and service access to the rear of the properties fronting Boundary Street; and
- the design of the roller door complies with all other numerical controls.

The proposed retractable awning may be extended up to a length of 3.5m at a height of 2.8m above the ground level of the rear yard. It would create minor additional overshadowing onto the rear private open space of the neighbouring property to the south at No. 126 Boundary Street. It is noted that the rear yard of No. 126 Boundary Street is currently heavily overshadowed by the following elements:

- The approved rear addition structure of the subject site (DA1164/2000)
- The existing boundary fence between the two properties and
- The existing tree to the rear of No. 126 Boundary Street.

Due to the above-mentioned existing structures, the rear yard of No. 126 Boundary Street is almost completely overshadowed at mid-winter between 9am and 3pm. Shadow diagram for June 22 was prepared by the assessment officer with the aids of Technical Bulletin 13 – Sunlight Indicator by the Department of Environment and Planning. The shadow diagram indicates the existing shadow due to the existing structures on the subject site (excluding the existing Celtis tree to the rear of No. 126 Boundary Street) as compared with the proposal (i.e. the retractable awning). The shadow diagram demonstrates that an additional area of approximately 2.7m<sup>2</sup> (1m x 2.7m) to the southeastern corner of the rear yard at No. 126 Boundary Street will be overshadowed at 12.00 noon on 22 June.

Thought additional overshadowing will be created, the proposal is considered acceptable given the following:

- The overshadowing to the rear yard of No. 126 Boundary Street should also include the shadow cast by the existing Celtis tree which the shadow diagram is not able to take into account. On this basis, the additional shadow due to the proposed retractable awning is actually overlapped by the existing shadow by the tree.
- It is reasonable to anticipate that the proposal retractable awning will not be extended to its full length at all time.
- The amount of additional overshadowing to the southeastern corner is very minimal and will not warrant for a reason for refusal to the DA by its own.

In view of the above, the proposal is considered acceptable with regard to the objectives prescribed in Part 5.1.7 of the Paddington DCP.

### **Acoustic and visual privacy**

It is not considered that the current level of privacy will be diminished as a result of the proposed works to the rear of the site.

### **Gardens and significant trees**

Council's Tree Officer advised that:

*No excavated reduction in levels should be undertaken within the rear yard of 124 Boundary St. This constraint is to avoid negative and destabilising impacts on the root system of the Celtis tree standing adjacent in the rear yard of 126 Boundary St. Any new surface treatment, such as paving, should be established on the existing levels.*

*Excavation for the footing of the new bin enclosure should adhere to the recommendations of condition E.1 a) & E.1 b)*

As such, **Conditions C.1b, E.1a and b** are recommended.

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

Not applicable for assessment of the DA as the proposal does not seek any changes to the existing situation of nil on-site parking.

### **13.3 Woollahra Access DCP**

The proposal does not reduce the current level of accessibility of the site and is considered satisfactory in this regard.

### **13.4 Other DCPs, codes and policies**

None applicable.

## **14. APPLICABLE REGULATIONS**

*Not applicable.*

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

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

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

The site is suitable for the proposed development.

## **17. SUBMISSIONS**

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

- Paddington Society
- Campbell Fuller and Lynn Hegarty of No. 126 Boundary Street, Paddington

The objections raised the following issues:

- *Impact of the private open space and soft landscaping*

Comments: This has been discussed in Section 13.1 above under *Landscaping and private open space*. **Condition C.1a** is recommended.

- *Overshadowing due to the boundary wall between subject site and No. 126 Boundary Street and the proposed awning*

Comments: Amended plans were submitted and the existing side boundary fence between the two properties will be retained. The additional overshadowing due to the proposed awning has been discussed in Section 13.1 under *Building height, bulk and scale*.

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

## 18. CONCLUSION - THE PUBLIC INTEREST

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

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

THAT the Council, as the consent authority, grant development consent to Development Application No. 804/2006 for new pavers to the rear courtyard; retractable awning; and garbage bin enclosure to the laneway on land at 124 Boundary Street Paddington, 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, piling, 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)
Drawing #01	Architectural Plans	Brian Van Der Plaat Design	May 2007

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

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

### A.4 Prescribed Conditions

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

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

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

### B.1 Construction Certificate required prior to any demolition

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

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

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

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

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

- a. The pavers to the rear yard area are to be porous or semi-porous material in order to assist in the on-site disposal of surface drainage.
- b. No excavated reduction in levels shall be undertaken within the rear yard of 124 Boundary St. This constraint is to avoid negative and destabilising impacts on the root system of the Celtis tree standing adjacent in the rear yard of 126 Boundary St. The new surface treatment, such as paving, shall be established on the existing levels.

**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
<b>LONG SERVICE LEVY</b> under Building and Construction Industry Long Service Payments Act 1986			
<b>Long Service Levy</b> Use Calculator: <a href="http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm">http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm</a>	Contact LSL Corporation or use their online calculator	No	

<b>SECURITY</b> under section 80A(6) of the Environmental Planning and Assessment Act 1979			
<b>Property Damage Security Deposit -</b> Making good any damage caused to any property of the <i>Council</i> as a consequence of the doing of anything to which the consent relates.	\$2,000	No	T600
Security Administration Fee	\$163	No	T16
<b>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</b>	\$2,163 <b>Plus any relevant indexed amounts and long service levy</b>		

### **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 - Single Dwelling House**

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

- a storage area for 1 x 120 litre general wastes bin, 1 x 240 litre green waste bin, 2 x recycling crates behind the building line or within non-habitable areas of the dwelling
- Standard Condition: C15

## C.4 Structural Adequacy of Existing Supporting Structures

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

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

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

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

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

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

This condition does not apply:

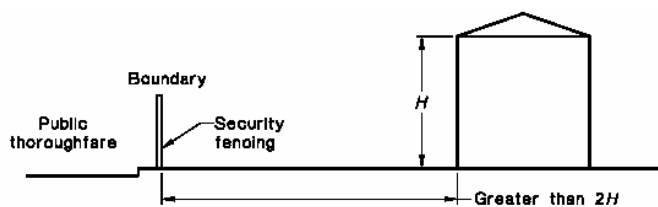
- a. to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4),
- or
- b. to the erection of a temporary building.

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

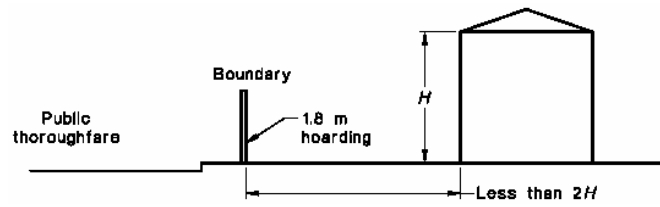
**Note:** This condition must be satisfied prior to commencement of any work in relation to the contract of insurance under the Home Building Act 1989. This condition also has effect during the carrying out of all building work with respect to compliance with the Building Code of Australia.  
Standard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

### D.2 Security Fencing, Hoarding and Overhead Protection

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



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

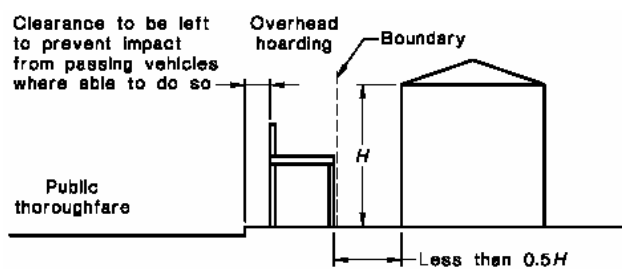


Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an *overhead protective structure* and the facing facade protected by heavy-duty scaffolding, unless either

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

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

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



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

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

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

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

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

### D.3 Site Signs

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

“Erection of signs

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

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

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

### D.4 Toilet Facilities

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

Each toilet provided:

- a. must be a standard flushing toilet, and
- b. must be connected to a public sewer, or

- c. if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the council, or
- d. if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the council.

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

In this condition:

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

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

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

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

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

## D.5 Erosion and Sediment Controls – Installation

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

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

Where there is any conflict The Blue Book takes precedence.

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

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

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

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

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

#### **D.6 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)**

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

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

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

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

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

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

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

#### **D.7 Notification of Home Building Act 1989 requirements**

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

Standard Condition: D17

#### **D.8 Establishment of boundary location, building location and datum**

Prior to the commencement of any work the principal contractor or owner builder must ensure that a surveyor registered under the *Surveying Act 2002* sets out:

- a. the boundaries of the *site* by permanent marks (including permanent recovery points);
- b. the location and level of foundation excavations, footings, walls and slabs by permanent marks, pegs or profiles relative to the boundaries of the land and relative to Australian Height Datum ("AHD") in compliance with the approved plans;
- c. establishes a permanent datum point (bench mark) within the boundaries of the *site* relative to AHD; and

- d. provides a copy of a survey report by the registered surveyor detailing, the title boundaries, pegs/profiles, recovery points and bench mark locations as established pursuant to this condition to the PCA.

**Note:** Where the *principal contractor* or *owner builder* notes any discrepancy between the approved development consent and the *Construction Certificate*, especially in relation to the height, location or external configuration of the building (but not limited to these issues) the *principal contractor* or *owner builder* should not proceed until satisfied that the variations as shown are consistent with the consent. Failure to do so may result in a breach of development consent.

**Note:** On larger developments, or where boundary redefinition is required, the placement of new State Survey Marks as permanent marks should be considered by the registered surveyor.  
Standard Condition: D18

## **E. Conditions which must be satisfied during any development work**

### **E.1 Tree Preservation**

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

#### **General Protection Requirements:**

- a) Where excavation encounters tree roots with a diameter exceeding 40mm excavation must cease. The *principal contractor* must procure an inspection of the tree roots exposed by a qualified arborist. Excavation must only recommence with the implementation of the recommendations of the qualified arborist or where specific instructions are given by Council's Tree Management Officer in strict accordance with such Council instructions.
- b) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the qualified arborist or where specific instructions are given by Council's Tree Management Officer in strict accordance with such Council instructions.

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

### **E.2 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989**

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

- a. that the work must be carried out in accordance with the requirements of the Building Code of Australia,

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

This condition does not apply:

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

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

Standard Condition: E1

### **E.3 Compliance with Australian Standard for Demolition**

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

Standard Condition: E2

### **E.4 Critical Stage Inspections**

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

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

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

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

Standard Condition: E5

### **E.5 Hours of Work –Amenity of the neighbourhood**

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

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

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

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

**Note:** The delivery and removal of plant, equipment and machinery associated with wide loads subject to RTA and Police restrictions on their movement 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](http://www.epa.nsw.gov.au/resources/ci_build_sheet7.pdf)  
Standard Condition: E6

## **E.6 Maintenance of Vehicular and Pedestrian Safety and Access**

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

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

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

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

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

**Note:** Section 138 of the *Roads Act 1993* provides that a person must not:  
(a) erect a structure or carry out a work in, on or over a public road, or  
(b) dig up or disturb the surface of a public road, or

- (c) remove or interfere with a structure, work or tree on a public road, or
- (d) pump water into a public road from any land adjoining the road, or
- (e) connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.

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

Part C Management of Waste:

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

Part E Public roads:

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

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

## E.7 Maintenance of Environmental Controls

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

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

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

## E.8 Support of adjoining land and buildings

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

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

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

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

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

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

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

## E.9 Erosion and Sediment Controls – Maintenance

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

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

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



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

**Note 2:** Section 257 of the Protection of the Environment Operations Act 1997 provides that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”. **Warning,** irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of the occupation of the land being developed whether or not they actually cause the pollution.  
Standard Condition: E15

## E.10 Disposal of site water during construction

The principal contractor or owner builder must ensure:

- a) Prior to pumping any water into the road or public stormwater system that approval is obtained from *Council* under section 138(1)(d) of the *Roads Act 1993*;

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

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

Standard Condition: E17

### **E.11 Check Surveys - boundary location, building location, building height and stormwater drainage system relative to Australian Height Datum**

The *Principal Contractor* or *Owner Builder* must ensure that a surveyor registered under the *Surveying Act 2002* carries out check surveys and provides survey certificates confirming the location of the building(s) and the stormwater drainage system relative to the boundaries of the *site* and that the height of buildings and the stormwater drainage system relative to Australian Height Datum complies with this consent at the following critical stages.

The *Principal Contractor* or *Owner Builder* must ensure that work must not proceed beyond each of the following critical stages until compliance has been demonstrated to the *PCA*'s satisfaction:

- a) Upon the completion of foundation walls prior to the laying of any floor or the pouring of any floor slab and generally at damp proof course level;
- b) Upon the completion of formwork for floor slabs prior to the laying of any floor or the pouring of any concrete and generally at each storey;
- c) Upon the completion of formwork or framework for the roof(s) prior to the laying of any roofing or the pouring of any concrete roof;
- d) Upon the completion of formwork and steel fixing prior to pouring of any concrete for any ancillary structures, swimming pool or spa pool or the like;
- e) Driveway transitions and crest thresholds prior to pavement of driveways;
- f) Stormwater Drainage Systems prior to or post construction confirming location, height and capacity of works.

**Note:** This condition has been imposed to ensure that development occurs in the location and at the height approved under this consent.

Standard Condition: E20

### **E.12 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.13 Prohibition of burning**

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

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

### **E.14 Dust Mitigation**

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

This generally requires:

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

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

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

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

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

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

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

**Note:** New building includes an altered portion of, or an extension to, an existing building.

Standard Condition: F1

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

No condition.

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

No condition.

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

No condition.

## **J. Miscellaneous Conditions**

No condition.

## **K. Advisings**

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

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

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

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

### **Warnings as to potential maximum penalties**

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

### **Warning as to enforcement and legal costs**

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

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

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

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

## K.2 Dial before you dig



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

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

Standard Advising: K2

## K.3 Builders Licences and Owner Builders Permits

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

Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder):  
<http://www.dft.nsw.gov.au/building.html> .

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

Standard Condition: K5

## K.4 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.5 Asbestos Removal, Repair or Disturbance**

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

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

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

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

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

## **K.6 Appeal**

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

**Thoamss Wong, Senior Assessment Officer** on (02) 9391 1758

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.7 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.8 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](http://www.fairtrading.nsw.gov.au).  
Standard Condition: K18

Mr T Wong  
**SENIOR ASSESSMENT OFFICER**

George Fotis  
**TEAM LEADER**

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## **ANNEXURES**

1. Plans and elevations
2. Referral Response – Trees & Landscaping
3. Referral Response – Health