

Additional Report

Agenda: *Development Control Committee*

Date: *Monday 3 December 2007*

Time: *8.00 pm*

Session: *Two*

Part: *Three*

Item: *D9*

Development Control Committee

Outline of Meeting Protocol & Procedure:

- The Chairperson will call the Meeting to order and ask the Committee/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 Committee.
- If person(s) wish to address the Committee, they are allowed four (4) 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 four (4) 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 Committee 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 Committee will debate the matter (if necessary), and arrive at a recommendation (R items which proceed to Full Council) or a resolution (D items for which the Committee has delegated authority).

Delegated Authority (“D” Items):

- To approve, disapprove and take action on Development and related applications submitted or any other matter referred by the Council or other Committee; to a site inspection for recommendation back to the Development Control Committee. (Except for those applications within the category of designated development, or matters as specified by resolution of the Council taken from time to time.
Note: This not to limit the discretions of nominated staff members exercising Delegated Authorities granted by the Council.)
- General implementation of matters touching upon or within the strategic goals and policy directives of the Council, and in respect of which due provision has been made in the Council's current budget.
- To require such investigations, reports or actions as considered necessary in respect of matters contained within the Business Agendas (and as may be limited by specific Council resolution).
- Confirmation of Minutes of its Meeting.
- Any other matter falling within the responsibility of the Development Control Committee and not restricted by the Local Government Act or required to be a Recommendation to Full Council as listed below:

Recommendation only to the Full Council (“R” Items):

- Specified developments, as may be determined and listed by the Council by resolution taken from time to time.
- Matters which involve broad strategic or policy initiatives within the responsibilities of the Committee.
- Matters requiring the expenditure of moneys and in respect of which no Council vote has been made.
- Matters not within the specified functions of the Committee,.
- Matters reserved by individual Councillors in accordance with any Council policy on "safeguards" (and substantive changes)

Committee Membership: 7 Councillors

Quorum: The quorum for a committee meeting is 4 Councillors.

Additional Item

Meeting Agenda

Session Two – Commencing 8.00pm

Part Three

Item	Subject	Pages
D9	DA323/2007 – 1 Wingadal Place, Point Piper – New single dwelling house including landscaping works & swimming pool – 18/5/2007 *See Recommendation Page 386	351-454

DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D9
FILE No.	DA 323/2007/1
PROPERTY DETAILS	1 Wingadal Place, Point Piper
	Lot & DP No.: LOT: 2 DP: 389502
	Side of Street: South
	Site Area (m ²): 927m ²
	Zoning: Residential 2(b)
PROPOSAL:	New single dwelling house including landscaping works and a swimming pool
TYPE OF CONSENT:	Integrated Development
APPLICANT:	Mr J Temple
OWNER:	Ms S M Cooke
DATE LODGED:	18/05/2007 20/06/2007 – Amended Revision B Plans submitted 10/09/2007 – Amended Revision C Plans submitted 14/11/2007 – Amended Revision D Plan submitted
AUTHOR:	Mr J La Posta

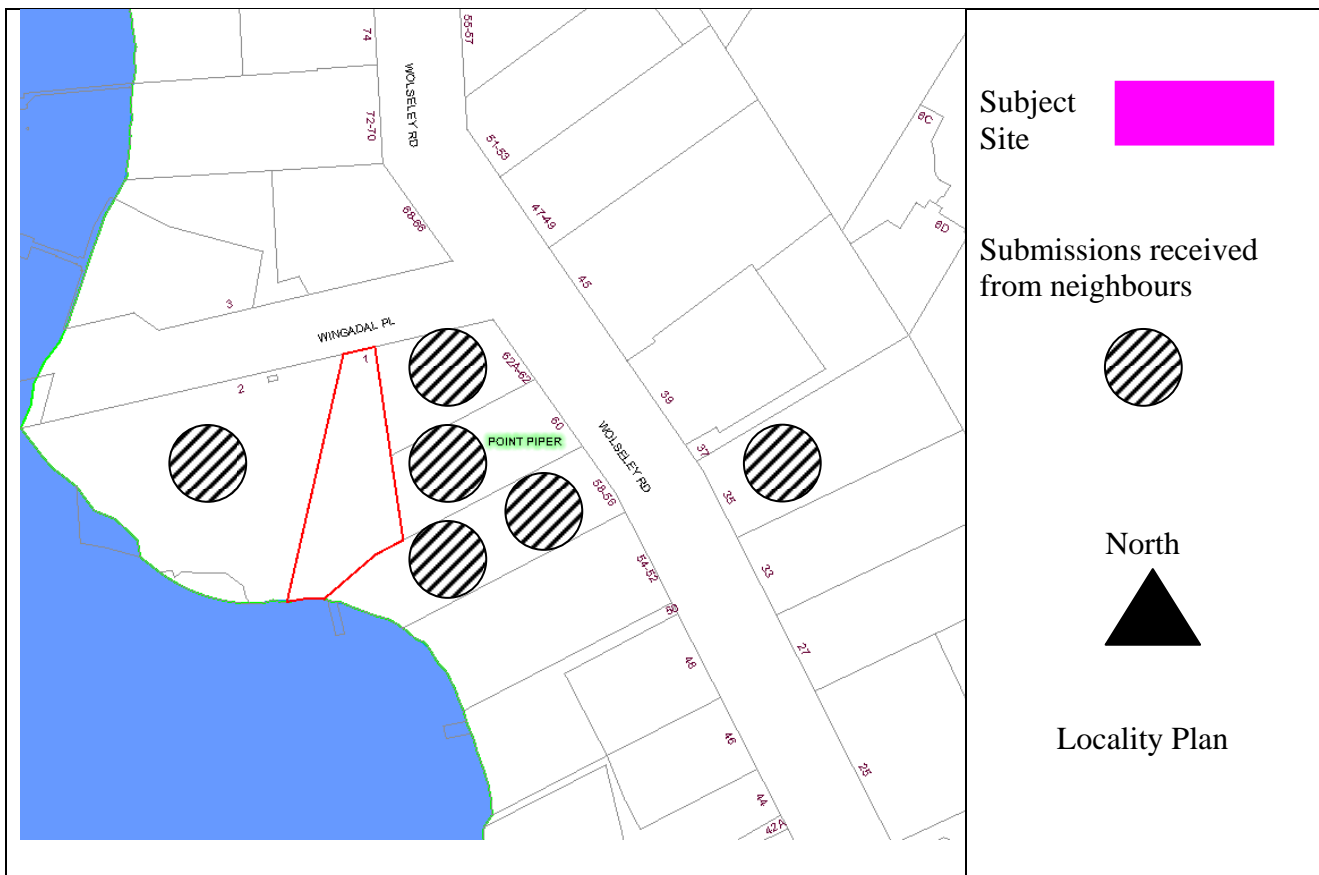
1. RECOMMENDATION PRECIS

The application is recommended for approval subject to conditions.

2. PROPOSAL PRECIS

The application proposes the construction of a new single dwelling house including landscaping works and a swimming pool.

3. LOCALITY PLAN



4. DESCRIPTION OF PROPOSAL

The application proposes the construction of a new single dwelling house including landscaping works and a swimming pool. Specifically the works proposed include the following:

- construction of a part two / part three storey dwelling. The proposed dwelling is to include a lower, ground and upper floor plan
- the lower floor plan is proposed at a level of RL17.35 (the existing excavated area of the site). Within the lower level is to be a 120000 litre water tank, waste treatment area, store / plant area, bedroom and ensuite, family/guest/entertaining area, bathroom, toilet, laundry and cellar
- the ground floor plan includes a garage and turntable, three bedrooms all with ensuites, family room and toilet. The proposed finished floor level of the ground floor is RL 20.95
- the upper floor level incorporates a north facing entry and courtyard, open plan dining / kitchen / living area and west and south facing terraces. The finished floor level will be RL 24.55 with the ridge height of the curved roof form reaching a maximum RL of 27.660
- the proposed building materials include extensive use of glass, sandstone cladding and a curved copper roof form
- to the rear (south) of the dwelling is to be a pool room with shower and a 16 metre long single lane lap pool
- landscaping and terrace works are also proposed within the rear open space area of the site and within the backfilled planted courtyard along the northern boundary
- the application seeks to backfill the side setbacks of the dwelling to represent ground levels comparative to what previously existed on the site

5. SUMMARY

Reasons for report[p1]	Issues[p2]	Submissions
The application is referred to the DCC as it is for new waterfront development and the proposal does not comply with the FSBL	Height, View loss, privacy, visual impact of the development, works within the FSBL.	[p3]8 submissions were received. All 8 of the submissions received were satisfied via discussions with the applicant, design changes, clarification from Council officers and conditions of consent.

6. ESTIMATED COST OF WORKS

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

A Quantity Surveyor's report has accompanied the application. The estimated cost of works is \$5,590,200.00.

7. DESCRIPTION OF SITE OF LOCALITY



Figure 1. 2005 Aerial Photograph of the subject site and adjoining properties (It is noted that the property at 2 Wingadal Place is under construction at the time of the photograph).

THE SITE AND LOCALITY	
Physical features	<p>The subject site is located on the southern side of Wingadal Place approximately 28 metres east of the intersection with Wolseley Road. The site is an irregular shaped allotment with a street frontage of 7.62 metres, an eastern boundary of 45.36 metres, a western boundary of 58.635 metres and a southern (rear) boundary of 33.495 metres. It is noted that the southern setback is varied given the site partially adjoins Sydney Harbour and the splayed side boundary of the neighbouring property at 56 Wolseley Road.</p> <p>The overall site area is 927m².</p> <p>The site adjoins four private allotments including the dwelling at 2 Wingadal (west), the Residential Flat Building (RFB) at 62 Wolseley Road, the RFB at 60 & 60A Wolseley Road and the RFB at 56 Wolseley Road. To the south of the site is Blackburn Cove, within Sydney Harbour.</p> <p>Much of the significant vegetation on site has been removed prior to the unauthorised excavation being undertaken by the previous property owner.</p>
Topography	<p>Substantial excavation (as discussed within the history section) has resulted in much of the natural topography of the site being removed. Having regard to the levels of the surrounding properties, it would be assumed that the natural topography of the site would incorporate a sloping fall of 23 metres from Wingadal Place down to Sydney Harbour.</p> <p>As discussed within the history section of this report, the majority of the site has been excavated to an RL ranging between 17.03 – 17.30. The existing topography of the site therefore includes a drop of 3.0 metres from the street to the excavated ground level and then a drop down 5 metres to the sloping landscape area that adjoins Sydney Harbour.</p> <p>As discussed above, the majority of vegetation on site has been removed. The remaining vegetation includes small trees and shrubs which exist within the southern section and foreshore area of the site.</p>
Existing buildings and structures	<p>The site is vacant excluding the protruding piers and contiguous piles that were erected as part of the illegal excavation on site. Vehicle access is afforded to the site via a single cross over from Wingadal Place.</p> <p>Concrete steps and a pathway also exist within the southern section of the site, facilitating access to a skid located above the harbour with access across the adjoining property.</p>
Environment	<p>The land surrounding the subject property consists of established residential development comprising large dwelling houses and residential flat buildings.</p>

8. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	Vacant Site
Relevant History	<p>DA98/179 was approved by Council for demolition of the existing two storey dwelling house and the erection of a part two/part three storey residential flat building including basement car parking for six vehicles. The approved residential flat building was to contain two residential units. The approved building height comprised an upper most RL of 28.99, compliant with the statutory 9.5 metre height control applicable for the site. The approved garage level was to be an RL20.090.</p> <p>In accordance with the approval granted for DA98/179, the previously existing two storey dwelling on site (comprising an upper most RL27.76) was demolished in 2001.</p> <p>In January 2002, excavation was undertaken on the site well beyond the extent approved under DA98/179. The site was excavated to a level of 17.20 metres, some 2.8 metres below the level approved by Council.</p> <p>DA179/1998/2 was lodged with Council on 1 May 2002 to undertake the following works:</p> <ul style="list-style-type: none"> • additional excavation to Level 1 to be generally consistent with the footprint of the building • new stairs to access proposed additional area to Level 1 from Level 2

- modification to internal layout of Unit 1 with respect to the laundry and lift foyer
- reduction in height of the approved lift overrun
- new stairs to Level 1 terrace
- fenestration and door opening modifications
- new railing to pool at Level 3

This application was refused on 27 May 2002 as the proposed modification did not qualify as substantially the same proposal as approved.

A Construction Certificate application was lodged with Council, which included the void area proposed under the above Section 96 application and was subsequently refused on 30 June 2002.

The applicant subsequently lodged a Class 1 appeal with the Land & Environment Court and the matter was heard in conjunction with the appeal against the refusal of the Construction Certificate by Council on 29 and 30 July 2002. Both appeals were dismissed.

With respect to the proposed Section 96 modification, the Commissioner determined that the proposed works were substantially the same as that approved "as the evidence indicated that the building form and design will not change nor will the relative levels of the respective floors except in some small areas where the height will be slightly reduced."

However, the Commissioner provided the following comment with respect to the proposal and the provisions of Clause 18 of LEP 1995:

"The provisions of LEP 1995 and the Residential DCP place some considerable emphasis on the need to minimise excavation, both in terms of its effect on the natural landform and its potential impacts on the amenity and stability of adjoining properties.

I am not convinced that the excavation is desirable or warranted. For excavation to be "minimised" as required by the LEP 1995 and the Residential DCP, it should be reduced to the smallest possible amount or degree. Mr Daintry's evidence that modern building techniques can overcome the applicant's reasons for the additional excavation was well balanced and should be supported. Put simply, I am not convinced that the benefits of the proposed excavation outweigh the potential impacts of the adjoining properties, particularly that of Mrs Balkin. By any measure, a vertical cut of 6.3 metres directly on the boundary, in sand, is a situation that should be embraced only in the most extreme situations. I do not accept such a situation exists in this case. The view of Mrs Balkan's property highlighted the potential problems that can occur, notwithstanding the best intentions, expertise and knowledge.

I find that the excavation does not "minimise any impact on the amenity of the neighbourhood", pursuant to Clause 2(e) of LEP 1995 and consequently it is inconsistent with the plan objective and consent must not be granted.

I also find that the proposal is contrary to the provisions of the Residential DCP at Clause 5.2.1 (O4) and 5.2.3 (P17, P18 and P19)."

A court order was issued on 16 April 2003 by the Land & Environment Court requiring works to proceed in accordance with the approved development consent and Construction Certificate. As a result some fill was imported to the site which was not virgin excavated material.

Under class 4 proceedings undertaken by Woollahra Council against Mr Angelo Ferrala (no.40424 of 2003) the court ordered that the respondent (Mr Ferella) undertake the following works (*inter alia*)

- e) backfill under proposed level 2 RL 20.010 (level 2) to eliminate any void under the slab
- f) pour slab at RL 20.010 (level 2)

under the direction and supervision of his professional engineer.

To date the orders have not been complied with and the unlawfully excavated level exists.

DA179/1998/3 was lodged with Council on 19 August 2004 for the following amendments to the

consent:

- additional excavation to Level 1 to be generally consistent with the footprint of the building to RL16.99
- new stairs to access proposed additional area to Level 1 from Level 2
- modification to internal layout of Unit 1 at Level 1 – not shown coloured
- modification to internal layout of Unit 1 at Level 2 and additional floor area of 0.8m² – not shown coloured
- fenestration and door opening modifications – shown coloured on elevations but not on floor plans

The modification was refused under delegated authority on 22 November 2004.

DA179/1998/4 was lodged with Council on 19 April 2005 seeking consent for the following modifications:-

- To extend the floor area at the south east end of the building envelop of the level 2 car park to allow for the following: a refrigerated garbage room, storage room, sauna and a plant room.
- To increase the height of the approved building to the maximum permissible height of RL30.39 with a lift overrun to RL31.56m. Each level of the building will be altered due to the new RL. The floor level to the car parking level will also be raised to allow for the correct gradient required for vehicles using the car park.
- To amend external glazing to Levels 1, 2 3 and 4.
- To modified the proposed units internally.

The modification was refused on 28 June 2005.

DA179/1998/5 was lodged with Council on 30 September 2005. The proposed modification sought to undertake the following works:

- additional excavation to Level 1 to be generally consistent with the footprint of the building to RL17.440 and area to be accommodated by additional unit containing three bedrooms and communal store and laundry
- modification of approved floor levels as follows:
 - level 1: To be modified from approved RL16.990 to RL17.440
 - level 2: To be modified from approved RL19.740 to RL20.290
 - level 3: To be modified from approved RL22.790 to RL23.300
 - level 4: To be modified from approved RL25.790 to RL26.150
 - lift overrun: To be modified from approved RL29.22 to RL29.740
 - note: Approved height of the parapet at RL29.490 is not proposed to be altered
- new stairs to access proposed additional area to Level 1 from Level 2
- provision of additional floor area at Level 2 to accommodate additional car parking space, plant room and refrigerated garbage room
- new glass blocks to eastern elevation at Level 1 at location of proposed additional floor area
- fenestration and door opening modifications – shown coloured on elevations but not on floor plans

The modification was refused on 6 October 2005 as the proposed modification did not qualify as substantially the same development as to what was originally approved.

In supreme Court proceedings between Mr Ferella & Mr Otvosi (60 Wolseley Road), the court refused the modification sought by Mr Ferella to the restrictive covenant (relating to density, height & stories) applicable to 1 Wingadal and approved an injunction to restrain development as in breach of covenant granted.

The current owner Ms Sarah Cooke purchased the site in 2006. A previous application DA81/2007/1 was withdrawn on 6 March 2007.

DA323/2007 was submitted to Council on 18 May 2007 and is the subject of this assessment.

It is noted by Council staff that extensive consultation was undertaken by Mr Stockwell and Mr Temple, the project architects on behalf of Ms Cooke.

<p>Pre-DA</p>	<p>A pre-DA meeting was undertaken at Council on 21 November 2006. The conclusion drawn within the meeting minutes were as follows:</p> <p><i>The proposal appears to address many of the relevant criteria of S79c criteria of the Environmental Planning and Assessment Act 1979, however prior to lodging a DA, the applicant is recommended to address the following issues:</i></p> <ul style="list-style-type: none"> • <i>the height and setbacks of the proposed dwelling having particular regard to the impact of visual bulk and view loss on the adjoining neighbours.</i> • <i>potential Overlooking into the adjoining properties;</i> • <i>further alterations to the natural topography of the site including the proposed terracing in the rear open space.</i> • <i>the visual dominance of the proposed swimming pool when viewed from the harbour.</i> • <i>the need to fill the site, either side of the proposed works to represent the natural topography of the land.</i> • <i>the proximity of works to Sydney Harbour including works proposed in the 12 metre Foreshore Building Line.</i> • <i>the applicant is required to demonstrate to Council why the illegal excavation undertaken by the previous property owner should facilitate the location for the proposed water tank and waste treatment area.</i> <p><i>The proposed development may be supported subject to a refinement of the detailing of the development as discussed.</i></p> <p>The merits of the submitted drawings provided with the DA will be discussed in detail within the assessment section of this report.</p>
<p>Requests for additional information</p>	<p>Correspondence was sent by Council to the applicant on 23 May 2007 requesting the following additional information:</p> <ul style="list-style-type: none"> • stormwater management plan. <p>The additional information was submitted to Council on 12 June 2007.</p>
<p>Amended plans/ Replacement Application</p>	<p>Revision B plans were submitted to Council on the 20/06/2007. The plans depicted the following amendments:</p> <ul style="list-style-type: none"> • the proposed stone balustrade for the upper level terraces was changed to glass with a timber rail. The modification was made following discussions with the consultants and lawyers acting on behalf of the property owners of 56 Wolseley Road. <p>Revision C plans were submitted to Council. The plans detailed the following amendments:</p> <ul style="list-style-type: none"> • the setback for the proposed family room and terrace above was increased to range between 2.312m – 3.0m • increase in the width of the planter box from 1.7m to a revised width of 2.86 metres to preserve the privacy of the adjoining neighbour at 2 Wingadal Place. <p>The modifications were made following discussions with the architect and property owner of 2 Wingadal Place.</p> <p>Drawing No A-1.02 Revision D was submitted to Council. The plans detailed the following amendments:</p> <ul style="list-style-type: none"> • Changes to the internal garaging arrangement to satisfy AS2890.1 regarding car parking width. <p>In accordance with Council’s Notification and advertising DCP and having regard to the nature of the modifications proposed, the amended plans did not require re-advertising or re-notification.</p>
<p>Land & Environment Court appeal</p>	<p>N/A</p>

9. REFERRALS

9.1 The following table contains particulars of internal referrals.

INTERNAL REFERRALS		
Referral Officer	Comment	Annexure
Technical Services	Council's Technical Services Engineer – Mr Nick Tomkins provided the following comments: Council's Development Engineer has determined that the proposal satisfies Technical Services concerns, subject to the following conditions A3, A4, C2, C5, C8, C9, C10, C11, D2, D3, D8, D11, E3, E7, E11, E12, E13, E15, E22, E24 & F3 of consent.	3
Landscaping Officer	Council's Tree Management Officer – Mr Andrew Simpson provided the following comments: Council's Tree and Landscape Officer has determined that the development proposal is satisfactory in terms of tree preservation and landscaping, subject to compliance with the following Conditions A3, C6, D4, E8, E9, E10, E14, F2, H2, H3, I2, K15 of consent.	4
Health Officer	Council's Health Officer – Mr Graeme Reilly provided the following referral response: The proposal is considered satisfactory subject to compliance being given to the following conditions: C3, C14, F4, I5, I6.	5

9.2 The following table contains particulars of external referrals.

EXTERNAL REFERRALS		
External Referral Body	Reason for referral	Comment
NSW Maritime Authority	Part 3A (section 22B)	General Terms applicable

ENVIRONMENTAL ASSESSMENT UNDER S.79C

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

10. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

10.1 SEPPs

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The development application was accompanied by BASIX Certificate No.1117259S committing to environmental sustainability measures.

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

State Environmental Planning Policy No. 55

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

10.2 REPs

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject site is within the area to which the SREP applies. This plan has the following aims with respect to the Sydney Harbour Catchment:

- (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 subject development is highly visible from Sydney Harbour (Double Bay) and the adjoining foreshore area. The proposal includes a dwelling, pool house and swimming pool that are of a natural material and finish, consistent with the natural features that surround the harbour. The development is seen to improve the relationship between the site and the harbour ensuring that the visual qualities of Sydney harbour are protected and enhanced by the proposal.

Accordingly, the proposal is considered satisfactory with regard to the general aims of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

The site is within the vicinity of the Heritage Item 64 - site of the wharf (Wingadal Place Point Piper). The proposal does not include any water based development that would impact on the heritage significance of this listed item. The proposal satisfies the relevant planning principles of Clause 15 heritage conservation.

Clause 26 requires the maintenance, protection and enhancement of views to be taken into consideration. Whilst it is acknowledged within this report that the development will result in some view loss, this is evitable on a site that is currently vacant. In assessing the extent of view loss the planning principle applied is *Tenacity v Warringah Council*. The assessment on views concluded that the cumulative view loss from the private domain would be moderate whilst the view loss from the public domain would be minor. Given all properties impacted by the proposal would still maintain enjoyment of views of the harbour and public views would still be available from Wingadal Place, the development is acceptable having regard to the objectives of clause 26.

The site is located within Zone No W8 – Scenic Waters: Passive use Zone. The proposed dwelling will be of a scale and bulk complimenting the existing bulk and scale of surrounding development and would be of a significantly lesser scale than the existing dwelling at 2 Wingadal Place and the residential flat buildings located within the locality. The visual presentation of the dwelling when viewed from the waters of Double Bay is appropriate within its context, thereby satisfying the relevant objectives of the Zone.

The site is located within a wetlands protection area. The application does not propose any works within the existing wetland areas adjoining the mean high water mark. The landscaping works proposed seek to expose the natural features and rock formations that exist within the site. The applicant will be required to comply with **Condition A.5** imposed on the consent by NSW Maritime that require best practice methods to be adopted for the on-site control of runoff, sediment and other pollutants during, and post, construction. These controls must be installed and stabilised before commencement of site works.

Providing the works comply with conditions of consent, the proposal achieves the objectives of protecting the wetlands protection area.

The proposal achieves the requirements of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

10.3 Section 94 contribution

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

Levy = 1% (levy rate) x \$5,590,200 (proposed cost of development)
= \$55,902.00

The total contribution = \$55,902.00

This requirement is outlined in **Condition C.2**.

10.4 Other relevant legislation

None relevant.

11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

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

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

11.2 Statutory compliance table

Site Area: 927m ²	Existing	Proposed	Control	Complies
Overall Height	N/A	10.31m	9.5m	NO
FSBL	N/A	<12.0m	12.0m	NO

11.3 Site area requirements

Not relevant to this assessment.

11.4 Height

The Woollahra LEP 1995 defines height “*as the greatest distance measured vertically from any point on the building to the existing ground level immediately below that point.*”

The existing ground level is defined by the WLEP 1995 as being “*the surveyed level of the ground surface immediately prior to the proposed development and prior to any associated excavation, development or site works.*”

The proposed development has a maximum height of 10.31 metres above **existing ground level** which equates to a non-compliance of 810mm.

The subject site has a long history which involved significant unauthorised excavation. In the matter of Ferella vs. Woollahra Council undertakings were agreed to by all parties and formalised by the court to reinstate the ground levels of the site to RL20.010. The current ground level exists at the unlawful level of RL17.03 – RL17.30 (some 2.71 – 2.98 metres below the level agreed upon).

If the levels were reinstated to RL20.010 in accordance with the above undertakings, the proposed development would achieve a building 7.65 metres in height, well under (1.85m) the permissible 9.5 metre height control applicable to the site.

The applicant has submitted a SEPP 1 objection in relation to the non-compliance and concludes as follows:

- *The site comprises an excavated area at RL 17.03 to RL 17.29, part of which was undertaken unlawfully in 2002. The original ground line and natural topography of the site is at RL 20.90.*
- *The proposal has a maximum height from the original (pre-excavated) ground line of 8.3m, which would easily comply with the development standard.*
- *The current owner purchased the site in 2006, in the excavated state. As such, one option that was available to the applicant was to submit a separate DA for the backfilling, undertake the work and then submit another DA for the construction of the proposed development house (on the basis of the new ground line). Pursuing this option would result in a building with the same height, but one that complies with the development standard given the new ground line. However, this is not considered to be practical nor does it achieve any planning benefit for the site or the surrounds. Accordingly, the application is for the utilization of a portion of the excavated area for a water tank and waste treatment facility and the construction of the residential levels above. This is desirable from a planning and environmental point of view by avoiding the need for tones of fill to be*

transported back to the site and by providing ESD facilities that are encouraged by Council. In addition, the side of the building will be filled to the original ground line to reflect the original topography and the building will result in an appropriate contextual fit when compared to the other buildings in the surrounding area.

- *The proposal is lower than the approved and previously existing developments on site, the view is likely to be improved when compared to these developments.*
- *The proposal is to construct a two storey dwelling over the basement (which sits under the original ground line), will be comparable and in fact more modest in scale to surrounding development.*
- *As the area of non-compliance comprises the top 0.81m of the proposed dwelling, this area will not result in any privacy impact as it is largely occupied by the non-trafficable roof of the building.*
- *In the circumstances of the proposal, strict compliance with the development standard is unnecessary and unreasonable and would tend to hinder the attainment of the objectives under section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979.*

The SEPP 1 Objection is assessed as follows:

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

The maximum building height is a development standard under clause 12 of the WLEP 1995.

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

The objectives of the maximum building height development standard in Woollahra LEP 1995 are as follows:

- a) to minimise the impact of new development on existing views of the Sydney Harbour, ridgelines, public and private open spaces and views of the Sydney City skyline;*
- b) to provide compatibility with the adjoining residential neighbourhood;*
- c) to safeguard visual privacy of interior and exterior living areas of neighbouring dwellings;*
- d) to minimise detrimental impacts on existing sunlight access to interior living rooms and exterior open space areas and minimise overshadowing;*
- e) to maintain the amenity of the public domain by preserving public views of the harbour and surrounding areas and the special qualities of the streetscapes.*

3. *Is non-compliance with the development standard consistent with the aims of the Policy, and in particular, would strict compliance with the development standard tend to hinder the attainment of the objectives specified in S.5(a)(I) and (ii) of the EPA Act?*

Having considered the arguments presented by the applicant in his SEPP 1 submission against the relevant objectives of the development standard contained in Woollahra LEP 1995 the following assessment is provided.

- a) to minimise the impact of new development on existing views of the Sydney Harbour, ridgelines, public and private open spaces and views of the Sydney City skyline;*

In considering the impact the non-complying height would have on the surrounding neighbours views the following is provided:

- the view affection to Unit 2/56 Wolseley Road would not vary from a building that complied with the height control.

- the view from the upper levels of 60 and the mid and upper levels of 62 Wolseley Road would be marginally improved by a complying design, however having regard to the overall view afforded to these properties the loss is minimal.

The areas of the adjoining neighbour's properties that are materially impacted by the non-complying height are:

- apartment 3/56 Wolseley Road
- the lower level of 60 Wolseley Road.

The building design would maintain the iconic views from apartment 3 from a standing position and a section of water to provide context, however if the building was to comply, additional water views would be afforded to this apartment. From a sitting position, the neighbour would lose significant water views and the base of the opera house and bridge. A complying building height would maintain the base of the iconic elements.

The lower level of 60 Wolseley Road would lose views of the water above the property at 2 Wingadal Place and district views of Darling Point from both a sitting and standing position.

In considering the reasonableness of the view affection, consideration must be given to the history of the site and the unlawful excavation undertaken by the previous owner. It is considered on balance that whilst the building does not comply with the strict interpretation of the numeric height control, if the land was to be reinstated to the level agreed upon within the Land and Environment Court, the view affection from apartment 3/56 Wolseley Road and the lower level of apartment 60 Wolseley Road would likely be substantially greater. Therefore, in the circumstances of the site, compliance with the statutory control is unreasonable and un-necessary.

b) to provide compatibility with the adjoining residential neighbourhood;

The overall height of the development provides an acceptable transition between the buildings along the southern side of Wolseley Road and the adjoining development at Wingadal Place. Whilst the building results in a 0.81m numeric non-compliance with height, the proposal would comply with the height control if it was to be applied above the natural ground level of the site.

The proposal would be compatible with the adjoining residential neighbourhood.

c) to safeguard visual privacy of interior and exterior living areas of neighbouring dwellings;

The non-complying height of the building is limited to 0.81 metres. This area includes the curved roof form of the building and the highlight windows. Given the proposed windows are 2.3 metres above finished floor level, their sole purpose is to provide light filtration into the upper level and not outlook upon the habitable areas of the adjoining neighbours. The non-complying section of the building will not impact on the visual privacy of the neighbouring dwellings.

d) to minimise detrimental impacts on existing sunlight access to interior living rooms and exterior open space areas and minimise overshadowing;

The non-complying section of the building would not impact on sunlight access to the interior living rooms of the adjoining neighbours. The overshadowing impact from the non-complying section of the building on the adjoining neighbours open space areas would be minimal.

e) to maintain the amenity of the public domain by preserving public views of the harbour and surrounding areas and the special qualities of the streetscapes.

Whilst it is accepted that some extent of water views will be lost by the proposal, this is inevitable on a site that is presently vacant. Given the angle of the site in its relationship to Wingadal Place, only some partially obstructed views are afforded across the site to Double Bay. The proposed building design would facilitate some views along the western side of the dwelling, maintaining the connection between the street and the harbour. Furthermore the 810mm non-complying section of the building would not directly result in any greater view loss than a complying development. For the above mentioned reasons, it is considered that the proposal would uphold the objectives underlying the development standard and the development standard would hinder the attainment of those objectives.

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

Having regard to the objectives of the development standard contained in Woollahra LEP 1995, it is considered that strict compliance with this standard is unreasonable and unnecessary in this circumstance as the level of the site has been previously excavated unlawfully.

In addition, the non-complying portion of the development would not unreasonably impact on the amenity of adjoining property or the environment and the development would be contextually compatible in height.

5. *Is the objection well founded?*

The objection advanced by the applicant that compliance with the development standard is unreasonable and unnecessary is well founded and it is considered that granting of development consent would be consistent with the aims and objectives of SEPP 1.

11.5 Floor space ratio

Not applicable to this application as the proposal is for a single dwelling.

11.6 FSBL

The FSBL for a single dwelling is 12m as prescribed by the LEP. The application proposes terracing and landscape works within 12 metres of the MHWL.

The applicant has lodged a SEPP 1 objection to justify the works. The applicant provides the following argument in part against the objectives of the development standard as follows:

“The proposal:-

- *The area within the FSBL has been extensively disturbed by the previous owner of the site.*
- *The proposed buildings (dwelling, pool house and swimming pool) do not encroach the FSBL.*
- *The shoreline does not appear to have been altered and the proposal will ensure its retention.*
- *The works within the FSBL are considered to improve the natural topography of the site.*
- *The site is in a prominent location and the proposed works will improved the appearance from the harbour. As the works related to landscaping and not a building per se, the proposal will maintain the foreshore setback requires by the FSBL.*
- *The proposed works promote vegetation and improve the areas of vegetation. If the proposed works did not proceed, the landscaped quality of the site would be adversely affected.*

- *The proposal relates to landscaping works and a building per se, it will not result in any loss of views or sunlight.*
- *The proposal will not affect any rock platforms or the intertidal ecology.*
- *In the circumstances of the proposal, strict compliance with the development standard is unnecessary and unreasonable and would tend to hinder the attainment of the objectives under section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979.*

The following assessment of the SEPP 1 Objection applies the principles arising from Hooker Corporation Pty Limited v Hornsby Shire Council(NSWLEC, 2 June 1986, unreported) by using the questions established in Winten Property Group Limited v North Sydney Council(2001) NSW LEC 46 (6 April 2001).

The SEPP 1 Objection submitted is assessed as follows:-

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

The foreshore building line is a development standard under WLEP 1995.

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

The objectives of the foreshore building line development standard in Woollahra LEP 1995 are as follows:

- a. *to retain Sydney Harbour's natural shorelines,*
- b. *to provide larger foreshore setbacks at the points and heads of bays in recognition of their visual prominence,*
- c. *to protect significant areas of vegetation and, where appropriate, provide areas for future planting which will not detrimentally impact on views of the harbour and its foreshores,*
- d. *to protect the amenity of adjoining lands in relation to reasonable access to views and sunlight,*
- e. *to preserve the rights of property owners to maintain an encroachment on the foreshore building line by an existing main building,*
- f. *to protect rock platforms and the intertidal ecology.*

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

Having considered the arguments presented by the applicant in his SEPP 1, the strict application of the development standard is considered unreasonable and unnecessary in the circumstances of the case.

The proposed location of the landscaping works would not significantly alter the existing foreshore, would not result in the loss of the existing rock shelf or rock outcrop nor would it impact on significant vegetation located within the site and surrounding properties. There would be no impact on the amenity of adjoining property with respect to views or solar access. Nor would its location impact on intertidal ecology or hinder access along the foreshore. The proposal is considered to be satisfactory with regards to the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The proposal would satisfy the relevant objectives of the development standard and non-compliance with the development standard is consistent with the aims of the Policy and will not hinder the attainment of the objectives specified in s.5(a)(i) and (ii) of the EPA Act.

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

In view of the above, the strict application of the development standard is considered unreasonable and unnecessary in the circumstances of the case.

5. *Is the objection well founded?*

The objection advanced by the applicant that compliance with the development standard is unreasonable and unnecessary is well founded and it is considered that granting of development consent would be consistent with the aims and objectives of SEPP 1.

11.7 Other special clauses/development standards

Clause 18 Excavation: The structural engineering statement prepared by Professor Max Irvine and submitted with the proposal has stated that the excavation required to accommodate the development is as follows:

- *the pool room will require the most minor excavation (more accurately, removal of loose sandstone material) to achieve a slab on grade*
- *in respect to the pool we require no excavation other than two 2000 diameter caissons that will be socketed into competent sandstone. The pool (of probable footprint 20000 x 4000) will be built off these two caissons which will follow the land contours there*

Excavation to a depth ranging between 900mm – 1700mm is also required to accommodate the proposed garden beds adjoining the lower terrace and pool room.

Cl.18 of WLEP 1995 requires Council to have to regard how the above mentioned excavation may temporarily or permanently affect:

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

The provisions of Cl.18 are addressed as follows:

The temporary amenity impacts are assessed as follows:

- (i) **Noise:** The excavation process will cause noise impacts. **Condition E6** of the consent limits the hours when excavation may occur and the duration of the excavation.
- (ii) **Vibrations:** Due to the large diameter of the two caissons that will be socketed into the sandstone and the unknown strength and depth required to meet competent sandstone, conditions **D.11** and **E.24** have been imposed on the consent to provide a conservative approach to the closest neighbouring property.
- (iii) **Dust:** **Condition E11** requires the applicant to implement appropriate measures to control dust.
- (iv) **Erosion:** **Condition E11** requires the applicant to implement best practice techniques to control erosion from the site.

- (v) Support to existing land and building both with the site and neighbouring site: The minor nature of excavation proposed and its location to the rear of the site would not require support to the adjoining land of the neighbouring allotments.
- (vi) Ground Water: It is not anticipated that the development will have any adverse impacts on ground water levels.
- (vii) On-site processing of excavated materials: It is not proposed to process excavated material on-site.

The permanent amenity impacts of the proposed excavation are assessed as follows:

- (i) Landform: The intention of the lower level terrace design is to secure and maintain the natural landform. As previously discussed this area has been previously destabilised through the superimposing of soil from previous excavation and the removal or expiry of existing vegetation. As such the proposed retaining walls establish a means to stabilise and minimise soil movement on the existing slope. The proposal would ensure sufficient deep soil landscaping within the site and the provision of a detailed landscape plan.
- (ii) Support to existing land and building both within the site and neighbouring site: It is anticipated that when completed the development will result in a high level of geotechnical stability across the site.
- (iii) Ground water levels: It is not anticipated that the development will have any adverse impacts on ground water levels.

Subject to conditions, the proposed excavation is acceptable in terms of Clause 18.

Clause 19 HFSPA: Clause 19(2) of Woollahra LEP 1995 requires Council to make an assessment of:

- a) *The visual impact when viewed from Sydney Harbour of the design of the proposed development, including the colours, textures, styles and types of material used and the types of and form of any roof; and*
- b) *The impact of the proposed development on the natural landform and topography.*

The application seeks to utilise the unlawfully excavated areas of the site, whilst backfilling the side setbacks and terrace areas to represent the natural topography of the site. The design of the proposal would complement the natural surrounds and use materials and finishes that relate to the surrounding landform.

The visual impact of the proposed retaining walls and new swimming pool would be softened by the landscaping and new vegetation that has been detailed on the submitted landscaping plan. Furthermore, given many of the adjoining site include natural terraces following the sandstone rock formation, the proposed landscaping and swimming pool is reasonable within the site context.

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.

Clauses 26-33 Heritage and conservation area provisions: The site is not a heritage item nor located within a heritage conservation area.

Opposite the site to the north is 66 Wolseley Road, a listed Residential Flat Building heritage item. The proposed construction of the new dwelling and associated landscaping on land at 1 Wingadal Place will not impact on the significance of this item or its curtilage.

The proposal therefore satisfies clauses 26 – 33 of the Woollahra LEP 1995.

12. DRAFT AMENDMENTS TO STATUTORY CONTROLS

Draft State Environmental Planning Policy (Application of Development Standards) 2004 applies

Section 79C(1)(a)(ii) of the Act requires that in determining a development application, a consent authority is to take into consideration any draft environmental planning instrument "EPI" that is or has been placed on public exhibition and details of which have been notified to the consent authority.

Draft State Environmental Planning Policy (Application of Development Standards) 2004 ("the proposed SEPP") was publicly exhibited from 10 May to 18 June 2004. In considering how much weight should be placed upon an exhibited draft environmental planning instrument under section 79C of the Act one must assess how likely it is that the draft EPI will commence, in what form it is likely to commence and consider what effect the instrument would have if applied.

The proposed SEPP received significant criticism from the development industry in submissions. Officers of DIPNR have advised that it will not be made in the form it was exhibited and that it will now be included as part of the new Integrated LEP Template. This template will be placed on public exhibition in late April/May 2005. Therefore, it is not known in what form the draft SEPP will be made.

Clause 14 of the draft SEPP provides Saving and Transitional provisions. These provisions provide that any application submitted prior to the commencement of the proposed SEPP and within 28 days after the commencement of the proposed SEPP is to be determined in accordance with the former SEPP No.1 as if the former SEPP No.1 had not been repealed by the proposed SEPP. It is likely that the draft SEPP, if made, will contain transitional provisions.

The draft SEPP would, if it commenced in its exhibited form, require a higher threshold test in order for an objection against a development standard to be sustained. However, the draft policy should not be given determining weight in the assessment of development applications for the following reasons:

1. The draft SEPP will not be made in the form it was exhibited
2. It is not known whether the threshold tests contained in the exhibited SEPP will be retained
3. It is likely that, if made, the draft SEPP will contain savings and transitional provisions.

This means that objections submitted under State Environmental Planning Policy No.1 must be assessed under the current policy.

Amendment 60 of the Draft Woollahra LEP 1995 is not relevant to this assessment.

13. DEVELOPMENT CONTROL PLANS

13.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

Site Area (927m ²)	Existing	Proposed	Control	Complies
Maximum Number of Storeys – Dwelling	N/A	3	2	NO
Building Boundary Setbacks [a4]				
Front (north)	N/A	5.5m	4m	Yes
Rear (south)	N/A	6.0m – 26.0m	13m	NO
Less than 12 metres width				
Side (east)				
Lower Floor	N/A	1.5m	1.5m	Yes
Ground Floor	N/A	1.5m	1.5m	Yes
First Floor	N/A	1.5m	1.5m	Yes
Side (west)				
Lower Floor	N/A	1.5m	1.5m	Yes
Ground Floor	N/A	1.5-2.6m	1.5m	Yes
First Floor	N/A	1.5-2.6m	1.5m	Yes
Between 12 – 18m site width				
Side (east)				
Lower Floor	N/A	1.5m	1.5m	Yes
Ground Floor	N/A	1.5m	2.0m	NO
First Floor	N/A	1.5m	3.5m	NO
Side (west)				
Lower Floor	N/A	2.31 – 5.0m	1.5m	Yes
Ground Floor	N/A	2.31 – 5.0m	1.5m – 2.5m	Yes
First Floor	N/A	5.0 – 11m	3.5m – 4.0m	Yes
Greater than 18m site width (Point Piper Precinct)				
Side (east)				
Lower Floor	N/A	1.5m	3.0m	NO
Ground Floor	N/A	1.5m	3.0m	NO
First Floor	N/A	1.5m	3.5m	NO
Side (west)				
Lower floor	N/A	2.6m	3.0m	NO
Ground Floor	N/A	2.6m	3.0m	NO
First Floor	N/A	10m	3.0m	Yes
Ancillary Development (Swimming Pool)[a5]				
Maximum Height	N/A	3.41m	3.6m	Yes
Rear Setback (south)	N/A	2.65m	1.5m	Yes
Side Setback (east)	N/A	4.2m	1.5m	Yes
Side Setback (west)	N/A	5.5m	1.5m	Yes
Ancillary Development (Pool house)[a6]				
Maximum Height	N/A	2.6m	3.6m	Yes
Rear Setback (south)	N/A	12.4m	1.5m	Yes
Side Setback (east)	N/A	18m	1.5m	Yes
Side Setback (west)	N/A	1.45m	1.5m	NO
Setback from Significant Mature Trees	N/A	<3.0m	3.0m	NO
Building Footprint [a7]	N/A	28.3% (262.25m ²)	35% (324.45m ²)	Yes
Floor Space Ratio [a8] [a9]	N/A	0.63:1 (592.36m ²)	0.55:1 (509.85m ²)	NO
Floor to Ceiling Height – Habitable Rooms [a10]	N/A	2.45m	2.7m	NO

Site Area (927m ²)	Existing	Proposed	Control	Complies
Maximum Unarticulated Length to Street	N/A	<6.0m	6.0m	Yes
Solar Access to Open Space of Adjacent Properties (Hrs on 21 June)	N/A	50% >2 Hours	50% (or 35m ²) for 2 hours	Yes
Solar Access to Nth Facing Living Areas of Adjacent Properties (Hrs on 21 June)	N/A	>3.0 hours	3.0 hours	Yes
Excavation Piling and Subsurface Wall Setback	N/A	>1.5m	1.5m	Yes
Deep Soil Landscaping – Dwelling[a11]	N/A	52% (316.7m ²)	50% (301.27m ²)	Yes
Deep Soil Landscaping – Front Setback	N/A	25% (12.35m ²)	40% (19.55m ²)	NO
Private Open Space [a12]at Ground Level – Total	N/A	50m ² Min dim 6m	35m ² Min dimension 3m	Yes
Private Open Space [a13]at Ground Level – Principal Area	N/A	50m ² Min dim 6m	16m ² Min dimension 4m	Yes
Private Open Space [a14]at Ground Level – Maximum Gradient	N/A	<1:10	1:10	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	>1.5m	1.5m	Yes
Swimming Pool Height Above Ground Level Adjacent to Adjoining Property	N/A	<0.3m	0.3m	Yes
Swimming Pool Height Above Ground Level Adjacent to the HFSPA	N/A	3.41m	0.3m	NO
Front Fence Height	1.8m	1.08m	1.2m/1.5m where 50% transparent	Yes
Side and Rear Fence Height	1.8m	1.8m	1.8m	Yes
Solar Access to North-Facing Living Areas of Development (Hrs on 21 June)	N/A	>3.0 hours	3.0 hours	Yes
Minimum Number of North Facing Habitable Rooms	N/A	1	1	Yes
Setback of Bedroom Windows from Streets/Parking Areas of Other Dwellings	N/A	>3.0m	3.0m	Yes
Location of Garages and Car Parking Structures	N/A	Behind front setback	Behind Front Setback	Yes
Garage Frontage Width	N/A	42% (3.0m)	40% (2.9m)	NO
Car Parking Spaces – Dwellings	0	2	2	Yes
Minimum Access Driveway Width	N/A	5.0m	3.5m – 6.0m 6.0m – 9.0m	Yes
Area of Lockable Storage Spaces per Dwelling	N/A	>8m ³	8m ³	Yes

Site analysis performance criteria (Part 3)

The subject site analysis documentation would satisfy the site analysis performance criteria of the RDCP 2003.

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

The subject site is located within the Point Piper Precinct. The following assessment is offered against the relevant desired future character performance criteria:

Views and Vistas

The proposal does not adversely impact on the views and vista corridors of the Point Piper Precinct. Whilst it is accepted that some of the water views will be obscured by the proposal when standing in Wingadal Place, this obstruction is not unreasonable given:

- the existing site is vacant and is not occupied by a dwelling
- the site would present as a single storey building to the street, therefore providing a building form that is compatible with the immediate surrounds
- the site frontage (7.2metres) is narrow in comparison to the surrounding allotments and some views of the harbour would be preserved within the side setbacks of the dwelling
- the proposed front fence height is below the permissible fence height ensuring this element does not detract from the streetscape or impact upon public views

The proposed development is reasonable with regard to this criterion.

Side boundary Setbacks

Clause C4.6.4 of the RDCP states that where the site lot width is equal to or exceeds 18.0m, development has a minimum side boundary setback of 3.0m.

As discussed above the site is an irregular shaped allotment (irregular diamond or kite shape). The site frontage and the majority of the site length is less than 18 metres in width. This control therefore only applies to the rear third of the site where the lot width ranges from 18 metres to a maximum width of 23 metres.

Within this section of the site the application proposes a minimum side boundary setback of 2.6 metres along the western boundary and 1.5 metres along the eastern boundary. The intent of this control is to assist the Point Piper Precinct:

- to maintain the sense of the historic grand estates by retaining the garden settings (O4.5.2)
- to protect important views from the public spaces of the precinct to the harbour and to the surrounding districts(O4.5.7)
- to maintain the evolution of residential building styles through the introduction of well designed contemporary buildings(O4.5.8)

This control applies to the rear portion of the site whereby the non-complying elements of this building are not readily visible from Wingadal Place. It is therefore reasonable to presume that the non-complying sections of the building will not detract from the historic grandeur of the precinct, nor the opportunity for harbour and district views from the public domain. The design of the proposal is contemporary with materials and finishes encouraged within the RDCP and landscaping proposed within the side setbacks and open space areas of the site that would maintain green corridors within the side setbacks of the development.

Location of garages

The proposed garage width represents a marginal non-compliance (2%) with the numeric control. The non-compliance is a result of the narrow site frontage (7.2m), therefore requiring any garage width to be less than 3.0 metres to comply. This would result in a numeric non-compliance with AS2890:1 having regard to minimal internal garage width.

Given the minor nature of the non-compliance and the proposed garage being situated below the street level, the proposed garaging will not dominate the streetscape, nor detract from the appearance of the dwelling when viewed from Wingadal Place.

The proposed development is reasonable with regard to this criterion.

Point Piper Street Section

The proposal represents a departure from the precinct controls having regard to the following:

- Deep soil frontage – C4.5.7.7
- Building height – storeys – C4.5.7.2
- Harbour Foreshore – C4.5.7.4

Deep soil frontage – The application includes 25% of the front setback of the site as deep soil frontage. The proposed non-compliance is acceptable for the following reasons:

- the numeric non-compliance is limited to 7.2m²
- a minimum driveway width of 3.0 metres is required to accommodate car parking on site
- the narrow site frontage and splayed side boundaries would limit the levels of deep soil landscaping that could be accommodated within the front setback
- the application proposes 316.7m² of deep soil planting, exceeding the requirement for the site area and ensuring that an acceptable amount of the site can accommodate permeable surfaces and established vegetation

Building Height – storeys – The applicants seek to utilise the existing excavated areas of the site to accommodate a 120,000lt water tank, waste treatment facility and store plant area. These areas are non-habitable and given the ground levels adjoining the lower level are reinstated to an RL ranging between RL19.65 and RL23.0 (similar to the pre 179/1998 development levels), the building would present as a two storey dwelling to the adjoining neighbours.

When viewing the site from Wingadal Place, the dwelling would present as predominately single storey complying with the built form requirements of the Point Piper section.

Whilst it is accepted that when viewing the site from the harbour, the development presents as a three storey form, this is not unreasonable given the surrounding context is characterised by three and four storey buildings interfacing with the harbour. For the above mentioned reasons, a departure from the control is acceptable. Furthermore, the basement level would conform to ESD principles that are relevant and encouraged within Council's policies.

Harbour Foreshore- As explained above, the non-compliance with the Harbour Foreshore control (Foreshore Building Line) is limited to retaining walls and landscaping that would soften the visual appearance of the new built form when viewed from the harbour and provide an improved landscape area to what presently exists on site. This encroachment is reasonable in the circumstances of what is proposed.

The proposal would satisfy the relevant objectives of the Point Piper Precinct as prescribed by the RDCP 2003.

Streetscape performance criteria (Section 5.1)

The application presents a single storey dwelling to Wingadal Place with an enclosed courtyard forward to the front building line. The proposal includes a low front fence height and front garden that interfaces with the street. Recessed behind the garden is to be a solid 2.4 metre high wall with private courtyard behind leading to the front entry of the dwelling. Whilst the enclosed courtyard design is not encouraged, the high wall is required to provide visual privacy to the internal living areas of the dwelling as the topography of Wingadal Place slopes steeply upwards. As discussed previously the courtyard wall has been reduced from 2.4 metres to a maximum height of 1.8 metres (Condition C.1A & C.1B) to minimise the view obstruction from 62 Wolseley Road across the site. The reduction in this wall height would also have positive repercussions having regard to the streetscape objectives as the front wall would be reduced in height, minimising the prominence of the element and providing an improved streetscape outcome.

The proposal would satisfy the relevant streetscape performance criteria of the RDCP 2003.

Building size and location performance criteria (Section 5.2)

The proposal satisfies the prescriptive building footprint, overshadowing (subject site and adjoining properties), daylight to habitable room windows, excavation and front setback controls of the RDCP.

The following elements of the application result in a numeric non-compliance with Council's controls and will be assessed accordingly:

- Floor Space Ratio (FSR)
- side and rear setbacks
- internal minimum floor to ceiling height
- cut and fill

Floor space ratio

The application proposes a FSR of 0.63:1 (592.36m²) exceeding the 0.55:1 (509.85m²) permissible FSR for the site. In assessing the numeric non-compliance, consideration is given to the objectives of the FSR control and the density of the surrounding neighbours. Council's records indicate that the adjoining residents' include the following FSR:

- 0.82:1 – 2 Wingadal Place, Point Piper
- 0.57:1 – 62 Wolseley Road, Point Piper
- 0.72:1 – 60 + 60A Wolseley Road, Point Piper

Whilst it is accepted that the numeric requirement is not achieved, the proposed floor space ratio is reasonable for the following reasons:

- the proposed built form of 2 stories plus basement level is compatible the built form surrounding the site
- the proposed plant room, waste treatment and water tank account for 129m² of gross floor area. Given the ground levels on either side of the site are to be reinstated to the levels of the natural topography of the site, these facilities will not be visible from the public domain thereby not contributing to the visual bulk of the building

- applying the line of reasoning by the commissioner in the Edgar Allan Planning Pty Limited vs. Woollahra Municipal Council [2006] case, the Court established that despite the breach of the FSR control under the relevant DCP, the areas of the proposal in breach of the FSR did not contribute to the visible bulk of the dwelling. Having consideration for the reasoning by the commissioner, the FSR that would be visible above the ground would be 0.50:1 (463.36) resulting in a building that complied with the applicable floor space ratio. This non-compliance is compatible with the surrounding context and less than the approved floor space ratio for the three immediately adjoining properties
- excavation required to accommodate the proposal is minimal
- the proposed development maintains compliance with the overshadowing requirements relating to sunlight access to the open space areas of the adjoining neighbours
- the non-complying floor space does not result in any direct loss of privacy for the adjoining neighbours
- the overall form of the building when viewed from the harbour is consistent with the surrounding context

The proposal exceeds the required minimum deep soil landscape area to the site which would contribute positively to the landscape character of the area and minimise the visual impact the proposal from Wingadal Place, Sydney Harbour and the adjoining properties.

For the above mentioned reasons the proposed floor space ratio is acceptable for the site and within the surrounding context.

Side and Rear setbacks

Side setbacks

As the site is an irregular allotment there are three numeric setback controls that apply to the site (front, middle and rear).

Front: Where the site is less than 12 metres in width (front northern 14.4 metres) the proposal would comply with the required 1.5 metre setback control.

Mid section: Within this section of the site (setback 14.4 - 31 metres from Wingadal Place) the ridge height of the building is required to have a setback of 3.5 metres from the side boundaries. The proposed upper level terrace areas of the dwelling would require a setback ranging between 2.0-3.0 metres from the western boundary and 3.0 – 3.5 metres from the eastern boundary.

The following areas of the proposal result in a numeric non-compliance:

- the proposed eastern setback, 1.5m, would result in a numeric non-compliance of 2.0 metres with the control (Discussed below)
- the upper level terrace includes a splayed setback ranging between 2.312 – 3.0 metres from the western boundary resulting in a 400mm non-compliance with the control

A variation from C5.2.5 of the RDCP is warranted for the following reasons:

- the location of the building form within the site has been designed to maintain the maximum expanse of water and iconic views for the surrounding neighbours at 56 and 60 Wolseley Road. By relocating the bulk of the building towards the centre or west of the site, views from the upper level apartment of 56 Wolseley Road would be drastically altered, whilst the outlook from 60 Wolseley Road would also be significantly negatively impacted

- the location of the building along the eastern boundary would preserve a view corridor from the public domain along the western side of the site towards Double Bay and Seven Shillings Beach
- the non-complying side setback does not unreasonably impact upon the privacy, sunlight access or significant water views of the adjoining eastern neighbours
- the section of the building that would have the most significant impact on the amenity (sense of enclosure and visual bulk) upon the adjoining neighbours is the complying section of the building that adjoins the lower unit of 62 Wolseley Road. Beyond this point, the non-complying section would have a minor impact given the building would be well screened and softened by the existing vegetation and the recessed planter that has been designed within the wall
- the non-complying section of the building length generally interfaces with the splayed side boundaries of the adjoining properties at 56 and 60 Wolseley Road, both who are afforded expansive garden and landscaping areas
- the impact from the length of the building is generally mitigated by the retained landscape on the adjoining properties and the angle of juxtaposition of the new building
- the non-complying western setback has been previously modified to preserve the privacy of the adjoining neighbour and ensure compliance with the overshadowing requirements of the RDCP

Rear: Where the site width is greater than 18 metres, the Point Piper Precinct side setback controls apply to the site. The merits of these controls have been discussed above.

Rear Setback

The site includes a varied rear setback that follows the MHWL and then continues at an angle along the side boundary of 56 Wolseley Road for a depth of 25 metres. Given the irregular configuration of the site, the new dwelling proposes a varied rear setback ranging between 6m – 25m. C5.2.3 of the RDCP prescribes that buildings have a minimum rear setback of 25% of the average site length. To comply with the RDCP, the development would need to include a minimum rear setback of 13 metres.

The numeric non-compliance is reasonable as:

- the non-complying section of the building is limited to the rear lower level & ground level bedrooms and upper level south facing terrace
- the proposal ensures sufficient areas for deep soil planting and open space within the rear of the site
- the rear of the proposal is to interface with Sydney Harbour, therefore separation between the rear of neighbouring buildings is not a relevant consideration to this assessment
- whilst the shape and design of the building is unique given the narrow site width, the scale of the development is representative of the surrounding context
- the non-complying rear setback does not result in any significant view affectation on the surrounding neighbours
- the non-complying rear setback will not impact on sunlight access to the adjoining properties and will maintain adequate levels of visual privacy between the dwelling occupants and adjoining properties

The proposal is considered to satisfy all relevant objectives relating to the rear setback control, therefore a numeric departure from the control is acceptable.

Cut and fill

The application includes excavation required to accommodate two swimming pool supports, level changes to accommodate a slab for the proposed pool room and excavation to accommodate the strip garden areas (900 – 1700mm) adjoining the terrace. The temporary and permanent impacts of excavation have been considered within section 11.7 of this report. The numeric requirements of the RDCP require excavation to be setback a minimum of 1.5 metres from any boundary. The proposal represents a non-compliance with this control for a section of the terrace garden area which adjoins 2 Wingadal Place. Given the nature of the non-compliance and the absence of adverse impacts on the adjoining neighbour, the numeric non-compliance with the RDCP is acceptable.

The development includes substantial levels of fill within the side setbacks (RL 17.35 – RL24.55) and west facing ground floor terrace (RL20.990) and swimming pool area (RL14.240). The visual impact of the swimming pool is discussed below, however generally the filling of the site is supported by Council for the following reasons:

- the levels proposed are similar to the lawful level that previously existed on site.
- the proposed fill will not detrimentally impact on the privacy of sunlight access of the surrounding neighbours.
- the proposed fill will principally adjoin the non-habitable areas at lower ground floor ensuring that the habitable room requirements of the RDCP regarding ventilation and external walls are satisfied.

The proposed filling of the site is supported by subject **condition E.16** which requires virgin excavated natural material to be used.

Internal minimum floor to ceiling height

The proposed lower and ground floor of the dwelling both exceed the 2.7 metre minimum floor to ceiling height.

The upper level proposes an internal clearance of 2.45 metres. Whilst this height does not achieve the numeric requirements of the control, the proposed clearance height is required so as to preserve iconic views of the adjoining neighbours to the east of the site.

Given the internal amenity of the applicants would not be compromised as a result of the internal clearance proposed and the adjoining neighbours would maintain iconic and significant views the numeric non-compliance is reasonable.

Open space and landscaping performance criteria (Section 5.3)

The proposal satisfies the private and communal open space and deep soil landscaping objectives and performance criteria of the RDCP 2003.

The height and siting of the proposed swimming pool will be discussed within the HFSPA controls, given these controls are more onerous than the standard RDCP controls relating to swimming pools.

Fences and walls performance criteria (Section 5.4)

The definition of front fences includes side fences that are within the front setback of the dwelling. Whilst the front fence along Wingadal Place complies with the specified height control, the existing side boundary fences within the front setback reach an approximate height of 1.8 metres. Given the height of these elements is to be maintained a variation from the control is acceptable.

The proposed side boundary walls would comply with the numeric 1.8 metre height specified.

No rear boundary fence is proposed as part of this DA.

The proposal would satisfy the relevant objectives of the RDCP 2003.

Views performance criteria (Section 5.5)

An assessment on public views has been discussed above.

C5.5.6 of Council's RDCP 2003 in relation to private views, requires building forms to enable a sharing of views with surrounding residences and to ensure that development does not fully obstruct existing views from the habitable rooms of neighbouring residences.

Subject to condition C.1A, C.1B & C.1C of consent there are no objections from the adjoining neighbours regarding view loss, however for the purpose of this report and the considerations of the RDCP 2003, the following assessment is provided.

There are six properties that are considered to be impacted having regard to view loss:

- 2/56 Wolseley Road
- 3/56 Wolseley Road
- 60 Wolseley Road
- The three apartments with 62 Wolseley Road

The Land & Environment Court, in Tenacity Consulting Pty Ltd Vs Warringah Council (2004), adopted a four-step assessment of view sharing. These steps are as follows:

1. *What is the value of the view?*

The private views from all properties are water views of the harbour and iconic views of the Sydney Harbour Bridge, Opera house, city skyline, Sydney Harbour and district views of Double Bay.

2. *From what part of the property the views are obtained?*

2/56 Wolseley Road

East facing habitable room windows and outdoor terrace

3/56 Wolseley Road

East facing habitable rooms windows and outdoor terrace.

60 Wolseley Road

South east facing windows and terrace of the upper level and lower level of the apartment.

Upper level apartment of 62 Wolseley Road

South east facing windows and terrace.

Middle level apartment of 62 Wolseley Road

South east facing windows and terrace.

Lower level apartment of 62 Wolseley Road

South east facing windows and ground level open space area.

3. *What is the extent of the impact?*

The applicant(s) arranged surveyed height poles to be placed on site, marking the corners of the building to assist in undertaking a detailed and comprehensive view loss assessment. Photomontages were also prepared by the applicant to illustrate the visual impact of the proposal.

2/56 Wolseley Road

The proposal is seen to have a severe impact on the existing view currently enjoyed from the outdoor area and living area and bedroom of the apartment in both a standing and sitting position. The proposal would maintain the existing view of the city skyline and opera house from the balcony; however the works result in a total view loss of Harbour Bridge from the northern section of the terrace and approximately two thirds lost from the southern end of the terrace. Expansive district views of Double Bay, Darling Point and surrounding landforms would be maintained by the proposal.

3/56 Wolseley Road

The view loss from the living room, bedroom and balcony is classified as moderate. All iconic views are maintained from a standing position, as is some water within the foreground to provide context. There is partial view obstruction of the bridge from a sitting position on the balcony. Expansive district views of Double Bay, Darling Point and surrounding landforms would be maintained by the proposal.

60 Wolseley Road

The view loss from the upper level of this apartment is minor given the iconic views are maintained from a standing and sitting position and the majority of the harbour views are preserved by the proposal. A section of the district views are lost by the rear section of the building.

The view loss from the lower level of this apartment is moderate. From a sitting and standing position within the bedroom, a considerable section of the water view of Double Bay is lost. From the balcony, the view loss is considered minor given the view from this element spans a greater area.

Upper level apartment of 62 Wolseley Road

The view loss from the upper level apartment is minor given the iconic views are maintained from a standing and seated position and the majority of the harbour views are preserved by the proposal.

Middle level apartment of 62 Wolseley Road

The view loss from the middle level of apartment is minor given the iconic views are maintained from a standing and seated position and the majority of the harbour views are preserved by the proposal.

Lower level apartment of 62 Wolseley Road

The view loss from this area is moderate. Iconic views from the study and ground floor open space are maintained, however many of the surrounding water views towards the city and Double Bay will be lost.

4. *What is the reasonableness of the proposal that is causing the impact?*

In the *Tenacity Consulting Pty Ltd Vs Warringah Council (2004)*, Senior Commissioner Roseth applies the following reasoning to the established planning principal of view sharing:

“A development that complies with all planning controls would be considered more reasonable than one that breaches them”.

In considering the impact the non-complying section of the building would have on the views of the adjoining neighbours consideration is given to the view affection that would occur from the proposed new building envelope. This is particularly difficult given the dwelling that previously existed on site (which included a ridge height of RL 27.760) has been demolished. Thus, views that exist over the site would not have existed prior to the demolition of the previous building.

Furthermore, the site has been illegally excavated as discussed previously. As such the proposal results in a numeric non-compliance of 810mm with the height control which must be assessed.

The non-compliance results in a view affection from 3/56 Wolseley Road, the apartment at 60 Wolseley Road and the apartments at 62 Wolseley Road. In considering the reasonableness of the impact from the properties consideration is given to the court ruling regarding views over side boundaries. As stated by Senior Commissioner Roseth *“the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries.”* He also added *“The expectation to retain side views and sitting views is often unrealistic.”*

The view loss from 3/56 Wolseley Road (considered the most significant) would occur across a side boundary and particularly from a sitting position. The view loss from all other apartments would occur across a side boundary. Having regard to the expansive views afforded from all apartments at 60 and 62 Wolseley Road, the view affection resulting from the proposed development is reasonable and satisfies the objective of the RDCP 2003 which encourages view sharing as a means of ensuring equitable access to views from dwellings.

It is accepted that the proposal does not satisfy the development standard for height, however as previously discussed, it is the position of the assessing officer that it is unreasonable to require the applicant comply with the height control given the complex site history and the previous rulings by the Land and Environment Court. Furthermore, the proposed works will sit 100mm lower than the height of the previously existing dwelling that was demolished on the site in 2001 and approximately 1.3 less than the application approved by Council in DA98/179.

The above mentioned planning principle also discusses the merits of *“with a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours”.*

The front (complying section) of the building results in view affection from the rear open space area of the adjoining property at 62 Wolseley Road. Conditions C.1, C.1B, C.1D requiring the applicant to lower the front wall heights of the terrace and limit the height of landscaping, have been imposed on the consent to preserve water views from the lower level open space area of the apartment of 62 Wolseley Road. It is therefore argued that the complying section of the proposed development could not be better skillfully modified to improve the view outlook from the windows or terraces of the surrounding neighbours.

On this basis, the proposal would satisfy the criteria set out by the Court and would satisfy the relevant criteria prescribed by the RDCP.

Energy efficiency performance criteria (Section 5.6)

The proposed design would satisfy and exceed many of the energy efficiency performance objectives and performance criteria of the RDCP 2003.

Stormwater management performance criteria (Section 5.7)

The submitted stormwater information is to the satisfaction of Council's Technical services department subject to conditions of consent.

The proposal achieves the stormwater management objectives and performance criteria of the RDCP 2003.

Acoustic and visual privacy performance criteria (Section 5.8)

Conditions C15, I3 & I5 have been imposed on the consent to preserve the acoustic privacy of the adjoining neighbours.

The application has preserved the privacy of the western neighbours (2 Wingadal Place) lower level east facing bedroom windows and courtyard through design changes incorporated into the Revision C plans. Revision C plans incorporate an increased side setback, increased planter width and 120mm increase in the eastern planter edging to prevent line of sight from the upper level terrace areas of the dwelling into the bedroom and courtyard of the adjoining neighbour. The proposed changes satisfy the privacy requirements of the RDCP and the matters raised by the adjoining neighbour.

The proposal preserves the privacy of the adjoining eastern neighbours by designing copper screen privacy panels to the three new east facing upper level habitable room windows. This design treatment would allow northern light filtration into the dwelling whilst preserving the visual privacy of the dwelling occupants and the visual privacy of the adjoining neighbours' habitable rooms and open space areas.

The eastern side of the proposed upper level terrace has been left untreated with glass balustrading to maintain views from the middle level apartment at 56 Wolseley Road of sections of the Harbour Bridge. Given the orientation of the terrace is focused to overlook the harbour and towards the west (city, bridge, opera house), the balcony is not considered unreasonable given the urban context that surrounds the site and the availability for the existing building on the lower side of Wolseley Road to overlook the southern sections of the open space areas of the adjoining neighbours.

The proposal satisfies the relevant objectives of the RDCP 2003.

Car parking and driveways performance criteria (Section 5.9)

The proposal includes the provision of a garage that facilitates the parking of two car spaces in accordance with the Australian Standard AS2890.1. Given the unusual shape of the garage a condition has been imposed on the consent to limit the number vehicles stored in the garage to a maximum of two.

The proposed driveway and vehicle turntable would facilitate vehicles entering and exiting the site in a forward motion consistent with the requirements of the RDCP.

The proposed driveway grades have been reviewed by Council's Technical services department who have stated that the application is satisfactory subject to conditions.

The proposal achieves the car parking and driveway objectives and performance criteria of the RDCP 2003.

Site facilities performance criteria (Section 5.10)

The applicant has incorporated suitable storage and plant areas within the building envelope to accommodate the required site facilities.

The proposal would satisfy the relevant site facilities performance criteria of the RDCP 2003.

Harbour foreshore development performance criteria (Section 5.11)

The site is located within the Harbour Foreshore Scenic Protection Area (HFSPA). The objectives of this section are:

- *To protect the scenic quality of the natural landscape and built environment as viewed from Sydney Harbour*
- *To protect indigenous flora and fauna habitats and minimise disturbance of ecological communities.*
- *To conserve the natural land and water interface and reinforce the natural character of the foreshore.*

Whilst the development is generally compliant with this section of the RDCP, the proposed swimming pool height represents a departure from the control that requires assessment.

C5.11.5 requires swimming pools to not be elevated more than 300mm above ground level. The proposed swimming pool is to be situated above an existing rock ledge with a water level RL of 14.240. Whilst the pool is to be in-ground, the pool wall will range in height between 1.0m - 3.41m above the immediately adjoining terrace level to the south. This transition is achieved by maintaining the natural sloping topography that exists on site.

To soften the visual impact of the swimming pool from the harbour, the applicant has proposed a stone clad wall material to blend with the natural rock formations on site and match the external walls of the dwelling. Also proposed are substantial vegetation and landscaping with a mature height of 3.6 metres, to be planted along the southern side of the wall to soften the appearance of the pool when viewed from the harbour.

The landscaping and wall material proposed by the applicant ensure that the numeric non-compliance with the controls still achieves the above mentioned objectives of the RDCP 2003.

Mixed development in business zones performance criteria (Section 5.12)

Not applicable to this assessment.

Access and mobility performance criteria (Section 5.13)

The objectives of this section encourage new building and associated spaces to be accessible and useable by all people in the community including those with disabilities. The development is required to comply with the requirements of the Access DCP (discussed below).

Inter-war flat buildings [a15] performance criteria (Section 5.14)

Not applicable to this assessment.

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

Not applicable to this assessment.

13.3 Woollahra Access

The access requirements for a single dwelling encourage visitor access to the dwelling and encourage the parking arrangement to comply with AS2890:1.

The modifications reflected in the Revision D plan would satisfy the parking requirements, whilst the proposed dwelling layout would encourage fully accessible visitor access to the living areas and bathroom facilities of the dwelling.

The proposal satisfies the Woollahra Access DCP 2004.

13.4 Other DCPs, codes and policies

Sydney Harbour Foreshores and Waterways Area DCP 2005

The subject site is located within the Foreshores and Waterways Area of the SREP 2005, therefore this DCP is applicable to the proposal.

Landscape Assessment

The site is identified as being located within Landscape Character type 10. The design and siting of the proposed works will not detract from or destroy the significant natural elements that are prominent from the harbour and significant to the site. Furthermore, the proposal seeks to undertake works that clear the natural rock ledge and expose the natural formation within the southern section of the site.

The proposed swimming pool and dwelling setback maintain an adequate separation between the buildings on site and Double Bay, thereby preserving the open nature of the bay and preventing an overdevelopment of the foreshore area.

The proposal would satisfy the criteria of the Landscape section of the DCP.

Design Guidelines for Water-Based and Land/Water Interface Developments

Whilst it is acknowledged that the existing timber skid is shown on the plans, the plans include an annotation indicating that the existing timber skid is not to be altered. The application does not classify as Water-Based development or Land/Water Interface development.

Design Guidelines for Land-Based Developments

The following assessment is offered against the relevant criteria of the DCP:

Siting of Buildings and structures

The proposed dwelling, swimming pool and pool house would comply with the FSBL applicable to the site. The applicant seeks to remove seven trees on site. It is the position of Council's Trees and Landscaping department that

"These trees should be removed and replaced regardless of future development."

Furthermore, the replacement plantings proposed are considered to satisfy the relevant Council policies regarding preserving the visual quality and natural environments of Sydney Harbour.

As previously discussed the proposal will result in minor view loss from the public domain and would generally preserve views of landmarks as identified within the DCP maps. The proposed view impact is not unreasonable given the design of the building and the context of the surrounding development.

The proposal satisfies the relevant criteria of the DCP.

Built Form

The proposed building is of a compatible scale and design to the surrounding development. The proposed external materials and roofing are consistent with the natural features of the site and would minimise reflectivity. The landscaping proposed within the lower levels of the site facilities views of open space areas of the site from the waterway.

The proposal satisfies the relevant criteria of the DCP.

Planting

The submitted landscape plan includes the levels of all proposed low height walls within the southern section of the site. Furthermore, the plan and trees species proposed having been referred to Council's Trees and landscaping department who have determined that the development proposal is satisfactory in terms of tree preservation and landscaping. The proposal satisfies the relevant criteria of the DCP.

Swimming Pools

The proposed swimming pool is not located between the MHWM and the foreshore building line.

Inclinators, stairs and driveways

The proposal seeks to stone clad the existing concrete stairs that are located within the subject site. The application also seeks to stabilize bank and existing stone ledges with low stone walls and plantings. The proposal would satisfy the relevant criteria of the DCP.

14. APPLICABLE REGULATIONS

All applicable regulations have been included as conditions of the consent.

15. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts of the modified development have been considered elsewhere in this assessment.

16. THE SUITABILITY OF THE SITE

The site is within a Class 5 Acid Sulfate Soil area identified in the Planning NSW Acid Sulfate Soil Risk Map. The site is therefore considered suitable for the proposed development.

17. SUBMISSIONS

The proposal was advertised and notified in accordance with Council's Advertising and Notifications DCP.

Submissions were received from:

- Ms D. Wolff - 2/35 Wolseley Road, Point Piper
- Murial Balkin – 62 Wolseley Road, Point Piper
- Mr John Belfer – Unit 2, 56 Wolseley Road, Point Piper
- Mr Lionel Abrahams – Unit 3, 56 Wolseley Road, Point Piper
- Byrnes and Associates and Reid and Vesely – on behalf of the body corporate for 56 Wolseley Road, Point Piper
- Tzannes Assocaites – on behalf of Mr John Symond of 2 Wingadal Place, Point Piper
- Anthony Rowan – on behalf of Mrs Murial Balkin of 62 Wolseley Road, Point Piper
- Gergely & Pinter – on behalf of Mr Erwin Otvosi of 60 Wolseley Road, Point Piper

The following matters were raised in the submissions to Council:

- parking

This has been discussed within section 13.1 of the report. As stated the application satisfies the car parking requirements prescribed by the RDCP.

- loss of View

This has been addressed in section 11.4 & 13.1 of this report. Subject to condition C1A, C1B & C1B of consent there are no outstanding objections relating to view loss.

- privacy

This has been addressed in section 13.1 of this report.

The proposed design changes encompassed in the revision C designs satisfied the privacy concerns of the adjoining neighbour at 2 Wingadal Place Point Piper.

- side setback to western boundary

This has been addressed in section 13.1 of this report.

The proposed western side setback was modified in the revision C drawings to the satisfaction of the adjoining neighbour at 2 Wingadal Place Point Piper.

- extent and quality of open space and landscaping

This has been addressed in section 13.1 of this report. The amount and detailing of the landscaping proposed would satisfy the requirements of the RDCP 2003.

- over development of the site

This has been addressed in section 11.4 & 13.1 of this report.

- trellis height

Condition C.1C has been imposed on the consent to limit the trellis height to 2.45 metres, thus satisfying the concern of the adjoining neighbour at 60 Wolseley Road, Point Piper.

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

18. CONCLUSION - THE PUBLIC INTEREST

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

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

THAT the Council, as the consent authority, is of the opinion that the objections under *State Environmental Planning Policy No. 1 – Development Standards* to Clause 12 Building Height & Clause 22 Foreshore Building Lines development standard under Woollahra LEP 1995 is well founded. The Council is also of the opinion that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of this case as the proposed built form is acceptable given the context of the site.

AND

THAT the Council, as the consent authority, being satisfied that the objection under SEPP No. 1 is well founded and also being of the opinion that the granting of consent to DA 323/2007/1 is consistent with the aims of the Policy, grant development consent to DA 323/2007/1 for a new single dwelling house including landscaping works and a swimming pool on land at 1 Wingadal Place Point Piper, 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)
CO-07-01	Landscape Plan	Craig Burton,	Feb 2007
Arboricultural Assessment	Arborist Report	Urban Forestry Australia	Jan 2007
A-1.01C, A-1.02D, A-1.03C, A-1.04C,	Architectural Plans	James Stockwell Architect & Jonathan Temple Architect	10 Sept 2007
DO35 1 of 1	Plan showing levels and features	Whelans Operations	June 2006
117259S	BASIX Certificate	Department of Planning	8 Feb 2007
Dwg No. A-1.08	Construction Management Plan	James Stockwell architect	15 May 2007
Dwg No. A-1.03	Driveway Profiles	James Stockwell architect	15 May 2007
Dwg No 1/5 to 5/5 Rev A	Stormwater Management Plan	JCL Development Solutions	Rev A 07/06/07

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

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

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

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

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

A.5 General Terms of Approval – Part 3A Permit (Maritime)

The following general terms of approval have been imposed by the NSW Maritime Authority:

Section ss 91A(2) – the general terms to be attached to Permit under Part 3A of the Rivers and Foreshores Improvement Act 1948 (part 3A Permit)

1. The works to which these general terms of approval apply are not to commence until such time as NSW Maritime has issued a Part 3A Permit under the *Rivers and Foreshores Improvement Act 1948*.
2. The proposed works are carried out so that:
 - a. No materials are eroded, or likely to be eroded, are deposited, or likely to be deposited, on the bed or shore or into the waters of Blackburn Cove; and
 - b. No materials are likely to be carried by natural forces to the bed, shore or waters of Blackburn Cove.
3. Any material that does enter the waters of Blackburn Cove must be removed immediately.
4. Best practice methods shall be adopted for the on-site control of runoff, sediment and other pollutants during, and post, construction. Methods shall be in accordance with the relevant specifications and standards contained in the manual *Managing Urban Stormwater – Soils & Construction* issued by the NSW Department of Housing/Landcom in 2004 and any other relevant Council requirements.
5. The erosion, sediment and pollution controls must be installed and stabilised before commencement of site works. This does not include the works associated with the construction of the appropriate controls.
6. The proposed system for erosion, sediment and pollution control is effectively maintained at or above design capacity for the duration of the works and until such time as all ground disturbed by the works has been stabilised and rehabilitated so that it no longer acts as a source of sediment.

7. Any material that is to be stockpiled on site must be stabilised and covered to prevent erosion or dispersal of the material.
8. Landscaping is to be comprised of locally indigenous species, which represent the original plant communities that would have been found along the shoreline in the vicinity of the subject land.
9. Any trees that are removed during the works are to be replaced elsewhere on the site with a suitable replacement. Replacement trees are to be of locally indigenous species.
10. In relation to 8 and 9 above, a suitable landscape plan is to be provided to NSW Maritime prior to a Part 3A Permit being issued. The plan is to identify the location and species of trees at the site; measures to protect them from damage during the works and details of additional landscaping to be carried out, including species, numbers and location.
11. The foreshore and intertidal area are to be fully protected for the duration of the works. This includes preventing the storage of any materials, equipment, supplies, or waste receptacles within the inter-tidal area.
12. Limited information has been provided regarding access for the proposed works. If access for construction and materials is to be sought via the foreshore (i.e. barge) then a comprehensive construction management plan is to be prepared by suitably qualified individuals and submitted to the satisfaction of NSW Maritime. The Plan should include, but not be limited to, measures that demonstrate:
 - a. The protection of sensitive inter-tidal areas through access and egress of the barge and associated activities (such as propeller damage, lines and anchor points, length of stay etc).
 - b. The management of disturbed foreshore lands to avoid any sediment entering the waterway.
 - c. Siltation management through the implementation of suitable controls (such as floating boom and silt curtains). this
 - d. Post construction works to restore and stabilise the intertidal area.
 - e. Measures are in place to audit the environmental performance of the construction management and what approach is to be used for responding to an issue.
13. No works are to be undertaken on land owned by NSW Maritime without the relevant approvals being granted by NSW Maritime.

Note: These conditions have not been imposed by Council but are required to be incorporate as conditions of development consent. Where there is any inconsistency between these general terms of approval and other conditions of this consent the more onerous requirement prevails.

Standard Condition: A17

A.6 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.7 Inconsistency in Lower Floor Plan

Plan reference No. A-1.02d includes an incorrect FFL of 20.950 for the family area. This reference is to be deleted from the plans with the approved finished floor level at FFL17.350.

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

B.1 Construction Certificate required prior to any demolition

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

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

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

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

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

- a. The proposed blade wall along the eastern elevation of the front north facing courtyard is to be lowered by 600mm. This would limit the height of this wall to 1.8 metres.
- b. The proposed northern wall along the front north facing courtyard is to be lowered by 600mm. This would limit the height of this wall to 1.8 metres.
- c. The wire trellis over the upper level West facing terrace will be at a height of 2.45 metre above the terrace finished floor level of RL 24.550.
- d. The landscape plan is to be modified to ensure that all landscape plantings forward of the northern wall of the dining room are of a species with a maximum mature height no greater than 1.8 metres above the approved ground level.

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

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

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

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

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

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

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

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy Use Calculator: http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation or use their online calculator	No	
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit - Making good any damage caused to any property of the <i>Council</i> as a consequence of the doing of anything to which the consent relates.	\$112,000	No	T600
Infrastructure Works Bond - Completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent.	\$132,000	No	T600
DEVELOPMENT LEVY under Woollahra Section 94A Development Contributions Plan 2005 This plan may be inspected at Woollahra Council or downloaded from our website www.woollahra.nsw.gov.au .			
Development Levy	\$55,902.00+ Index Amount	Yes, quarterly	T94
INSPECTION FEES under section 608 of the Local Government Act 1993			
Public Road and Footpath Infrastructure Inspection Fee	\$168	No	T99
Security Administration Fee	\$163	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$300,233.00 Plus any relevant indexed amounts and long service levy		

Building & Construction Industry Long Service Payment

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

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

How must the payments be made?

Payments must be made by:

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

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

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

How will the section 94A levy be indexed?

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

Do you need HELP indexing the levy?

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

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

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

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

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

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

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

C.3 Waste Treatment System

An Activity application under Section 68- Part C, of the Local Government Act 1993 is required to be lodged with Council for determination of the proposed Waste Treatment System. The application seeks approval to (a) install and (b) to operate a system of waste management.

Under the Local Government (General) Regulation 2005 the following information is required to accompany applications for approval to install or construct sewage management facilities:

1. Plan

The application must be accompanied by a plan, to scale, showing the location of:

- The sewage management facility proposed to be installed or constructed on the premises, and
- Any related effluent application areas, and
- Any buildings or facilities existing on, and any environmentally sensitive areas of, any land located within 100 metres of the sewage management facility or related effluent application areas, and
- Any related drainage lines or pipework (whether natural or constructed)

2. Specifications

The application must be accompanied by full specifications of the waste management facility proposed to be installed or constructed on the premises concerned.

3. Site Assessment

The application must be accompanied by details of the climate, geology, hydrogeology, topography, soil composition and vegetation of any related effluent application areas together with an assessment of the site in the light of those details.

4. Statement re Capacity assessment

The application must be accompanied by a statement of:

- The number of persons residing, or probable number of persons to reside, on the premises, and
- Such other factors as are relevant to the capacity of the proposed sewage management facility.

5. Operation and Maintenance

The application must be accompanied by details of:

- The operation and maintenance requirements for the proposed waste management facility, and
- The proposed operation, maintenance and servicing arrangements intended to meet those requirements, and
- The action to be taken in the event of a breakdown in, or other interference with its operation.

C.4 BASIX commitments

The *applicant* must submit to the *Certifying Authority* *BASIX Certificate* No.117259S 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.5 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.6 Tree Management Details

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

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

Standard Condition: C30

C.7 Structural Adequacy of Existing Supporting Structures

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

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

Standard Condition: C35

C.8 Professional Engineering Details

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

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

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

Standard Condition: C36

C.9 Bicycle, Car and Commercial Parking Details

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

Specific works include:

- The driveway is to comply with the long section by James Stockwell architect Dwg No. A-1.03 dated 15 May 2007
- The width of the double carparking area is to comply with AS2890.1 with a width of 5.4m.
- Access levels and grades must comply with access levels and grade required by Council under the *Roads Act 1993*.

The *Certifying Authority* has no discretion to reduce or increase the number or area of car parking or commercial parking spaces required to be provided and maintained by this consent.
Standard Condition: C45

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

The developer must obtain written approval from the NSW Maritime Authority to discharge stormwater from the subject property directly into Sydney Harbour.
Standard Condition: C50

C.11 Stormwater management plan (Site greater than 500m²)(Clause 25(2) WLEP 1995)

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

The *Stormwater Management Plan* must detail:

- a) general design in accordance with JCL Development Solutions Dwg No 1/5 to 5/5 Rev A dated 07/06/07 other than amended by this and other conditions;
- b) the discharge of stormwater, by direct connection, to Sydney harbour;
- c) compliance the objectives and performance requirements of the BCA;
- d) any rainwater tank required by BASIX commitments including their overflow connection to the *Stormwater Drainage System*, and
- e) general compliance with the Council's draft Development Control Plan Stormwater Drainage Management (draft version 1, public exhibition copy dated 23 August 2004), and

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

Layout plan

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

It must include:

- All pipe layouts, dimensions, grades, lengths and material specification,
- Location of On-Site Detention,
- All invert levels reduced to Australian Height Datum (AHD),
- Location and dimensions of all drainage pits,
- Point and method of connection to Councils drainage infrastructure, and
- Overland flow paths over impervious areas.

Copies of certificates of title, showing the creation of private easements to drain water by gravity, if required.

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

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

Standard Condition: C51

C.12 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.13 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.14 Light & Ventilation

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

Note: Clause 98 of the *Regulation* requires compliance with the *BCA*. Clause 145 of the *Regulation* prevents the issue of a *Construction Certificate* unless the *Accredited Certifier/Council* is satisfied that compliance has been achieved. Schedule 1, Part 3 of the *Regulation* details what information must be submitted with any *Construction Certificate*. It is the Applicant's responsibility to demonstrate compliance through the *Construction Certificate* application process. Applicants must also consider possible noise and odour nuisances that may arise. The provisions of the *Protection of the Environment Operations Act 1997* have overriding effect if offensive noise or odour arises from the use. Applicant's must pay attention to the location of air intakes and air exhausts relative to sources of potentially contaminated air and neighbouring windows and air intakes respectively, see section 2 and 3 of [AS 1668.2](#).
Standard Condition C59

C.15 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).
2. **Association of Australian Acoustical Consultants**—professional society of noise related professionals (www.aaac.org.au).
Standard Condition: C62

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 public infrastructure

To clarify the existing state of public infrastructure prior to the commencement of any development (including prior to any demotion), the *Principal Contractor* must submit a dilapidation report on Council's infrastructure both sides for the full length of the constructed section of Wingdal Place.

The dilapidation report must be submitted to Council prior to the commencement of any work and include:

- a. Photographs showing any existing damage to the road pavement,
- b. Photographs showing any existing damage to the kerb and gutter,
- c. Photographs showing any existing damage to the footway including footpath pavement,
- d. Photographs showing any existing damage to retaining walls within the footway or road, and
- e. Closed circuit television/video inspection (in DVD format) of public stormwater drainage systems in the road.

The dilapidation report must specify (with supporting photographic/DVD evidence) the exact location and extent of any damaged or defective public infrastructure prior to the commencement of any work. If the required report is not submitted then Council will assume there was no damage to any infrastructure in Wingadal Place prior to the commencement of any work under this consent.

Note: If the Principal Contractor fails to submit the dilapidation report required by this condition and damage is occasioned to public assets adjoining the site Council will deduct from security any costs associated with remedying, repairing or replacing damaged public infrastructure. Nothing in this condition prevents Council making any claim against security held for this purpose.
Standard Condition: D5

D.3 Adjoining buildings founded on loose foundation materials

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

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

D.4 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>Pittosporum undulatum</i> (Sweet Pittosporum)	R.L 7.40 Top of embankment western end of site	5

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

Council Reference No:	Species	Location
1	<i>Pittosporum undulatum</i> (Sweet Pittosporum)	R.L 7.40 Top of embankment western end of site

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

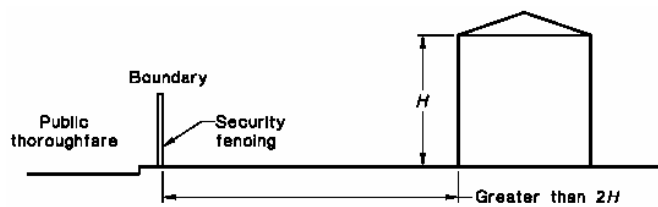
- d) A sign must be erected on each side of the fence indicating the existence of a Tree Protection Zone and providing the contact details of the site Arborist.
- e) Existing soil levels must be maintained within Tree Protection Zones. Where excavation is undertaken adjacent such an area, the edge of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

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

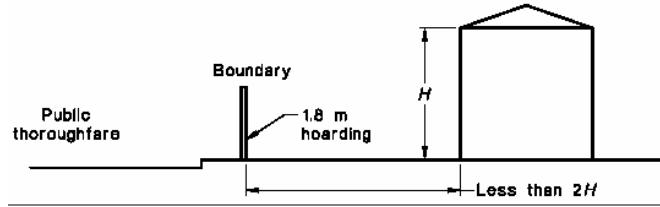
Note: Water Restrictions take precedence over this condition. Having regard to water restrictions manual hosing may be necessary.
Standard Condition: D8

D.5 Security Fencing, Hoarding and Overhead Protection

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



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

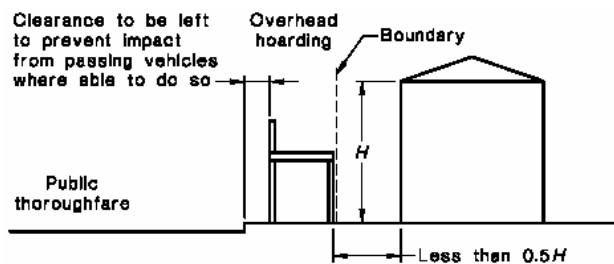


Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an *overhead protective structure* and the facing facade protected by heavy-duty scaffolding, unless either

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

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

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



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

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

<http://www.workcover.nsw.gov.au/Publications/LawAndPolicy/CodesofPractice/oheadprotstrcuts.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.6 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.7 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.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

D.9 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.10 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.11 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. 2 Wingadal Place, Point Piper

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.

Standard Condition: D4

D.12 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 Compliance with Construction Management Plan

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

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

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

Standard Condition: E3

E.4 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.5 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.6 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.7 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.8 Tree Preservation

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

General Protection Requirements:

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

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

E.9 Tree Preservation & Approved Landscaping Works

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

- a. The following trees must be retained:

Trees on Private Land

Council Reference No:	Species	Location	Dimension (Metres)
1	<i>Pittosporum undulatum</i> (Sweet Pittosporum)	R.L 7.40 Top of embankment western end of site	9 (h) x 10 (w)

- b. The following trees may be removed:

Council Reference No:	Species	Location	Dimension (Metres)
2	<i>Olea europea var. africana</i> (African Olive)	Southern embankment	Exempt from TPO
3	<i>Stenocarpus sinuatus</i> (Firewheel Tree)	Southern embankment	10 (h) x 2 (w)
4	(Group of four) <i>Archontophoenix cunninghamiana</i> (Bangalow Palm)	Southern embankment	7 (h) x 4 (w)
5	<i>Phoenix canariensis</i> (Canary Island Date Palm)	Southern embankment	7 (h) x 8 (w)

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

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

Note: Water Restrictions take precedence over this condition.

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

E.10 Bush Regeneration

The *principal contractor* or *owner builder* must ensure that the bush is regenerated in accordance with the approved bush regeneration plan.

Standard Condition: E10

E.11 Maintenance of Environmental Controls

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

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

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

E.12 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.13 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.14 Removal of undesirable species and noxious weeds

The *principal contractor* or *owner builder* must (to prevent the spread of undesirable and invasive species and to ensure the preservation of urban bushland within the Municipality) remove all weeds identified within the *Noxious Weeds Act 1993* (Order No 7) and the following identified Woollahra Municipality bushland invasive plant species must be removed from the development site:

Common name	Scientific name
Alligator weed	<i>Alternanthera philoxeroides</i>
Bitou bush Boneseed	<i>Chrysanthemoides monillifera</i>
Black knapweed	<i>Centaurea nigra</i>
Blackberry	<i>Rubus fruticosus (agg. spp.)</i>
Broomrape	<i>Orobanche spp.</i>
Cabomba	<i>Cabomba spp.</i>
Castor oil plant	<i>Ricinus communis</i>
Green cestrum	<i>Cestrum parqui</i>
Harrisia cactus	<i>Harrisia spp.</i>
Hawkweed	<i>Hieracium spp.</i>
Horsetail	<i>Equisetum spp.</i>
Karoo thorn	<i>Acacia karroo</i>
Kochia	<i>Kochia scoparia</i>
Lagarosiphon	<i>Lagarosiphon major</i>
Lantana (Pink flowered)	<i>Lantana camara</i>
Lantana (Red flowered)	<i>Lantana camara</i>
Ludwigia	<i>Ludwigia peruviana</i>
Mexican feather grass	<i>Nassella tenuissima syn Stipa tenuissima</i>
Miconia	<i>Miconia spp.</i>
Pampas grass	<i>Cortaderia spp.</i>
Parthenium weed	<i>Parthenium hysterophorus</i>
Pellitory	<i>Parietaria judaica</i>

Prickly pears	<i>Opuntia spp.</i>
Rhus tree	<i>Toxicodendron succedaneum</i>
Salvinia	<i>Salvinia molesta</i>
Senegal tea plant	<i>Gymnocoronis spilanthoides</i>
Siam weed	<i>Chromolaena odorata</i>
Spotted knapweed	<i>Centaurea maculosa</i>
St John's wort	<i>Hypericum perforatum</i>
Water hyacinth	<i>Eichhornia crassipes</i>
Water lettuce	<i>Pistia stratiotes</i>
Willows	<i>Salix spp.</i>

Standard Condition: E16

E.15 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.16 Filling of site

To the extent that this consent permits filling of the site such fill must be *virgin excavated natural material* (“VENM”).

VENM means “*Virgin excavated natural material (such as clay, gravel, sand, soil and rock) that is not mixed with any other type of waste and which has been excavated from areas of land that are not contaminated with human-made chemicals as a result of industrial, commercial, mining or agricultural activities and which do not contain sulphidic ores or soils.*”

Note: This definition is the same as in Schedule 1 of the *Protection of the Environment Operations Act 1997*, Appendix IX: Types of waste.

Note: Sulphidic ores and soils are commonly known as Acid Sulphate Soils.

Note: If a person transports waste to a place (the site) that cannot lawfully be used as a waste facility for that waste: (a) the person, and, (b) if the person is not the owner of the waste, the owner, are each guilty of an offence under section 143 of the *Protection of the Environment Operations Act 1997*.

Note: A person who is the owner or occupier (principal contractor) of any land that cannot lawfully be used as a waste facility and who permits the land to be used as a waste facility is guilty of an offence under section 144 of the *Protection of the Environment Operations Act 1997*.

Note: Additional information is available from the following websites:

Illegal waste dumping - <http://www.epa.nsw.gov.au/waste/dumping.htm>

Is that fill legal? <http://www.epa.nsw.gov.au/resources/012648web.epa%20fill.dl%20bro.pdf>
Standard Condition: E18

E.17 Site Cranes

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

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

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

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

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

Note: Where it is proposed to swing a crane over private land the consent of the owner of that private land is required. Alternatively, the *principal contractor* or *owner builder* must obtain an access order under the *Access to Neighbouring Land Act 2000* or easement under section 88K of the *Conveyancing Act 1919* or section 40 of the *Land & Environment Court Act 1979* as appropriate. The encroachment of cranes or the like is a civil matter of trespass and encroachment. Council does not adjudicate or regulate such trespasses or encroachments.
Standard Condition: E19

E.18 Check Surveys - boundary location, building location, building height and stormwater drainage system relative to Australian Height Datum

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

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

- a) Upon the completion of foundation walls prior to the laying of any floor or the pouring of any floor slab and generally at damp proof course level;
- b) Upon the completion of formwork for floor slabs prior to the laying of any floor or the pouring of any concrete and generally at each storey;
- c) Upon the completion of formwork or framework for the roof(s) prior to the laying of any roofing or the pouring of any concrete roof;
- d) Upon the completion of formwork and steel fixing prior to pouring of any concrete for any ancillary structures, swimming pool or spa pool or the like;

- e) Driveway transitions and crest thresholds prior to pavement of driveways;
- f) Stormwater Drainage Systems prior to or post construction confirming location, height and capacity of works.

Note: This condition has been imposed to ensure that development occurs in the location and at the height approved under this consent.
Standard Condition: E20

E.19 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.20 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.21 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.22 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.23 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

E.24 Vibration Monitoring

Vibration monitoring equipment must be installed and maintained, under the supervision of a *professional engineer* with expertise and experience in geotechnical engineering, between any potential source of vibration and any *building* identified by the *professional engineer* as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed.

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the *professional engineer* as the maximum acceptable peak particle velocity an audible alarm must activate such that the *principal contractor* and any sub-contractor are easily alerted to the event.

Where any such alarm triggers all excavation works must cease immediately.
Prior to the vibration monitoring equipment being reset by the *professional engineer* and any further work recommencing the event must be recorded and the cause of the event identified and documented by the *professional engineer*.

Where the event requires, in the opinion of the *professional engineer*, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the *professional engineer* as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the *professional engineer* to the *principal contractor* and any sub-contractor clearly setting out required work practice.

The *principal contractor* and any sub-contractor must comply with all work directions, verbal or written, given by the *professional engineer*.

A copy of any written direction required by this condition must be provided to the *Principal Certifying Authority* within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining *building* or such that there is any removal of support to *supported land* the *professional engineer*, *principal contractor* and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that *supported land* and take immediate action under the direction of the *professional engineer* to prevent any further damage and restore support to the *supported land*.

Note: *Professional engineer* has the same mean as in Clause A1.1 of the BCA.

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

Note: *Supported land* has the same meaning as in section 88K of the Conveyancing Act 1919.
Standard Condition: E14

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 stormwater drainage systems.
- d. All mechanical ventilation systems.
- e. All hydraulic systems.
- f. All structural work.
- g. All acoustic attenuation work.
- h. All waterproofing.
- i. Such further matters as the *Principal Certifying Authority* may require.

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

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

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

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 Fulfillment of BASIX commitments – Clause 154B of the Regulation

All BASIX commitments must be effected in accordance with the BASIX Certificate No. 117259S.

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

H.2 Landscaping

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

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

H.3 Bush Regeneration

Bush regeneration must be completed in accordance with the approved bush regeneration plan. The *principal contractor* or *owner* must provide to *PCA* certification from a qualified bush regenerator that the works as completed comply with this consent.

Note: This condition has been imposed to ensure that bush regeneration work required under the consent have been completed prior to the issue of any *Final Occupation Certificate*.
Standard Condition: H10

H.4 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 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. 117259S.

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

I.2 Maintenance of Landscaping

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

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

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

Note: This condition also acknowledges that development consent is not required to plant vegetation and that over time additional vegetation may be planted to replace vegetation or enhance the amenity of the locality. Owners should have regard to the amenity impact of trees upon the site and neighbouring land. Further, drought proof vegetation being native species endemic to the immediate locality is encouraged. Suggested native species endemic to the immediate locality are listed in the Brochure Titled "Local Native Plants for Sydney's Eastern Suburbs" published by Woollahra, Waverley, Randwick and Botany Bay Councils.
Standard Condition: I8

I.3 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.4 Outdoor lighting – Residential

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

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

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

I.5 Noise 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

I.6 Rainwater Tank – Operation and Maintenance

All rainwater tank systems shall be operated and maintained in accordance with the technical provisions of the NSW Code of Practice for Plumbing and Drainage 3rd Edition 2006, AS/NZS 3500 as adopted by the Building Code of Australia, and the NSW Health Guideline "Use of Rainwater Tanks Where a Public Water Supply is Available".

Note: The NSW Health Guideline can be downloaded from
http://www.health.nsw.gov.au/policies/gl/2007/pdf/GL2007_009.pdf. The guideline's introduction states:
"In urban areas the public water supply remains the most reliable source of good quality drinking water for the community. In these areas NSW Health supports the use of rainwater tanks for non-drinking uses, such as toilet flushing, washing clothes or in water heating systems, and outdoors for uses such as garden watering, car washing, filling swimming pools, spas and ornamental ponds, and fire fighting. Use of rainwater conserves the public water supply and helps to reduce stormwater impacts. In urban areas NSW Health recommends that people use the public water supply for drinking and cooking because it is filtered, disinfected and generally fluoridated."
Standard Condition: I35

J. Miscellaneous Conditions

No relevant conditions.

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 Commonwealth Disability Discrimination Act 1992 (“DDA”)

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

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

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

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

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

Standard Advising: K3

K.4 NSW Police Service and Road Closures

The Rose Bay Local Area Command closely aligns with the boundaries of the Woollahra local government area.

Council and Police approval is required prior to a partial or full temporary road closure. If you are seeking a partial or full temporary road closure you must comply with the relevant conditions of this consent and you must also gain the approval of the Traffic Sergeant, Paddington Police Station, 16 Jersey Road, Paddington. Phone No. 02 8356 8299 or Fax No. 0283568211.

Warning: If you partially or fully close a road without compliance with Council and Police requirements Council Rangers or the Police can issue Penalty Infringement Notices or Court Attendance Notices leading to prosecution.
Standard Advising: K4

K.5 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.6 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.7 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.8 Asbestos Removal, Repair or Disturbance

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

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

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

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

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

K.9 Lead Paint

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

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

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

Standard Advising: K9

K.10 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.11 Appeal

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

Mr Joseph La Posta, Senior 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.12 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.13 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.14 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.15 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.16 Model

If you submitted a model with the application it must be collected from the Council offices within fourteen (14) days of the date of this determination. Models not collected will be disposed of by Council.

Standard Condition: K21 (Autotext KK21)

Mr J La Posta
SENIOR ASSESSMENT OFFICER

Mr M Schofield
TEAM LEADER

ANNEXURES

1. Plans and elevation
2. Referral Response – NSW Maritime
3. Referral Response – Technical Services
4. Referral Response – Trees and Landscaping
5. Referral Response – Environmental Health