



Application Assessment Panel

Agenda: *Application Assessment Panel*

Date: *Tuesday 22 July 2008*

Time: *3.00pm*

Part: *One of One Part*

Item: *D1 to D3*

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

14 July 2008

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

CC: The Mayor
All Councillors

Application Assessment Panel Meeting – 22 July 2008

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Application Assessment Panel** to be held in the **Committee Room, 536 New South Head Road, Double Bay, on Tuesday 22 July 2008 at 3.00pm.**

Gary James
General Manager

Meeting Agenda

Part One of One Part

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

Items to be Decided by this Committee using its Delegated Authority

D1	Confirmation of Minutes of Meeting held on 15 July 2008	1
D2	DA774/2007 – 22 Girilang Avenue, Vaucluse – Section 82A Review of the application - 20/5/2008 *See Recommendation Page 17	2-53
D3	DA292/2008 – 10A William Street, Double Bay – New swimming pool & associated works – 23/5/2008 *See Recommendation Page 68	54-114

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 15 July 2008**
Author: Les Windle, Manager - Governance
File No: See Application Assessment Panel Minutes
Reason for Report: The Minutes of the Meeting of Tuesday 15 July 2008 were previously circulated. In accordance with the guidelines for Committees' operations it is now necessary that those Minutes be formally taken as read and confirmed.

Recommendation:

That the Minutes of the Application Assessment Panel Meeting of 15 July 2008 be taken as read and confirmed.

Les Windle
Manager - Governance

SECTION 82A REVIEW OF DETERMINATION REPORT

ITEM No.	D2
FILE No.	DA 774/2007
ADDRESS:	22 Girilang Avenue, Vaucluse
PROPOSAL:	Alterations and additions including a new first floor level and carport
DATE DA DETERMINED:	14 January 2008
SUBJECT OF REVIEW:	Refusal of the application
DATE S82A REVIEW APPLICATION LODGED:	20/05/2008
APPLICANT:	Advantage Designs
OWNER:	Mr T Blumenstein & Ms M Ehrlich
REVIEW OFFICER:	Ms S Chambers

LOCALITY PLAN



1. SUMMARY

Reason for report

Reason for report	Issues	Submissions
A Section 82A review of determination application is required to be determined by a higher level of delegation than the originally determined development application. In this instance, the original development application was determined (refused) under delegated authority. Accordingly, the subject review of determination application is referred to Council's Application Assessment Panel for determination.	<ul style="list-style-type: none">▪ Front setback non-compliance▪ Rear setback non-compliance▪ Side setback non-compliances▪ Building footprint non-compliance▪ Floor space ratio non-compliance▪ Excavation, piling and sub-surface wall setback non-compliances	<p>One (1) submission was received to the s82A Review.</p> <p>One (1) submission was received to the original DA.</p>

Recommendation

The application is recommended for conditional approval because it: -

1. is permissible under the zoning
2. satisfies the objectives of the relevant planning standards contained in WLEP 1995 and WRDCP 2003
3. is an appropriate design for the subject site
4. will not have adverse effects upon the amenity of adjoining properties or the surrounding locality such that refusal is justified.

2. BACKGROUND

DA 774/2007 was refused under delegated authority on 14 January 2008 for the following reasons:

1. Floor space ratio

The proposed development does not comply with the floor space ratio control applied in C5.2.9 of Woollahra RDCP 2003. It results in an unacceptable level of overshadowing of the adjoining property to the south (No. 20 Girilang Avenue), and a dwelling house that is excessive in scale and bulk, which is contrary to and objective O5.1.1 and objectives O5.2.2 of Woollahra RDCP 2003.

2. Solar access

The proposed development would result in significant overshadowing of the adjoining property to the south (No. 20 Girilang Avenue) and would not comply with the minimum solar access to north facing windows of adjoining buildings applied in C5.2.14 of Section 5.2 of Woollahra RDCP 2003.

3. Visual and acoustic privacy

The proposed development would result in unacceptable overlooking to the rear private open spaces of adjoining properties to the south (No. 20 Girilang Avenue) and to the north (No. 24 Girilang Avenue) from the proposed first floor rear balcony. This is contrary to O 5.8.1 and C5.8.6 of Woollahra RDCP 2003.

4. **Setbacks**

The proposed development would be contrary to C 5.2.5 of WRDCP, which requires a minimum side setback of 1.5 metres, and in this instance an applicable setback of 3.5 metres from its southern first floor boundary and 3.8 metres from its northern boundary. The proposed southern boundary first floor setback of 3.0 metres would contribute to the unacceptable level of overshadowing to the adjoining house at No. 20 Girilang Avenue.

Attached as Annexure 2 is a copy of the original assessment report and plans.

3. **DESCRIPTION OF PROPOSAL SUBJECT OF REVIEW**

The subject Section 82A review of determination application seeks the review of Council's decision to refuse consent to the subject development application (774/2007).

The subject review of determination application contains the following amendments from the refused scheme in an effort to address Council's concerns: -

- the southern setback has been increased to 3.5m
- privacy screens have been added to the rear first floor level balcony
- the roof form has been altered
- the window dimensions and locations have been amended
- the first floor level has been reconfigured
- a new plant room to the rear is proposed to minimise noise from an existing air conditioning unit and to house the pool filter and gas heater

4. **DESCRIPTION OF PROPOSED REVIEW**

This report reviews all aspects of the determination including any cumulative impacts of the changes requested by the applicant.

5. **PROPERTY HISTORY**

PROPERTY HISTORY	
Current use	Residential dwelling-house
Previous relevant applications	None.
Pre-DA	None.
Requests for additional information	None.
Amended plans/ Replacement Application	None.
Land & Environment Court appeal	None.

6. **DESCRIPTION OF SITE AND LOCALITY**

THE SITE AND LOCALITY	
Physical features	The subject site is located on the western side of Girilang Avenue, opposite the Billong Avenue junction. The site has an eastern frontage to Girilang Avenue measuring 15.2m, a rear, western, boundary measuring 15.2m in length, a northern side boundary measuring 45.7m in length and a southern side boundary measuring 45.7m in length. The site has an area of 696.77m ² .
Topography	The site falls from the rear to the front by approximately 4.5m, the steepest area being towards the rear.
Existing buildings and structures	The site is occupied by a single storey rendered brick dwelling with a rear extension and a garage.
Environment	The locality is characterised by one and two storey dwelling-houses of varying age and architectural styles.



7. 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.

8. CONSIDERATION OF REVIEW

8.1 Substantially the same development

The amendments made to the proposal, as discussed under *Part 3* of this report, are considered to be minor relative to the scope of the alterations and additions such that the proposal, as amended, is considered to be substantially the same as that previously refused by Council.

9. Estimated Cost of Works

Council adopted (DCC 6 June 2005) administrative changes for determining DA fees based on the estimated cost of work of \$2,000/m². The stated cost of the proposed work of \$350,000 has been checked using this criteria and is considered to be accurate.

10. REFERRALS

10.1 Internal Referrals

INTERNAL REFERRALS		
Referral Officer	Comment	Annexure
Development Engineer	Council's Development Engineer considered the development proposal at Council's Development Assessment Review Committee meeting of 28 May 08 and imposed standard conditions to address technical Services issues. Refer to Conditions .	-

10.2 External referrals.

No external referrals were required.

ENVIRONMENTAL ASSESSMENT UNDER S.79C

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

11. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

11.1 SEPPs

SEPP 55: Remediation of Land

Under clause 7(1)(a) of State Environmental Planning Policy 55 – Remediation of Land, consideration has been given as to whether the land is contaminated. An assessment of the documentation provided by the applicant indicates the land does not require further consideration under clause 7(1)(b) and (c) of SEPP 55.

11.2 SREPs

SREP (Sydney Harbour Catchment) 2005

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

11.3 Section 94 contribution

The Woollahra Section 94A Contributions Plan 2005 is applicable. In accordance with Schedule 1, a 1% levy (of the total cost of works) applies. With a cost of works of \$350,000 **Condition C.1** requires the payment of \$3,500, which will be used for a variety of works as outlined in Schedule 2 of the Section 94A Contributions Plan.

11.4 Other legislation

None applicable.

12. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

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

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

12.2 Statutory compliance table

Site area: 696.77m²	Existing Dwelling	Refused DA	Proposed S82A	Control	Complies
Overall Height	5.5m	8.2m	6.5m-7.4m	9.5m	Yes

12.3 Height

Clause 12 of WLEP 1995 stipulates a maximum height of 9.5m. The development complies with the height requirement, having a maximum height of 7.4m. In addition, the development complies with the objectives under Clause 12AA.

12.4 Other special clauses/development standards

Clause 18 Excavation

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

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

The extent of excavation is limited to footings for piers to the carport, footings for the new plant room and ground floor additions.

C 5.2.16 of WRDCP 2003 stipulates that the siting of excavation is required to be setback a minimum of 1.5m from all boundaries. The proposed footings for the carport and plant room result in non-compliances up to 1.4m, however given the minor nature of the works and minimal impact on neighbouring properties, the works are satisfactory with regard to this control.

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

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

The maintenance of the amenity of the neighbourhood in terms of minimising noise, vibration and dust is addressed by **Conditions E.4** and **E.8** requiring limited hours of working and dust mitigation measures. Subject to the above-mentioned conditions, the amenity of the adjoining residential properties will be maintained.

(b) *public safety*

(c) *vehicle and pedestrian movements*

Issues relating to public safety and pedestrian movements during the excavation phase are inter-related and are addressed by **Conditions E.5** requiring a maintenance of vehicular and pedestrian safety and access.

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

There are no heritage items within the vicinity of the site.

(e) *natural landforms and vegetation*

The proposed footings will not alter the landform or result in extensive excavation.

(f) *natural water run-off patterns*

Satisfactory, subject to **Condition C.5**.

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

Clause 25 Water, wastewater and stormwater

Clause 25(1) and (2) of WLEP 1995 requires council to consider the provisions of adequate stormwater drainage and the provisions of adequate water and sewage services.

The proposal has been assessed against the provisions of Clause 25 and is considered to be satisfactory, subject to **Condition C.5**.

Clause 25D Acid Sulphate Soils

The subject site is identified to be within a Class 5 Acid Sulfate Soil area within the Woollahra Council Acid Sulfate Soil Map. However, the subject works are not likely to lower the water table beyond 1m AHD below the existing ground level on any land within 500m of Class 1, 2, 3 or 4 land classification and therefore, there is no issue of acid sulfate affectation.

13. DRAFT AMENDMENTS TO STATUTORY CONTROLS

None relevant.

14. DEVELOPMENT CONTROL PLANS

14.1 Compliance table - Woollahra Residential Development Control Plan 2003

Site Area (696.77m ²)	Existing	Refused DA	S82A Review	Control	Complies
Maximum Number of Storeys – Dwelling	1	2	2	2	Yes
Building Boundary Setbacks					
Front (East)	5.2m	3.8m	3.7-5.2m	4.85m(4.8m & 4.9m)	No(Part)
Rear (West)	17m	17m	9.4m-17m	11.3m	No(Part)
Side (North)					
Ground Floor	0.1m	0.9m	0.1m-5.2m	1.5m-1.85m	No(Part)
First Floor	N/A	4.5m	4m-5.2m	1.5m-3.4m	Yes
Side (South)					
Ground Floor	0.9m	0.9m	0.9m	1.5m-1.85m	No
First Floor	N/A	3m	3.6m	1.5m-3.4m	Yes
Setback from Significant Mature Trees	>3m			3m	Yes
Building Footprint	43.5% (303.38m ²)	47.8% (333.53m ²)	50.8% (354m ²)	41% (285.7m ²)	No*
Floor Space Ratio	0.38:1 (261.65m ²)	0.62:1 (433.8m ²)	0.60.9:1 (425m ²)	0.55:1 (383.2m ²)	No
Floor to Ceiling Height – Habitable Rooms	2.7m	2.7m	2.7m	2.7m	Yes
Maximum Unarticulated Length to Street	<6m	<6m	<6m	6m	Yes
Solar Access to Open Space of Adjacent Properties (Hrs on 21 June)	>50% (or 35m ²) for 2 hours			50% (or 35m ²) for 2 hours	Yes
Solar Access to Nth Facing Living Areas of Adjacent Properties (Hrs on 21 June)	>3hrs	<3hrs	>3hrs	3 hours	Yes
Excavation Piling and Subsurface Wall Setback	<1.5m	<1.5m	<1.5m	1.5m	No*
Deep Soil Landscaping – Dwelling	581.5m ²	259.84m ²	248m ²	50% of 342.77m ² (171.4m ²)	Yes
Private Open Space at Ground Level – Total	>35m ² Min dimension 3m	>35m ² Min dimension 3m	>35m ² Min dimension 3m	35m ² Min dimension 3m	Yes
Private Open Space at Ground Level – Principal Area	>16m ² Min dimension 4m	>16m ² Min dimension	>16m ² Min dimension	16m ² Min dimension	Yes

Site Area (696.77m ²)	Existing	Refused DA	S82A Review	Control	Complies
		4m	4m	4m	
Location of Garages and Car Parking Structures	Behind Front Setback	Behind Front Setback	Behind Front Setback	Behind Front Setback	Yes
Garage Frontage Width	26% (4m)	27% (4.2m)	19% (3m)	40% of 15.2m (6.08m)	Yes
Car Parking Spaces – Dwellings	2	3	3	2	Yes
Minimum Access Driveway Width	>3.5m	>3.5m	>3.5m	3.5m – 6.0m	Yes

* Existing non-compliance

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

The subject site is located in the Vaucluse East Precinct under Part 4.14 of WRDCP 2003. The objectives of the Vaucluse East precinct aim to retain the scenic qualities of the area, to reinforce the precinct's landscape setting, to maintain mature street trees, to protect important views and to maintain the low rise residential building styles.

The development is satisfactory with regard to the Performance Criteria and Objectives of the Vaucluse East precinct.

Streetscape performance criteria (Section 5.1)

Reason for refusal: *Relevant control in WRDCP is C 5.1.3- Alterations and additions reflect the architectural design, materials and finishes of the existing building*

The proposed additions, particularly on the front elevation, would be inconsistent with the ground floor portion of the existing house in form, architectural style, and materials. In particular the first floor window 'W10' would not be in vertical alignment with those below, resulting in a misaligned fenestration. The skillion roof form, although unique to the streetscape, would not relate to the existing roof pitch or form of the ground floor. The first floor balcony would present as an awkward and incongruent element out of proportion with the relatively restrained style of the existing ground floor portion. In short, the first floor would appear as a different house having been placed on top, with poor visual integration with its base. The overall additions would be unsympathetic such that it is highly unlikely it could be satisfactorily amended via conditions of consent (such as aligning the fenestration, selecting matching materials, amending the roof form, etc).

C 5.1.1- the proposal is inconsistent with this requirement to have a front door or a kitchen or living room window addressing the street.

The amended proposal provides changes to the front façade, including changes to the front windows and balcony, and changes to the roof form. The proposal also provides a front door to the front of the dwelling and windows addressing the street. Accordingly, the proposal as amended is satisfactory with regard to the performance criteria and objectives of Section 5.1.

Building size and location performance criteria (Section 5.2)

Reason for Refusal 1: Floor space ratio

The proposed development does not comply with the floor space ratio control applied in C5.2.9 of Woollahra RDCP 2003. It results in an unacceptable level of overshadowing of the adjoining property to the south (No. 20 Girilang Avenue), and a dwelling house that is excessive in scale and bulk, which is contrary to and objective O5.1.1 and objectives O5.2.2 of Woollahra RDCP 2003.

Reason for Refusal 2: Solar access

The proposed development would result in significant overshadowing of the adjoining property to the south (No. 20 Girilang Avenue) and would not comply with the minimum solar access to north facing windows of adjoining buildings applied in C5.2.14 of Section 5.2 of Woollahra RDCP 2003.

Reason for Refusal 4: Setbacks

The proposed development would be contrary to C 5.2.5 of WRDCP, which requires a minimum side setback of 1.5 metres, and in this instance an applicable setback of 3.5 metres from its southern first floor boundary and 3.8 metres from its northern boundary. The proposed southern boundary first floor setback of 3.0 metres would contribute to the unacceptable level of overshadowing to the adjoining house at No. 20 Girilang Avenue.

The amended proposal results in the following non-compliances:

Front setback:

C 5.2.2 stipulates that front setbacks are to be consistent with those of adjoining buildings, resulting in a setback requirement of 4.85m. The proposal, as amended, provides a front setback of between 3.7m and 5.2m, resulting in a maximum front setback non-compliance of 1.15m for the balcony at first floor level.

The non-compliance is acceptable in this instance for the following reasons:

- The balcony, as amended, is a small structure (1.5mx3.5m) and provides articulation to the front façade.
- The amended development does not present bulk and scale.
- The majority of the upper level addition is in line with the existing front façade, which is consistent with the front setback of adjoining properties.
- The area of non-compliance will not adversely impact on landscaping, solar access, views or privacy.
- The development, as amended, does not prevent side access to the rear or create an unreasonable sense of enclosure.
- The development does not require extensive site excavation.
- The non-compliance with the front setback does not disrupt the continuity of the front setback pattern along Girilang Avenue.

Rear setback:

C 5.2.3 stipulates a minimum rear setback of 25% of the average site length, which equates to 11.3m. The proposed works, as amended, provide a rear setback of 9.4m-17m, resulting in a non-compliance of 1.9m in the area of the plant room attached to the back of the garage.

The non-compliance is acceptable in this instance for the following reasons:

- The area of non-compliance under the amended scheme relates only to the proposed plant room, which is a small structure (3.9m wide, 2.4m in length and a maximum of 1.7m in height) to be used for housing the air conditioning unit, pool filter and gas heater.
- The works are minor and will not adversely impact on significant landscaping, solar access, overshadowing, privacy or views.
- The works will not prevent side access to the rear or create an unreasonable sense of enclosure
- The works do not add bulk or scale to the existing development.

Side setbacks:

C 5.2.5 stipulates a minimum side setback of 1.5m to be increased by 0.5m for every metre that exceeds 6.5m adjacent to the side setback, resulting in setback requirements of 1.5-1.7m to the north and to the south. The development provides side setbacks of 0.1m-5.2m to the north and 0.9m-3.6m to the south.

The development, as amended, results in the following non-compliances:

- a maximum non-compliance of 1.75m from the northern side boundary at ground floor level for the carport and plant room
- a maximum non-compliance of 0.95m from the southern side boundary at ground floor level for the replacement and infill of window and door openings and a small wall extension to the rear 1m in width in line with the existing building

The non-compliances are satisfactory in this instance for the following reasons:

- the non-compliances are minor and will not result in adverse amenity impacts on neighbouring properties being at ground floor level
- the development is satisfactory in terms of impacts on significant vegetation, solar access, views and privacy (refer to assessment below)
- the development does not result in an unreasonable sense of enclosure or prevent side access to the rear
- the development does not result in excessive excavation

Floor space ratio:

C 5.2.9 stipulates a maximum floor space ratio of 0.55:1 which equates to 383.2m². The amended proposal provides an FSR of 0.60.9:1 (425m²) which results in a non-compliance of 41.8m².

The non-compliance is acceptable in this instance for the following reasons:

- a large part of the non-compliant floor area relates to the plant room, which has been proposed under the amended application to minimise amenity impacts on neighbouring properties, and an existing car space which is calculated as gross floor area as it is in excess of the number of car spaces needed to meet Council's requirements
- the floor area has been reduced from the previous proposal by setting the southern side setback in at first floor level to comply with Council's setback controls
- the works will not adversely impact on solar access, privacy, views, overshadowing or tree and vegetation networks
- the development does not create an unreasonable sense of enclosure or prevent side access to the rear
- the proposal does not result in extensive excavation

Building footprint:

C 5.2.8 stipulates that building footprint is to comply with the DCP requirement of 41%, which equates to 285.7m². The development provides a footprint of 354m², resulting in a non-compliance of 68.3m².

The non-compliance is satisfactory in this instance for the following reasons:

- the non-compliance relates to the proposed plant room which has been incorporated into the amended proposal in order to minimise amenity impacts on neighbouring properties, the existing garage and proposed car port, which are included in the footprint as they are attached to the dwelling but these structures do not result in additional bulk and scale given that the garage is existing, the car port is an open structure and the plant room is of minimal dimensions (2.4mx4m) and is only 1.7m in height
- the works will not adversely impact on solar access, privacy, views, overshadowing or tree and vegetation networks
- the development does not create an unreasonable sense of enclosure or prevent side access to the rear
- the proposal does not result in extensive excavation

Solar access:

C 5.2.14 requires that north-facing windows to habitable rooms of neighbouring dwellings are to not have sunlight reduced to less than 3 hours between 9am and 3pm on 21 June. Shadow diagrams have been submitted indicating that solar access is provided to the north facing windows of the adjoining property to the south (20 Girilang Avenue) for a minimum of 3 hours. Further, the first floor addition, under the amended proposal, has been setback to comply with the side setback requirement. Whilst there are non-compliances in terms of FSR and footprint, a development that would completely comply with these controls would still have the same impact in terms of over shadowing.

Accordingly, the proposal, as amended, is satisfactory with regard to solar access.

Excavation, piling and sub-surface wall setbacks:

C 5.2.16 stipulates that the outer edge of excavation, piling and sub-surface walls are to be setback a minimum of 1.5m. This is discussed under Clause 18 above.

Open space and landscaping performance criteria (Section 5.3)

The proposal, as amended, is satisfactory with regard to landscaping and open space.

Energy Efficiency (Section 5.6)

The development application was accompanied by **BASIX Certificate A23902** committing to environmental sustainability measures. Refer to **Conditions**.

Accordingly, the proposal demonstrates compliance with the relevant objectives and performance criteria stipulated under Part 5.6 of WRDCP 2003.

Stormwater (*Section 5.7*)

Satisfactory, subject to **Condition C.5**.

Acoustic and visual privacy performance criteria (*Section 5.8*)

Reason for Refusal 3: Visual and acoustic privacy

The proposed development would result in unacceptable overlooking to the rear private open spaces of adjoining properties to the south (No. 20 Girilang Avenue) and to the North (No. 24 Girilang Avenue) from the proposed first floor rear balcony. This is contrary to O 5.8.1 and C5.8.6 of Woollahra RDCP 2003.

The amended proposal has set the balcony back 3m from the southern side boundary. The balcony is off two bedrooms and is a small balcony 1.2m wide that would not accommodate large gatherings. Further the amended proposal incorporates privacy screens to the sides of the balcony. The balcony is set back adequate distance from the rear boundary (16.2m) to preserve the privacy of neighbours to the rear. Given the additional set back from the southern side boundary which achieves compliances with Council's controls, the provision of privacy screens and the nature of the balcony, the revised scheme is considered to be satisfactory.

The owner of 20 Girilang Avenue has objected to the amended proposal on the grounds of loss of privacy cause by overlooking from the second storey windows and noise form the air conditioning unit.

A plant room is proposed under the amended proposal to house the air conditioning unit. Further, a condition has been recommended to protect the neighbouring property form any noise impacts.

In terms of over looking, the objector's property is a single storey dwelling and therefore the windows will over look the roof. The windows on the southern elevation are small windows to the bathroom, shower, hallway and a small bedroom window.

Accordingly, the amended proposal is satisfactory with regard to privacy.

Car parking and driveways performance criteria (*Section 5.9*)

The amended proposal complies with Council's car parking requirements.

Site facilities performance criteria (*Section 5.10*)

The proposal is considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under Part 5.10 of WRDCP 2003.

Access and mobility performance criteria (*Section 5.13*)

Refer to *Woollahra Access DCP* below.

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

The proposal complies with the provisions of this DCP.

14.3 Woollahra Access

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

14.4 Other DCPs, codes and policies

None relevant.

15. APPLICABLE REGULATIONS

Clause 92 of the EPA Regulation 2000 requires us to consider Australian Standard AS 2601-1991: The demolition of structures. This is addressed via **Condition E.2**.

16. THE LIKELY IMPACTS OF THE PROPOSAL

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

17. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

18. SUBMISSIONS

The proposal was advertised and notified in accordance with Council's Advertising and Notifications DCP. The original development application attracted one (1) submission from the following:

- Ms Ackland of 20 Girilang Avenue, Vaucluse

The objector raised the following issues:

- *oversized development*
- *loss of sunlight*
- *garage too close to the street*

The Section 82A Review was advertised and notified in accordance with Council's Advertising and Notifications DCP. One (1) submission was received from:

- Ms Ackland of 20 Girilang Avenue, Vaucluse

The objector raised the following issues:

- *loss of visual and acoustic privacy*
- *loss of sunlight*
- *oversized development*
- *aesthetically unrewarding*

The above matters are considered within this report, except for the following:

- *aesthetically unrewarding*

Comment - the design of the amended development is satisfactory in terms of meeting Council's controls.

19. CONCLUSION

It is considered that the proposal, as amended, adequately addresses **Reasons for Refusal 1-4** of the original development application for the reasons contained in the body of the report (above). Furthermore, subject to conditions, the proposal, as amended, is acceptable against the relevant considerations under s79C of EPA Act 1979.

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

THAT the Council, as the consent authority, grant development consent to Development Application No. 774/2007 for alterations and additions including a new first floor level and carport on land at 22 Girilang Avenue Vaucluse, 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)
A07.34.1 Revision A	Site Plan	Advantage Designs	28/4/08
A07.34.2 Revision A	Ground Floor Plan	Advantage Designs	28/4/08
A07.34.3 Revision A	Top Floor Plan	Advantage Designs	28/4/08
A07.34.4 Revision A	North and East Elevations	Advantage Designs	28/4/08
A07.34.5 Revision A	South and West Elevations	Advantage Designs	28/4/08
A07.34.6 Revision A	Sections A and B	Advantage Designs	28/4/08
Cert A23902	BASIX Certificate	DOP	5/5/08

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

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

B.1 Construction Certificate required prior to any demolition

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

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

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

C.1 Payment of Security, Levies and Fees (S80A(6) & S94 of the Act, Section 608 of the Local Government Act 1993)

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

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

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

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy Use Calculator: http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation or use their online calculator	No	
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit - Making good any damage caused to any property of the <i>Council</i> as a consequence of the doing of anything to which the consent relates.	\$9,000	No	T115
DEVELOPMENT LEVY under Woollahra Section 94A Development Contributions Plan 2005 This plan may be inspected at Woollahra Council or downloaded from our website www.woollahra.nsw.gov.au .			
Development Levy (S94A)	\$3,500 + Index Amount	Yes, quarterly	T96
INSPECTION FEES under section 608 of the Local Government Act 1993			
Security Administration Fee	\$168	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES		\$12,668	Plus any relevant indexed amounts and long service levy

Building & Construction Industry Long Service Payment

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

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

How must the payments be made?

Payments must be made by:

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

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

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

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

How will the section 94A levy be indexed?

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

Do you need HELP indexing the levy?

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

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

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

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

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

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

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

Standard Condition: C5

C.2 BASIX commitments

The *applicant* must submit to the *Certifying Authority* *BASIX Certificate* NoA23902 with any application for a *Construction Certificate*.

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

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

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

C.3 Structural Adequacy of Existing Supporting Structures

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

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

C.4 Professional Engineering Details

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

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

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

C.5 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 14 December 2006)

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

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

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

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

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

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

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

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

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

This condition does not apply:

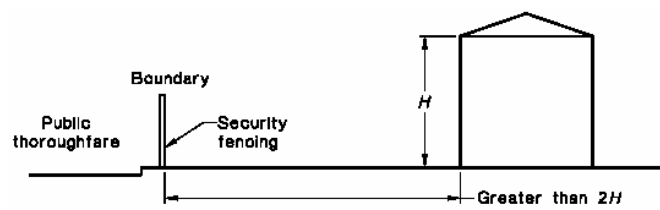
- a. to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4),
- or
- b. to the erection of a temporary building.

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

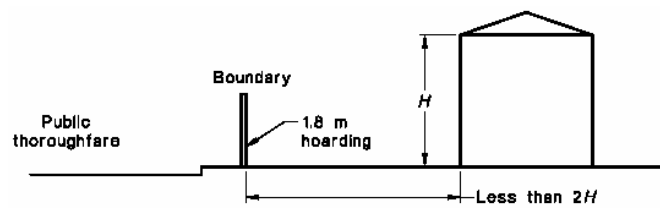
Note: This condition must be satisfied prior to commencement of any work in relation to the contract of insurance under the Home Building Act 1989. This condition also has effect during the carrying out of all building work with respect to compliance with the Building Code of Australia.
Standard Condition: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

D.2 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.



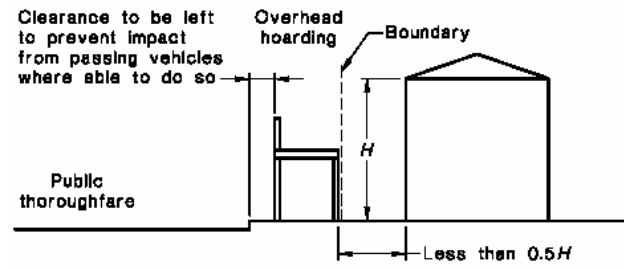
Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an *overhead protective structure* and the facing facade protected by heavy-duty scaffolding, unless either

- 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

- c. together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa.



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

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

<http://www.workcover.nsw.gov.au/Publications/LawAndPolicy/CodesofPractice/oheadprotstr 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 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

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

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

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

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

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

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

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

D.5 Notification of Home Building Act 1989 requirements

- a. For the purposes of section 80A (11) of the Act, the requirements of this condition are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the Home Building Act 1989.
- b. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - i. in the case of work for which a *principal contractor* is required to be appointed:
 - the name and licence number of the principal contractor, and
 - the name of the insurer by which the work is insured under Part 6 of that Act,
 - ii. in the case of work to be done by an owner-builder:
 - the name of the owner-builder, and
 - if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- c. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.
- d. This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.
Standard Condition: D17

D.6 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 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

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

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

This condition does not apply:

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

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

Standard Condition: E1

E.2 Compliance with Australian Standard for Demolition

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

Standard Condition: E2

E.3 Critical Stage Inspections

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

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

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

Note: The PCA may, in addition to inspections, require the submission of *Compliance Certificates*, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.
Standard Condition: E5

E.4 Hours of Work –Amenity of the neighbourhood

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

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

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

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

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

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

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

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

E.5 Maintenance of Vehicular and Pedestrian Safety and Access

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

- a. Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.
- b. Not use the road or footway for the storage of any article, material, matter, waste or thing.
- c. Not use the road or footway for any *work*.

- d. Keep the road and footway in good repair free of any trip hazard or obstruction.
- e. Not stand any plant and equipment upon the road or footway.

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

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

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

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

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

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

Part C Management of Waste:

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

Part E Public roads:

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

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

E.6 Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures 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.
- g) Flood protection measures are in place confirming location, height and capacity.

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.7 Placement and use of Skip Bins

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

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

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

E.8 Dust Mitigation

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

This generally requires:

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

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

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

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

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

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

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

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

F.2 Commissioning and Certification of Systems and Works

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

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

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

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

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

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

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

N/A

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

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

All BASIX commitments must be effected in accordance with the BASIX Certificate No.A23902.

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

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

I.1 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No.A23902.

Note: This condition affects successors in title with the intent that environmental sustainability measures must be maintained for the life of development under this consent.
Standard Condition: I7

I.2 Noise from mechanical plant and equipment

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

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

Note: Words in this condition have the same meaning as in the:
NSW Industrial Noise Policy (http://www.environment.nsw.gov.au/resources/ind_noise.pdf) ISBN 0 7313 2715 2, dated January 2000, and
Noise Guide for Local Government (<http://www.environment.nsw.gov.au/noise/nglg.htm>) ISBN 1741370671, dated December 2004.
Standard Condition: I53

J. Miscellaneous Conditions

N/A

K. Advising

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

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

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

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

Warnings as to potential maximum penalties

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

Warning as to enforcement and legal costs

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

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

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

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

Standard Advising: K1

K.2 Dial before you dig



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

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

Standard Advising: K2

K.3 Builders Licences and Owner Builders Permits

Section 81A of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an **owner-builder**, must 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 Appeal

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

Sarah Chambers, Assessment Officer on (02) 9391 7064

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 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.9 Owner Builders

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

Standard Condition: K18

Ms S Chambers
REVIEW OFFICER

Mr N Economou
TEAM LEADER

ANNEXURES

1. S82 Plans & Elevations
2. Original assessment Report and Plans

DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D3
FILE No.	DA 292/2008/1
PROPERTY DETAILS	10A William Street DOUBLE BAY 2028
	Lot & DP No.: LOT: 2 DP: 1074836
	Side of Street: Northern
	Site Area (m²): 575.2
	Zoning: Residential 2(a)
PROPOSAL:	New swimming pool and associated works
TYPE OF CONSENT:	Local development
APPLICANT:	Mr R N Simons & Mrs A Simons
OWNER:	Mr R N & Mrs A Simons
DATE LODGED:	23/05/2008
AUTHOR:	Mr A Gilderdale

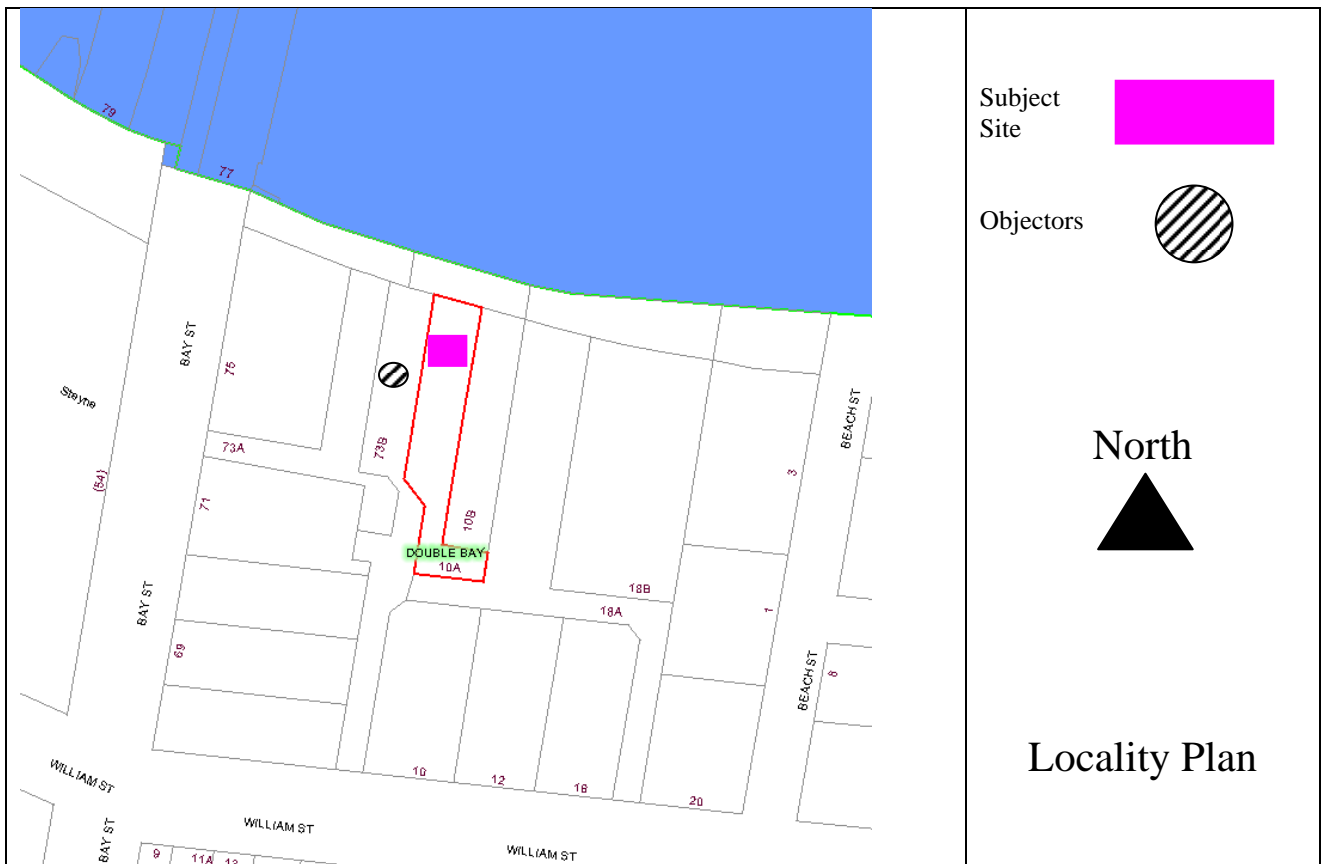
1. RECOMMENDATION PRECIS

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

2. PROPOSAL PRECIS

New swimming pool and associated landscaping.

3. LOCALITY PLAN



4. DESCRIPTION OF PROPOSAL

The proposal is seeking development consent for the following work:

Rear Yard:

- Swimming pool 1.0 – 1.8m deep with associated filter equipment;
- Glass safety fence 1.2m high;
- Poolside seating;
- Non-slip paving around pool; and
- Landscaping.

5. SUMMARY

Reasons for report	Issues	Submissions
<ul style="list-style-type: none"> ▪ The DA does not satisfy the criteria for determination under staff delegation as 1 objection was received and remains unresolved. 	<ul style="list-style-type: none"> • <i>Landscape character;</i> • <i>Aural impacts; and</i> • <i>Acoustic privacy.</i> 	1 submission was received.

6. ESTIMATED COST OF WORKS

The applicant's estimated cost for the proposed development is \$75,000. This has been checked using the adopted practice and is considered to be accurate.

7. DESCRIPTION OF SITE OF LOCALITY

THE SITE AND LOCALITY	
Physical features	The subject site fronts onto Sydney Harbour and is accessible via a service road running behind 10, 12 and 18 William Street. The site is predominately rectangular in shape and has a total site area of 575.2m ² . The site has a Harbour front width of approximately 11.0m and a length of approximately 61.0m.
Topography	The site slopes approximately 1.0m between the front of the site [RL 3.00] and the rear of the site [RL 2.00]. There are no significant trees located within the site.
Existing buildings and structures	The site contains a 2 storey semi detached dwelling. The structure dates from the late 19 th century.
Environment	The site fronts onto Sydney Harbour and is located within the HFSPA. The site makes a positive contribution to the visual amenity of the foreshore.



Figure 1.0^: Aerial view of 10A William Street Double Bay and surrounding locality.

8. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	Residential
Previous relevant applications	There are no previous relevant development applications
Pre-DA	N/A
Requests for additional information	Survey [submitted: 13 June 2008] Preliminary Acid Sulphate Soil Assessment [see: Douglas Partners Geotechnical Investigation Report dated May 2008] Cheque made out to Department of Water & Energy [submitted: 30 June 2008]
Amended plans/ Replacement Application	N/A
Land & Environment Court appeal	N/A

9. REFERRALS

9.1 The following table contains particulars of internal referrals.

INTERNAL REFERRALS		
Referral Officer	Comment	Annexure
Development Engineer	<i>Council's Development Engineer has determined that the proposal satisfies Technical Services concerns, subject to the imposition of standard conditions of consent.</i>	2
Landscaping Officer	<i>Council's Tree and Landscape Officer has determined that the development proposal is satisfactory in terms of tree preservation and landscaping, subject to compliance with standard conditions of consent.</i>	3
Environmental Health Officer	<p><i>Council's Environmental Health Officer has determined that the proposal satisfies health concerns, subject to the imposition of standard conditions of consent.</i></p> <p>In addition, the following relevant comment was made:</p> <p><i>The land for the purposes of Acid Sulfate Soils is classified as Class 2 which involves works below natural ground surface or works by which the water-table is likely to be lowered. The Health Section was not provided with any information in relation to Acid Sulfate Soils for the subject site requiring comment.</i></p> <p><i>Further, Council's Environmental Health Officer recommended on 9 July 2008 that condition C.3 'Acoustic Certification of Mechanical Plant and Equipment' form part of the recommendation in addition to condition I.5 'Noise from Mechanical Plant and Equipment' [see email dated 9 July 2008].</i></p>	4

9.2 The following table contains particulars of external referrals.

EXTERNAL REFERRALS		
External Referral Body	Reason for referral	Comment
NSW Department of Water & Energy	Water Management Act 2000	<i>"The proposed works are exempt from the need to obtain a Controlled Activity Approval under the Water management Act 2000"</i>

ENVIRONMENTAL ASSESSMENT UNDER S.79C

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

10. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

10.1 SEPPs

State Environmental Planning Policy No.55

The land is currently used for residential purposes. There is no evidence before Council to suggest that the land had been used for any non-residential purposes in relatively recent years. Consequently, the possibility of the land being contaminated is substantially reduced. It is therefore considered that Council can be satisfied that the land is not contaminated such that remediation would be required.

10.2 REPs

SREP (Sydney Harbour Catchment) 2005

The site falls within the Sydney Harbour Catchment area and the proposed swimming pool and associated mechanical plant and equipment would not be visible from the harbour.

The aim of the Sydney Harbour Catchment SREP is:

- (a) to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained:*
 - (i) as an outstanding natural asset, and*
 - (ii) as a public asset of national and heritage significance, for existing and future generations,*
- (b) to ensure a healthy, sustainable environment on land and water,*
- (c) to achieve a high quality and ecologically sustainable urban environment,*
- (d) to ensure a prosperous working harbour and an effective transport corridor,*
- (e) to encourage a culturally rich and vibrant place for people,*
- (f) to ensure accessibility to and along Sydney Harbour and its foreshores,*
- (g) to ensure the protection, maintenance and rehabilitation of watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity,*
- (h) to provide a consolidated, simplified and updated legislative framework for future planning.*

The development would not impact on the natural environment or ecology of the area. It would also not have any impact on the workings of the harbour or its use by the public. Neither would it impact on accessibility to its foreshores, watercourses etc. Therefore the proposed works would not have any negative impact on the aims of the SREP.

The subject site also falls within the area covered by the Sydney Harbour Forshores and Waterways Area Development Control Plan. It is classified as being within Landscape Character Type 10 area for which the performance criteria are:

- *It does not obscure, detract from or destroy special natural elements that are significant within the local context of the area;*
- *The open nature of the bays is not lost by overdevelopment of the foreshores; and*
- *It has been demonstrated that the commercial activities proposed within the adjacent to the foreshores are necessary and that their proposed use is compatible with existing and likely future land uses*

When assessing the proposal against the performance criteria of the DCP it can be concluded that the proposal would not detract from or destroy any special natural elements of the locality as the proposed works will not be visible from the harbour.

Accordingly, the proposal is considered to be satisfactory with regard to the provisions of this instrument.

10.3 Section 94A contribution

The estimates cost of the work is \$75,000. In accordance with Councils S94A Plan which came into force in November 2006 [Amendment No. 1-7 Feb 2007] the subject development does not attract a S94A contribution fee.

10.4 Other relevant legislation

Not applicable.

11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

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

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

The proposal is considered to comply with the aims and objectives of Woollahra LEP 1995 as the proposed works will have a negligible impact upon the surrounding natural and built environment and amenity of surrounding residents subject to the imposition of standard conditions.

11.2 Statutory compliance table

The proposed swimming pool, which would be located on or near ground level and outside the foreshore building line, would not alter any of the statutory controls applicable to the site.

11.3 Site area requirements

Not applicable.

11.4 Height

The proposed swimming pool will attain a maximum height of 100mm above natural ground level while the proposed pool filter enclosure[s] will attain a height of 1350mm above the natural ground level. Overall; the proposed height is compliant with the statutory 9.5metres height limit as prescribed by the WLEP 1995.

11.5 Floor space ratio

Not applicable.

11.6 FSBL

The property is not subject to Council's Foreshore Building Line control.

11.7 Other special clauses/development standards

Clause 18 Excavation: Council's Development Engineer has no objection to the proposed excavation on technical grounds subject to the imposition of standard conditions. The proposal will result in the following excavation:

- Pool resulting in excavation of 7.4m x 3.5m x 1.8m [max pool depth] = 46.6m³

The temporary and permanent impact of the proposed excavation is considered as follows:

Temporary impact:

The temporary impact of the proposed excavation during construction on the amenity of the adjoining properties would not be significant in terms of noise, vibration and dust. These impacts will be mitigated through the imposition of standard conditions. It is noted that the proposal will involve excavation at the rear of the property for a swimming pool reaching a maximum depth of 2.0m (at the deep end). In this respect, it can be assumed that the proposal will have the following temporary and permanent impacts:

Permanent impact:

The extent of excavation is considered to be acceptable and is comparable to the amount of excavation that has been approved by Council on other sites within the locality.

The risks of loss of support or vibration damage are considered to be low due to the proposed excavation being within the rear yard with no excavation proposed adjacent to adjoining buildings.

Amenity impacts:

The likely impacts include:

- Potential damage to 73B Bay Street & 10B William Street;
- Noise;
- Dust; and
- Obstructions to traffic and illegal parking.

The potential damage to adjoining properties as a result of the proposed excavation will be mitigated due to the imposition of the following conditions:

D.2 '*Dilapidation reports for existing buildings condition*'; and
E.9 '*Support of Adjoining Land and Buildings*'.

The potential nuisance of noise and dust as a result of the proposed excavation has been conditioned accordingly limiting hours of work and requiring dust control during excavation. Refer to the following conditions:

E.5 '*Hours of Work – Amenity of the Neighbourhood*';
E.8 '*Maintenance of Environmental Controls*';

The surrounding streets may be obstructed by trucks since there is insufficient area on the site and insufficient access to the site to ensure that all excavation, loading and works would occur within the site. The number of truck movements, in the worst case, would be approximately 4.9 [assuming 10m³ of excavation is 1 truck movement] in the excavation phase alone. This amount of truck movements is considered to be reasonable; however traffic disruption will be mitigated due to the imposition of the following condition:

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

Having regard to clause 18 of WLEP 1995, the proposed excavation is considered acceptable

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

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

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

Clause 25D Acid Sulfate Soils: The proposed works do not require the need for an assessment of acid Sulfate soils under clause 25D of Woollahra LEP 1995. Refer to Technical Services referral response, standard conditions applied. Refer to condition C.9 '*Geotechnical and Hydrogeological Design, Certification & Monitoring*' and condition C.10 '*Stormwater Discharge to Harbour (Clause 25(2) WLEP 1995)*'.

Clauses 26-33 Heritage and conservation area provisions: The site is not listed as a heritage item nor is it located within a conservation area. Consequently the proposal is considered to be acceptable.

12. DRAFT AMENDMENTS TO STATUTORY CONTROLS

Not applicable.

13. DEVELOPMENT CONTROL PLANS

13.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

Site Area (575.2m ²)	Existing	Proposed	Control	Complies
Ancillary Development (swimming pool & filter enclosure)				
Maximum Height	N/A	0.1 – 1350mm	3.6m	Yes
Rear Setback (north) – Swimming pool	N/A	1.6 – 2.15m	1.5m	Yes
Rear Setback (north) – Filter enclosure	N/A	No setback	1.5m	No
Side Setback (east)	N/A	1.5m	1.5m	Yes
Side Setback (west)	N/A	1.5m	1.5m	Yes
Building Footprint	33.7% (194.0m ²)	34.3% (197.7m ²)	46% (264.5m ²)	Yes
Deep Soil Landscaping – Dwelling	39.8% (171.4m ²)	29.8% (113.8m ²)	50% (190.6m ²)	No
Private Open Space at Ground Level – Total	217m ²	164m ²	35m ² Min dimension 3m	Yes
Location of Swimming Pool	N/A	Rear Setback	Rear Setback	Yes
Swimming Pool Setback from Significant Mature Trees	N/A	> 3.0m	3.0m	Yes
Swimming Pool Excavation, Piling and Subsurface Wall Setback	N/A	1.0 – 1.8m	1.5m	No
Swimming Pool Height Above Ground Level Adjacent to Adjoining Property	N/A	0.3m	0.3m	Yes

Site analysis performance criteria (*Part 3*)

The proposal complies with the performance criteria in that the development will fit into the surrounding environment and pattern of development. Accordingly, the proposal is considered to accord with Part 3 of the WRDCP 2003.

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

The proposal complies with the desired future character objectives for the Double Bay precinct, because:

- The proposal preserves the precinct's existing tree canopy;
- The proposed development maintains the amenity of the public domain by preserving public views.

The proposal complies with the performance design objectives and criteria for the Double Bay precinct as the proposed development preserves the leafy character of the precinct and the location of the development within a landscaped setting of the site will mean that it will not be visible from Sydney Harbour.

Accordingly, the proposal is considered to accord with the relevant objectives and performance criteria of Part 4.2 of the WRDCP 2003.

Streetscape performance criteria (*Section 5.1*)

The proposed swimming pool will not be discernable from the public domain or the harbour. Accordingly, the proposal is considered to accord with the relevant objectives and performance criteria of Part 5.1 of the WRDCP 2003.

Building size and location performance criteria (*Section 5.2*)

Setbacks

The proposed swimming pool would comply with the numeric side setback controls as prescribed by WRDCP 2003, however, the proposal will not comply with the rear setback controls as the proposed filter enclosure and pool side concourse will not incorporate any setback from the rear boundary of the site. Notwithstanding this, the proposal is considered to accord with the relevant objectives of Part 5.2 of the WRDCP 2003, because:

- the proposed swimming pool will not result in the removal of any significant trees;
- the proposed swimming pool will not disrupt view sharing arrangements;
- the proposed swimming pool will not be discernable from the harbour or public domain as it will be screened by the existing sandstone fence which is to be retained; and
- the proposed swimming pool excavation will be adequately setback from the rear and side boundaries.

Accordingly, the proposal is considered to accord with the relevant objectives and performance criteria of Part 5.2 of the WRDCP 2003.

Open space and landscaping performance criteria (*Section 5.3*)

The site presently has approximately 217m² of private open space at ground level. The proposal will result in approximately 164m² of the site being retained as private open space. Control 5.3.4 of the WRDCP 2003 requires a minimum area of 35m² of private open space. The proposal will satisfy this requirement.

The site presently has approximately 171.4^{m²} of deep soil landscaping. The proposal will result in approximately 113.8m² of the site being retained as deep soil landscaping. Control 5.3.2 of the WRDCP 2003 requires at least 50% [190.6m²] of the unbuilt upon area to comprise deep soil landscaping. Notwithstanding this, the proposal is considered to accord with the relevant objectives of Part 5.3 of the WRDCP 2003, because:

- the proposed swimming pool will not result in the removal of any significant trees;
- the proposed swimming pool will be adequately setback from mature and significant trees;
- the site will continue to provide a sufficient amount of deep soil landscaping; and
- the proposal is considered to accord with the landscape character of the locality.

In this respect, the proposal is considered to be acceptable.

Views performance criteria (*Section 5.5*)

The proposal will not obstruct any views obtained from the public domain or toward the harbour from surrounding properties. Accordingly, the proposal is considered to accord with the relevant objectives and performance criteria of Part 5.5 of the WRDCP 2003.

Acoustic and visual privacy performance criteria (*Section 5.8*)

When visual privacy is referred to in the context of residential design, it means the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space. Most planning instruments and development control plans acknowledge the need for privacy, but leave it to be assessed qualitatively. Part 5.8 of the WRDCP 2003 contains the following relevant acoustic and visual privacy objective:

Objective:

O 5.8.1 *To ensure adequate acoustic and visual privacy for occupants and neighbours.*

The objective is to protect the acoustic and visual privacy of adjoining and adjacent dwellings. The proposal includes the addition of a swimming pool within the rear of the property. It is therefore reasonable to assume that the proposal will have the following acoustic and visual privacy impact on surrounding properties:

10B William Street

The proposed swimming pool will be located at the rear of the subject property approximately 16.0m from the residential building at 10B William Street. The proposed swimming pool will be adequately setback from the adjoining residential building to ensure there would be no unreasonable impact on the aural and visual privacy of the adjoining property. Notwithstanding this, Council's Environmental Health Officer has recommended the imposition of condition I.5 '*Noise from mechanical plant and equipment*' and condition C.2 '*Acoustic Certification of Mechanical Plant and Equipment*'. Consequently, the proposal is considered to be acceptable.

73B Bay Street

The proposed swimming pool will be located at the rear of the subject property approximately 12.0m from the residential building at 73B Bay Street. The proposed swimming pool will be adequately setback from the adjoining residential building to ensure there would be no unreasonable impact on the aural and visual privacy of the adjoining property. Notwithstanding this, Council's Environmental Health Officer has recommended the imposition of condition I.5 '*Noise from mechanical plant and equipment*' and condition C.2 '*Acoustic Certification of Mechanical Plant and Equipment*'. Consequently, the proposal is considered to be acceptable.

Accordingly, the proposal is considered to accord with the relevant objectives and performance criteria of Part 5.8 of the WRDCP 2003.

Harbour foreshore development performance criteria (*Section 5.11*)

The proposal complies with the relevant performance criteria of Part 5.11 of the WRDCP 2003 in the following manner:

- The proposal will provide adequate vegetation cover when viewed from Sydney Harbour to maintain the existing leafy environment of the locality;
- The proposed swimming pool has been designed to blend with the natural landscape setting and the existing built environment;
- The proposal will not impact on the existing ecological communities within the harbour foreshore area.

Accordingly, the proposal is considered to accord with the relevant objectives and performance criteria of Part 5.11 of the WRDCP 2003.

13.3 Woollahra Access

The proposal will have no impact on entry and egress to or from the subject semi-detached dwelling-house. The proposal is considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under Part 5.13 of WRDCP 2003.

13.4 Other DCPs, codes and policies

Swimming Pools Act 1992

The proposed swimming pool fence and in particular the door is required to be modified to comply with the *Swimming Pool Act 1992*. Refer to condition C.5 '*Swimming and Spa Pools – Child Resistant Barriers*'.

14. APPLICABLE REGULATIONS

None applicable.

15. THE LIKELY IMPACTS OF THE PROPOSAL

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

16. THE SUITABILITY OF THE SITE

Council's Development Engineer made the following relevant comment:

"The proposal involves excavation for a pool to a depth of 2.0m (at the deep end). The harbour water level is 1.30m AHD. The excavation of the swimming pool will be below the water table and may impact on it.

No geotechnical report was submitted in favour of the proposal, therefore, Council's has conditioned the proposal accordingly.

Note: Any dewatering from the excavation that will be discharged into Sydney Harbour will need consent from NSW Maritime Authority – conditions applied".

Refer to condition C.9 'Geotechnical and Hydrogeological Design, Certification & Monitoring' and condition C.10 'Stormwater Discharge to Harbour (Clause 25(2) WLEP 1995)'.

17. SUBMISSIONS

In accordance with clause 4.5 of Woollahra Municipal Council's Development Control Plan for Advertising and Notification of Development Applications and Applications to Modify Development Consents, the applicant has completed the statutory declaration [see correspondence on file dated 7 July 2008] declaring that the site notice for DA 2008/292 at 10A William Street, Double Bay was erected and maintained during the notification period in accordance with the requirements of the DCP.

The proposal was advertised and notified in accordance with Council's Advertising and Notifications DCP. 1 submission was received from:

- Planning Workshop Australia [On behalf of David Scheinberg of 73B Bay Street – Double Bay]
Level 3, 7 Bridge Street
Sydney GPO Box 3275 NSW 2001

The submission raised the following issues:

- ***The SEE accompanying the DA refers to relevant issues listed in the Woollahra DA Guide Step 3. Included in these is G. Air and Noise. In this respect, the SEE submits that:***

"the proposal, in its intended use will not create any adverse noise or emissions nor prevent the flow of natural air".

This broad, generalised statement is not substantiated by any accompanying acoustical study or noise readings. The DA is therefore deficient in this regard and does not contain necessary technical details to enable a proper assessment of this issue by Council officers.

The SEE also refers to N. Landscaping and states that:

"the proposal will generally maintain the character of the existing landscaping".

However, nothing in the DA plans or accompanying material illustrates how the introduction of the proposed pool into an existing attractive soft landscape area will serve to maintain the existing landscape character. The DA material is therefore deficient in this regard.

Assessment Officer Comment: Council's Environmental Health Officer has determined that the development proposal satisfies Environmental Health concerns, Council's Environmental Health Officer has recommended the imposition of condition I.5 '*Noise from mechanical plant and equipment*' and condition C.2 '*Acoustic Certification of Mechanical Plant and Equipment*'.

Council's Tree and Landscape Officer has determined that the development proposal is satisfactory in terms of tree preservation and landscaping, subject to compliance with standard condition C.3 '*Tree Management Details*', condition D.3 '*Establishment of Tree Protection Zones*', condition E.7 '*Tree Preservation*' and condition K.11 '*Pruning or Removing a Tree Growing on Private Property*'.

- *After examining the DA plans and inspecting our client's property, where we were able to view the site of the proposed pool from our client's 1st floor main bedroom deck, we have major concerns regarding the likely aural impacts of the pool on the amenity of our clients' dwelling.*

Our clients' main bedroom and second bedroom are within an unobstructed distance of 15 metres from the proposed pool, and the aural impacts of pool activities on the quiet amenity enjoyed from this area of the dwelling is unacceptable on environmental grounds. This will be particularly so in summer months when cooling harbour breezes are enjoyed by Mr and Mrs Scheinberg in the main bedroom, but yet this is when the most intensive use of the proposed pool will occur. The shouting, laughter and splashing sounds resulting from the pool use will represent an unreasonable amenity impact on Mr and Mrs Scheinberg's quiet enjoyment of their dwelling. On this ground, alone, the DA for the proposed pool should be rejected.

Assessment Officer Comment: The proposed swimming pool will be located at the rear of the property approximately 12.0m from the residential building at 73 B Bay Street. The proposed swimming pool will be adequately setback from the adjoining residential building to ensure there would be no unreasonable impact on the aural and visual privacy of the adjoining property. Consequently, the proposal is considered to be acceptable.

- *Woollahra LEP 1995 includes the subject land in the 2(a) Residential "A" Zone. Relevant to the DA for the subject land, the LEP's objectives for the 2(a) Zone include:*

a) to maintain the amenity and existing characteristics of areas predominantly characterised by dwelling-houses,

It is submitted that this objective of the 2(a) Zone is not satisfied by the proposed pool on the subject land, as the pool's development will adversely impact on the amenity of our clients' dwelling, particularly in respect of aural impacts. The proposed pool will also alter the attractive soft landscape character of the area; a foreshore area characterised by dwelling houses set in soft landscape surrounds.

Assessment Officer Comment: Council's Tree and Landscape Officer has noted there is a mature *Ficus macrophylla* Moreton Bay Fig tree (18 x 18) located within the rear yard of 10B William Street, adjacent the subject property. Conditions of consent are recommended to ensure the proposed development has a minimal impact on the subject tree.

Notwithstanding this, the proposal is considered to accord with objectives (f) (i-v) [in relation to landscape] of the WLEP 1995. In this respect, the proposal is considered to be acceptable.

- *The RDCP 2003 includes in its Objectives the following:*

b) to retain and enhance significant trees and vegetation to conserve Woollahra's leafy character;

c) to minimise the negative impacts of development on the amenity of adjoining and neighbouring properties;

For the reasons stated elsewhere in this letter, it is submitted that the development of the proposed pool on the subject land is contrary to these objectives. Specifically, the proposed pool will:

Reduce the soft landscape setting of dwellings along the Double Bay foreshore, eroding the area's leafy character.

Present negative impacts on the amenity currently enjoyed by our clients from their adjoining dwelling, particularly through unreasonable aural impacts and the visual impacts resulting from the loss of overlooked soft landscaping.

Clause C 5.8.4 of the RDCP 2003 provides that bedrooms be separated, "by way of barriers or distance, from on-site noise sources such as active recreation areas". With the proposed pool being located within an unobstructed 15 metres from our clients' upper level main bedroom, it is contrary to the intention of this Clause. The aural impacts resulting from the relationship between the pool and our clients' main bedroom are unreasonable and unacceptable.

Clause C 5.3.16 of the RDCP provides that "the location of swimming pools and spa pools is to be at the rear of properties". Effectively, the front yards of dwellings in the foreshore area of Double Bay comprise the building setbacks from the foreshore. The rear comprises the southern setback, service areas of these dwellings. This provision is included in the RDCP 2003 to ensure the preservation of soft landscaping within the front setback areas of residential properties throughout Woollahra Municipality, with the objective of maintaining and reinforcing the Municipality's leafy charm. Clearly, the placement of the proposed pool on the subject land is contrary to this RDCP provision and should therefore be rejected.

Assessment Officer Comment: The site presently has approximately 171.4^{m²} of deep soil landscaping. The proposal will result in approximately 113.8m² of the site being retained as deep soil landscaping. Control 5.3.2 of the WRDCP 2003 requires at least 50% [190.6m²] of the unbuilt upon area to comprise deep soil landscaping. The proposal will not comply with this requirement, however, the proposal is considered to accord with the relevant objectives of Part 5.3 of the WRDCP 2003. In this respect, the proposal is considered to be acceptable.

Further, the proposal is considered to accord with objectives (f) (i-v) [in relation to landscape] of the WLEP 1995.

While the proposed swimming pool will not be separated by a landscape barrier, it is considered that the 12.0m separation between the proposed swimming pool and adjoining property, 73B Bay Street, will adequately mitigate visual and acoustic privacy impacts. It should be noted, that if a landscape barrier was proposed, it may have a significant and adverse impact on the adjoining property, 73B Bay Street, with respect to view sharing.

In relation to the location of the proposed swimming pool, it is considered that the proposed swimming pool is located at the rear of the property. In this respect, the proposal is considered to satisfy control C 5.3.16.

In this respect, the proposal is considered to be acceptable.

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. 292/2008 for new swimming pool and associated works on land at 10A William Street Double Bay, subject to the following conditions:

A. General Conditions

A.1 Conditions

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

Standard Condition: A1

A.2 Definitions

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

Applicant means the applicant for this Consent.

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

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

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

Council means Woollahra Municipal Council

Court means the Land and Environment Court

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

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

- a. The collection of stormwater,
- b. The retention of stormwater,

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

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

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

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

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

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

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

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

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

Site means the land being developed subject to this consent.

WLEP 1995 means *Woollahra Local Environmental Plan 1995*

Work for the purposes of this consent means:

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

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

Standard Condition: A2

A.3 Approved Plans and supporting documents

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

Reference	Description	Author/Drawn	Date(s)
DA – 01 / P – 01B	Site Plan – Existing + Proposed Pool	Frank Grill & Associates	30.04.2008
P - 02	Pool Plan & Elevations	Frank Grill & Associates	30.04.2008

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

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

A.4 Prescribed Conditions

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

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

A.5 Ancillary Aspect of the Development (s80A(2) of the Act)

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

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

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

B.1 Construction Certificate required prior to any demolition

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

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

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

C.1 Payment of Security, Levies and Fees (S80A(6) of the Act & Section 608 of the Local Government Act 1993)

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

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

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

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy Use Calculator: http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation or use their online calculator	No	
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit - Making good any damage caused to any property of the <i>Council</i> as a consequence of the doing of anything to which the consent relates.	\$4000	No	T115
INSPECTION FEES under section 608 of the Local Government Act 1993			
Security Administration Fee	\$168	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$4168 Plus any relevant indexed amounts and long service levy		

Building & Construction Industry Long Service Payment

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

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

How must the payments be made?

Payments must be made by:

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

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

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

Standard Condition: C5

C.2 Acoustic Certification of Mechanical Plant & Equipment

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

Where sound attenuation is required this must be detailed.

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

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

Standard Condition: C62

C.3 Tree Management Details

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

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

Standard Condition: C30

C.4 Professional Engineering Details

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

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

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

C.5 Swimming and Spa Pools – Child Resistant Barriers

The *Construction Certificate* plans and specifications required by clause 139 of the *Regulation* must demonstrate compliance (by showing the proposed location of all child-resistant barriers and the resuscitation sign) with the provisions of the *Swimming Pools Act 1992*.

Note: A statement to the effect that isolation swimming pool fencing complying with AS1926 will be installed does not satisfy this condition. The location of the required barriers and the sign must be detailed upon the *Construction Certificate* plans.
Standard Condition: C55

C.6 Swimming and Spa Pools – Backwash

The *Construction Certificate* plans and specification required to be submitted pursuant to clause 139 of the *Regulation* must detail the connection of backwash to Sydney Waters sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

Note: The plans must show the location of Sydney Waters sewer, the yard gully or any new connection to the sewer system including a detailed cross section of the connection complying with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

Note: The discharge of backwash water to any stormwater system is water pollution and an offence under the *Protection of the Environment Operations Act 1997*. The connection of any backwash pipe to any stormwater system is an offence under the *Protection of the Environment Operations Act 1997*.
Standard Condition: C56

C.7 Soil and Water Management Plan – Submission & Approval

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

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

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

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

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

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

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

C.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 14 December 2006)

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

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

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

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

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

C.9 Geotechnical and Hydrogeological Design, Certification & Monitoring

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

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

details:

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

Standard Condition: C40

C.10 Stormwater Discharge to Harbour (Clause 25(2) WLEP 1995)

The developer must obtain written approval from the NSW Maritime Authority to discharge ground water seepage from the subject property directly into Sydney Harbour.

Standard Condition: C50

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 Dilapidation Reports for existing buildings

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

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

- a. 73B Bay Street, Double Bay.
- b. 10B Bay Street, Double Bay.

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

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

Note: The reasons for this condition are:

- *To provide a record of the condition of buildings prior to the development being carried out*
- *To encourage developers and its contractors to use construction techniques that will minimise the risk of damage to buildings on neighbouring land*

Also refer to the Dilapidation Report Advising for more information regarding this condition
Standard Condition: D4

D.3 Establishment of Tree Protection Zones

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

- a) Tree Protection Zone areas

Council Reference No:	Species	Location	Radius from Trunk (Metres)*
1	<i>Ficus macrophylla</i> Moreton Bay Fig	Rear yard of 10B William Street	10

- b) Tree Protection Zones are to be fenced with a 1.8 metre high chainmesh or weldmesh fence to minimise disturbance to existing ground conditions. The area within the fence must be mulched, to a depth of 75mm, irrigated and maintained for the duration of the construction works.
- d) A sign must be erected on each side of the fence indicating the existence of a Tree Protection Zone and providing the contact details of the site Arborist.
- e) Existing soil levels must be maintained within Tree Protection Zones. Where excavation is undertaken adjacent such an area, the edge of the excavation must be stabilised, until such time as permanent measures are installed (eg. retaining wall etc) to prevent erosion within the Tree Protection Zone.
- f) Sediment control measures are to be installed around all Tree Protection Zones to protect the existing soil levels.
- g) The storage of materials, stockpiling, siting of works sheds, preparation of mixes, cleaning of tools or equipment is not permitted within Tree Protection Zones.

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

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

D.4 Site Signs

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

“Erection of signs

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

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

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

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

D.5 Toilet Facilities

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

Each toilet provided:

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

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

In this condition:

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

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

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

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

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

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

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

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

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

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

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

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

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

D.7 Notification of Home Building Act 1989 requirements

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

Standard Condition: D17

D.8 Erosion and Sediment Controls – Installation

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

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

Where there is any conflict The Blue Book takes precedence.

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

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

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

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

E. Conditions which must be satisfied during any development work

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

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

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

This condition does not apply:

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

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

Standard Condition: E1

E.2 Compliance with Australian Standard for Demolition

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

Standard Condition: E2

E.3 Requirement to notify about new evidence

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

Standard Condition: E4

E.4 Critical Stage Inspections

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

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

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

Note: The PCA may, in addition to inspections, require the submission of *Compliance Certificates*, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.
Standard Condition: E5

E.5 Hours of Work –Amenity of the neighbourhood

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

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

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

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

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

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

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

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

E.6 Maintenance of Vehicular and Pedestrian Safety and Access

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

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

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

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

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

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

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

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

Part C Management of Waste:

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

Part E Public roads:

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

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

E.7 Tree Preservation

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

General Protection Requirements:

- a) There must be no excavation or *work* within the required Tree Protection Zone(s). The Tree Protection Zone(s) must be maintained during all *development work*.
- b) Where excavation encounters tree roots with a diameter exceeding 50mm excavation must cease. The *principal contractor* must procure an inspection of the tree roots exposed by a qualified arborist. Excavation must only recommence with the implementation of the recommendations of the qualified arborist or where specific instructions are given by Council's Tree Management Officer in strict accordance with such Council instructions.
- c) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the qualified arborist or where specific instructions are given by Council's Tree Management Officer in strict accordance with such Council instructions.

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

E.8 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; and
- f) Ablutions.

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

E.9 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.10 Erosion and Sediment Controls – Maintenance

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

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

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



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

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

E.11 Disposal of site water during construction

The principal contractor or owner builder must ensure:

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

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

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

Standard Condition: E17

E.12 Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures 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.
- g) Flood protection measures are in place confirming location, height and capacity.

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.13 Placement and use of Skip Bins

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

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

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

E.14 Prohibition of burning

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

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

E.15 Dust Mitigation

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

This generally requires:

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

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

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

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

E.16 Compliance with Council’s Specification for Roadworks, Drainage and Miscellaneous Works Road works and work within the Road and Footway

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

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

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

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

E.17 Swimming and Spa Pools – Temporary Child Resistant Barriers and other matters

Temporary child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* where any swimming pool or spa pool as defined by the *Swimming Pools Act 1992* contains more than 300mm in depth of water at any time. Permanent child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* as soon as practical.

Backwash and any temporary dewatering from any swimming pool or spa pool as defined by the *Swimming Pools Act 1992* must be discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

Note: This condition does not prevent Council from issuing an order pursuant to section 23 of the *Swimming Pool Act 1992* or taking such further action as necessary for a breach of this condition or the *Swimming Pools Act 1992*.
Standard Condition: E26

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

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

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

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

F.2 Amenity Landscaping

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

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

F.3 Commissioning and Certification of Systems and Works

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

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

- a. Certification from the supervising professional engineer that the requirement of the Geotechnical / Hydrogeological conditions and report recommendations were implemented and satisfied during development work.

- b. All flood protection measures.
- c. All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1 – “Off-Street car parking.”
- d. All stormwater drainage systems.
- e. All mechanical ventilation systems.
- f. All hydraulic systems.
- g. All structural work.
- h. All acoustic attenuation work.
- i. All waterproofing.
- j. Such further matters as the *Principal Certifying Authority* may require.

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

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

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

F.4 Swimming and Spa Pools – Permanent Child Resistant Barriers and other matters

Prior to any occupation or use of the development and prior to filling any swimming pool as defined by the *Swimming Pool Act 1992*:

- a. Permanent child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992*.
- b. The *Principal Contractor* or *owner* must apply for and obtain a Compliance Certificate under section 24 of the *Swimming Pools Act 1992*.
- c. Public Pools must comply with the NSW Health Public Swimming Pool and Spa Pool Guidelines in force at that time and private pools are encouraged to comply with the same standards as applicable.
- d. Water recirculation and filtration systems must be installed in compliance with AS 1926.3-2003: *Swimming pool safety - Water recirculation and filtration systems*.

Backwash must be discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

- e. Water recirculation and filtration systems must be connected to the electricity supply by a timer that limits the systems operation such that it does not operate:
- f. before 8 am or after 8 pm on any Sunday or public holiday, or
before 7 am or after 8 pm on any other day.

Note: The NSW Health Public Swimming Pool and Spa Pool Guidelines can be down loaded free from:
<http://www.health.nsw.gov.au/public-health/ehb/general/pools/poolguidelines.pdf>
Standard Condition: F13

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. Ablutions;
- c. Hoarding;
- d. Scaffolding; and
- e. Waste materials, matter, article or thing.

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

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

I.1 On-going maintenance of the on-site-detention system

The Owner(s) must in accordance with this condition and any positive covenant:

- a. permit stormwater to be temporarily detained by the system;
- b. keep the system clean and free of silt rubbish and debris;
- c. if the car park is used as a detention basin, a weather resistant sign must be maintained in a prominent position in the car park warning residents that periodic inundation of the car park may occur during heavy rain;
- d. maintain renew and repair as reasonably required from time to time the whole or part of the system so that it functions in a safe and efficient manner and in doing so complete the same within the time and in the manner reasonably specified in written notice issued by the Council;
- e. carry out the matters referred to in paragraphs (b) and (c) at the Owners expense;
- f. not make any alterations to the system or elements thereof without prior consent in writing of the Council and not interfere with the system or by its act or omission cause it to be interfered with so that it does not function or operate properly;
- g. permit the Council or its authorised agents from time to time upon giving reasonable notice (but at anytime and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant;
- h. comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time reasonably stated in the notice;
- i. where the Owner fails to comply with the Owner's obligations under this covenant, permit the Council or its agents at all times and on reasonable notice at the Owner's cost to enter the land with equipment, machinery or otherwise to carry out the works required by those obligations;
- j. indemnify the Council against all claims or actions and costs arising from those claims or actions which Council may suffer or incur in respect of the system and caused by an act or omission by the Owners in respect of the Owner's obligations under this condition.

Reason: This condition has been imposed to ensure that owners are aware of require maintenance requirements for their stormwater systems.

Note: This condition is supplementary to the owner(s) obligations and Council's rights under any positive covenant.
Standard Condition: I12

I.2 Swimming and Spa Pools – Maintenance

Swimming and Spa Pools must be maintained:

- a. in compliance with the *Swimming Pools Act* 1992 with regard to the provision of child-resistant barriers and resuscitation signs;
- b. in compliance with the NSW Health "Public Swimming Pool and Spa Pool Guidelines" in force at that time. Private pools are encouraged to comply with the same standards as applicable;
- c. in compliance with AS 1926.3-2003:Swimming pool safety - Water recirculation and filtration systems ;
- d. with backwash being discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996, and
- e. with a timer that limits the recirculation and filtration systems operation such that it does not emit noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
 - before 8 am or after 8 pm on any Sunday or public holiday, or
 - before 7 am or after 8 pm on any other day.

Note: Child-resistant barriers, resuscitation signs, recirculation and filtration systems and controls systems require regular maintenance to ensure that life safety, health and amenity standards are maintained.

Note: The NSW Health Public Swimming Pool and Spa Pool Guidelines can be down loaded free from:
<http://www.health.nsw.gov.au/public-health/ehb/general/pools/poolguidelines.pdf>
Standard Condition: I13

I.3 Outdoor lighting – Residential

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

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

Note: This condition has been imposed to control the obtrusive effects of outdoor lighting.
Standard Condition: I42

I.4 Noise Control

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

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

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

Useful links:

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

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

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

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

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

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

I.5 Noise from mechanical plant and equipment

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

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

Note: Words in this condition have the same meaning as in the:
NSW Industrial Noise Policy (http://www.environment.nsw.gov.au/resources/ind_noise.pdf)
ISBN 0 7313 2715 2, dated January 2000, and
Noise Guide for Local Government (<http://www.environment.nsw.gov.au/noise/nglg.htm>)
ISBN 1741370671, dated December 2004.
Standard Condition: I53

J. Miscellaneous Conditions

No relevant conditions.

K. Advisings

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

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

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

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

Warnings as to potential maximum penalties

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

Warning as to enforcement and legal costs

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

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

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

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

Standard Advising: K1

K.2 Dial before you dig



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

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

Standard Advising: K2

K.3 Builders Licences and Owner Builders Permits

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

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

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

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

Standard Condition: K5

K.4 Building Standards - Guide to Standards and Tolerances

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

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

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

The Guide can be down loaded from:

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

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

Standard Condition: K6

K.5 Workcover requirements

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

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

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

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

Standard Condition: K7

K.6 Dividing Fences

The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act 1991*. Council does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences.

Note: Further information can be obtained from the NSW Department of Lands -

<http://www.lands.nsw.gov.au/LandManagement/Dividing+Fences.htm>. Community Justice Centres provide a free mediation service to the community to help people resolve a wide range of disputes, including dividing fences matters. Their service is free, confidential, voluntary, timely and easy to use.

Mediation sessions are conducted by two impartial, trained mediators who help people work together to reach an agreement. Over 85% of mediations result in an agreement being reached. Mediation sessions can be arranged at convenient times during the day, evening or weekends. Contact the Community Justice Centre either by phone on 1800 671 964 or at <http://www.cjc.nsw.gov.au/>.

Standard Advising: K10

K.7 Appeal

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

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

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

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

Standard Condition: K14

K.8 Release of Security

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

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

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

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

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

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

Standard Condition: K15

K.9 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.

Standard Condition: K18

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

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

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

Standard Condition: K19

K.12 Compliance with the Building Code of Australia

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

Part 3.3.4 - Weatherproofing of masonry

Part 3.4.1 - Sub floor ventilation

Part 3.7 - Fire safety

Part 3.7.1 Fire separation

Part 3.7.2 Smoke alarms

Part 3.7.3 Heating appliances

Part 3.8 - Health and amenity

Part 3.8.1 Wet areas

Part 3.8.3 Facilities

Part 3.8.4 Light

Part 3.8.5 Ventilation

Part 3.8.6 Sound insulation

Part 3.9 - Safe movement and access

Part 3.9.1 Stair construction

Part 3.9.2 Balustrades

Part 3.9.3 Pool access

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

Standard Condition: K20 (Autotext KK20)

Mr. A Gilderdale
ASSESSMENT OFFICER

Mr. G Fotis
TEAM LEADER

ANNEXURES

1. Plans and elevation
2. Referral response – Trees & Landscaping [dated 3 June 2008]
3. Referral response – Technical Services [dated 17 June 2008]
4. Referral response – Environmental Health [dated 12 June 2008]
5. Referral response – NSW Government Department of Water and Energy [dated 24 June 2008]