

Application Assessment Panel

Agenda: *Application Assessment Panel*

Date: *Tuesday 12 June 2007*

Time: *3.00pm*

Part: *One of Two Parts*

Outline of Meeting Protocol & Procedure:

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

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

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

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

WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

4 June 2007

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

CC: The Mayor
All Councillors

Application Assessment Panel Meeting – 12 June 2007

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Application Assessment Panel** to be held in the **Committee Room, 536 New South Head Road, Double Bay, on Tuesday 12 June 2007 at 3.00pm.**

Gary James
General Manager

Meeting Agenda

Part One of Two Parts

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

Items to be Decided by this Committee using its Delegated Authority

D1	Confirmation of Minutes of Meeting held on 5 June 2007	1
D2	DA4/2007 – 27 Prospect Street, Paddington – Alterations & additions including attic conversion – 2/1/2007 *See Recommendation Page 13	2-64
D3	DA707/2005 Part 2 – 9 Village High Road, Vaucluse – Section 96 Application Proposed Modification - Reinstatement of the roof terrace (deletion of Condition No. 3) & removal of a Chinese Weeping Elm Tree (deletion of Condition No. 34) *See Recommendation Page 80	65-130

Meeting Agenda

Part Two of Two Parts

Item	Subject	Pages
D4	DA190/2002 Part 3 – 550 New South Head Road, Rose Bay – Section 96 Application Proposed Modification - Internal & external modifications – 22/9/2006 *See Recommendation Page 136	131-159
D5	DA740/2006 – 550 New South Head Road, Rose Bay (Lyne Park Tennis Centre) – Extension of existing tennis centre building – 9/10/2006 *See Recommendation Page 163	160-188
D6	DA402/2006 – 3 Raine Street, Woollahra – Section 82A Review of refusal – 1/2/2007 *See Recommendation Page 200	189-229
D7	DA844/2006 – 5 Northland Road, Bellevue Hill – Alterations & additions including an extension to the 1 st floor with balcony, new carport & landscape works – 13/12/2006 *See Recommendation Page 242	230-266

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 5 June 2007**
Author: Les Windle, Manager - Governance
File No: See Application Assessment Panel Minutes
Reason for Report: The Minutes of the Meeting of Tuesday 5 June 2007 were previously circulated. In accordance with the guidelines for Committees' operations it is now necessary that those Minutes be formally taken as read and confirmed.

Recommendation:

That the Minutes of the Application Assessment Panel Meeting of 5 June 2007 be taken as read and confirmed.

Les Windle
Manager - Governance

DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D2
FILE No.	DA 4/2007/1
PROPERTY DETAILS	27 Prospect Street PADDINGTON 2022
	Lot & DP No.: LOT: 7 DP: 107829
	Side of Street: Eastern
	Site Area (m²): 138.87m ²
	Zoning: Residential 2(a)
PROPOSAL	Alterations and additions including attic conversion.
TYPE OF CONSENT:	Local Development
APPLICANT:	Mrs S A Mitchell
OWNER:	Mrs S A Mitchell & Ms S A Cooper
DATE LODGED:	02/01/2007
AUTHOR:	Ms L Northridge

1. RECOMMENDATION PRECIS

The application is recommended for conditional approval.

2. PROPOSAL PRECIS

The proposal is for alterations and additions to existing terrace including new attic conversion.

3. LOCALITY PLAN



⊘ The Paddington Society

4. DESCRIPTION OF PROPOSAL

The proposed development is for alterations and additions to the existing terrace. The proposal involves the following works:

- New attic room and dormer window to the rear roof slope of the building;
- Alterations and additions to the ground floor to provide enlarged living room, new kitchen and dining area.
- New rear pavilion structure to provide guest bedroom, ensuite and balcony;
- Partial demolition of existing rear wall to provide vehicular access. New Carport structure with metal roller door.
- Replace existing timber rear fence with new hardwood slat fence.

Revised plans were received on the 11 May 2007. The following changes were made:

- The proposed pavilion structure and associated balcony was reduced in size. The height of the pavilion structure was also reduced;
- The ground floor of the building has been reconfigured to allow for a slightly larger car space;
- The car space has been reconfigured to comply with AS2890.1;
- The dormer window to the main rear roof slope has been reduced in width;
- A new garden bed has been proposed at the front of the site;

- Semi-porous paving has been added to the rear courtyard; and
- The glass curtain and glazed gable have been deleted with new French doors to the northern side of the pavilion structure.

5. SUMMARY

Reasons for report	Issues	Submissions
<ul style="list-style-type: none"> • The DA does not satisfy the criteria for determination under staff delegation 	<ul style="list-style-type: none"> • Privacy • Parking • Private open space • Heritage • Loss of light/overshadowing • Objectors concerns 	7 submissions were received (1 letter of support).

6. ESTIMATED COST OF WORKS

The applicant's estimated cost of the proposed development at \$91 000 has been checked using our adopted practice and is considered to be accurate.

7. DESCRIPTION OF SITE OF LOCALITY

THE SITE AND LOCALITY	
Physical features	The subject site is located on the eastern side of Prospect Street. The site has an irregular shape and a total area of 129.7m ² .
Topography	The subject site does not contain any significant site features or vegetation. The site is relatively flat.
Existing buildings and structures	The subject site contains a single storey Federation filigree terrace. The building forms part of a group of terraces. The group is arranged in pairs, the rear wing pattern of the last two which includes the subject site have been significantly impacted by the orientation of and position of Rowe Lane.
Environment	The site is surrounded by residential properties, mainly terrace buildings.

8. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	Residential
Previous relevant applications	n/a
Pre-DA	n/a
Requests for additional information	Amended plans were requested on the 05/04/2007
Amended plans/ Replacement Application	Amended plans were received on the 11/05/2007.
Land & Environment Court appeal	n/a

9. REFERRALS

9.1 The following table contains particulars of internal referrals.

INTERNAL REFERRALS		
Referral Officer	Comment	Annexure
Development Engineer	Satisfactory	3
Heritage Officer	Satisfactory.	4

ENVIRONMENTAL ASSESSMENT UNDER S.79C

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

10. STATE/REGIONAL INSTRUMENTS AND LEGISLATION

10.1 SEPPs

State Environmental Planning Policy No. 55

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

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

10.2 REPs

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

10.4 Other legislation

There is no other relevant legislation.

11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

11.1 Aims and objectives of WLEP 1995 and zone

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

11.2 Statutory compliance table

Site Area (129.7m²)	Existing	Proposed	Control	Complies
Overall Height (metres)	9.5m	7.5m	9.5m	YES

11.4 Height

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

11.7 Other special clauses/development standards

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

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

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

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

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

13. DEVELOPMENT CONTROL PLANS

13.1 Compliance table Paddington Development Control Plan

Site Area (129.7m ²)	Existing	Proposed	Control	Complies
Height of Rear Addition to Single Storey Building (metres)	Below Ridgeline of Main Roof Over Existing Building	Below Ridgeline of Main Roof Over Existing Building	Below Ridgeline of Main Roof Over Existing Building	YES
Width of Permissible Single Dormer Window (metres)	n/a	1.5m	1.5m or 1/3 Width of Roof	YES
Height of Dormer Window (millimetres)	n/a	300mm	300mm Below Main Roof Ridge	YES
Private Open Space (m ²)	29.47m ²	17.55m ²	1/6 of Site Area or 21.6m ²	NO*
Proportion of Private Open Space to be Porous and Semi-Porous (%) or (m ²)	0.845m ²	7m ²	50% or 10.8m ²	NO**
Soft Landscaping at Ground Level (%) or (m ²)	1m ²	1m ²	50% of Required Private Open Space or 11.575m ²	NO*
Solar Access to Habitable Rooms, Private Open Space and Public Domain (Hours in mid winter)	< 2 hours	< 2 hours	2 Hours Between 9am and 3pm in Midwinter	NO*
Standards for Rear Lane Car Access (metres)	3.0m	3.0m	Lane Width – 4.0	NO*
Laneway Carports (metres)				
• Door Height	n/a	2.5m	2.2m	NO*
• Door Width	n/a	3.0m	2.3-3.3m	YES

* Satisfactory ** to be conditioned to comply

Street frontages

No changes to the front façade of the building or to the front fence have been proposed as part of this development. The proposal will improve the appearance of the front of the terrace with the reinstatement of the front garden.

Rear elevations and yards

The pavilion structure is well below the ridgeline of the main single storey terrace. The revised proposal further reduced the height and scale of this structure to ensure that it does not dominate or compete with the form of the original terrace.

The proposed development will not disrupt the pattern of a group of significant buildings. The revised development is not considered to have an adverse impact on the privacy, ventilation, light and the amenity of adjoining properties.

In this respect, the proposed development is considered to be acceptable in terms of Part 5.1.3 of the PDCP.

Roofs

The original main roof is not altered by the proposed development, with the exception of the proposed dormer window; this is discussed in the dormer window and skylight section of this report.

The proposed new roof to the pavilion structure has a traditional pitched roof.

In this respect, the proposal is considered to be acceptable with regard to Part 5.1.3 of the PDCP.

Site coverage, setbacks and levels

The proposed site boundary setbacks and levels will be generally maintained by the proposed development. Whilst the site coverage is not considered to be consistent with the general pattern of development, this is a result of the irregular shape and layout of the subject site. In addition the site coverage has only been marginally increased and is therefore considered to be acceptable in terms of Part 5.1.5 of the PDCP.

Landscaping and private open space

The proposed development does not comply with G1, G3 and G4 as an insufficient amount of private open space, soft landscaping and porous/semi-porous surfaces have been proposed. However this is considered to be acceptable as G2 gives special consideration for sites under 130m² (the subject site has a site area of 129.7m²). In addition the proposal will be conditioned to comply with the minimum porous/semi-porous surface requirements (refer to **Condition C1**) and the landscape character of the site will be improved with the re-instatement of a garden bed at the front of the site. Further to this, the area at the site that is to be used for car parking could be also used as additional private open space when this area is not used for car parking.

A condition of consent has been recommended to ensure that the proposed light well courtyard is adequately drained (refer to **Condition C2**). In this respect, the proposal is considered to be acceptable in terms of Part 5.1.6 of the PDCP.

Building height, bulk and scale

The revised pavilion structure is considered to be subservient to the original built form in terms of height, bulk and scale.

O5 of Part 5.1.7 seeks to minimise the impact of new development on access to sunlight for private and public places. It is considered that the additional overshadowing illustrated on the applicant's shadow diagrams is acceptable for the following reasons:

- The proposed development will only create a marginal amount of additional overshadowing;
- The majority of the overshadowing created by the proposed development falls in the same area that is already overshadowed by the existing development;
- The overshadowing of surrounding properties has been minimised as the size and height of the proposed pavilion structure has been significantly reduced by 1.724m and 160mm respectively.

The proposed development is therefore considered to be satisfactory in terms of Part 5.1.7 of the PDCP.

Acoustic and visual privacy

O2 of Part 5.1.8 seeks to minimise the impact of new development on the acoustic and visual privacy of existing development on neighbouring lands. The proposed development is considered to be consistent with O2 for the following reasons:

- The proposed glass curtain at first floor level on the northern side of the proposed pavilion structure has been replaced with traditional French doors;
- The new terrace off the pavilion structure has been reduced in size. In addition this terrace would look over (and not into) the existing skylight at the adjoining property, No. 29;
- The proposed terrace off the pavilion structure is considered to be adequately separated from the dormer window and private open space at No. 29 (approximately 6m to 8.5m). In addition this dormer window is at approximately 3 metres higher than the finished floor level of this dormer window;
- No new first floor openings will face the other adjoining property (No. 25).
- The proposal will maintain the use of the property as a single dwelling and does not include the addition of any mechanical equipment, such as air conditioning, that would impact the acoustic amenity of the neighboring residential properties.

In this respect, the proposal is considered to be acceptable in terms of Part 5.1.9 of the PDCP.

Stormwater management

Porous and semi-porous surfaces have been provided at the site to assist with the on-site detention of stormwater. In addition a condition of consent has been recommended (refer to **Condition C9**) to ensure that the subject site is adequately drained. Therefore the proposed development is consistent with 5.1.10 of the PDCP.

Water conservation

The Paddington DCP seeks to incorporate measures to reduce the demand on domestic water supplies. As a new kitchen and bathrooms have been proposed a condition of consent has been recommended to ensure that low flow regulators, water saving shower heads and taps, and dual flushing toilets are installed in the development. Refer to **Condition C3** of the recommendation.

In this regard, the proposed development is considered to satisfy Part 5.1.11 of the PDCP.

Dormer windows and skylights

Two dormer windows have been proposed as part of the proposed development. Originally only one dormer window had been proposed to the main rear roof slope, which exceeded one third of the width of the roof and was therefore amended accordingly. This dormer window, which will not be readily visible from the public domain, has a traditional design, and it has been recommended via a condition of consent that this dormer window is to contain a traditional timber framed double hung window (refer to **Condition C1**).

No new skylights have been proposed as part of this development application.

In this respect, the proposed development is considered to be acceptable in terms of Part 5.2.1 of the PDCP.

Windows, doors and shutters

Originally the proposed pavilion structure contained a glass curtain and glazed gable at the northern and southern ends of the structure; these elements were considered to be intrusive to the character of the conservation area and were highly visible from the public domain. Therefore these were deleted from the revised proposal. New French doors have now been proposed to the first floor of the pavilion structure. These new doors are considered to be acceptable as these doors are timber framed and reference traditional proportions and arrangements.

The remaining new windows and doors are considered to be acceptable with regard to Part 5.2.3 of the PDCP.

Verandahs and balconies

The proposed new balcony is considered to be of a design, which complements the form of the building and its context. The revised proposal involves a reduction to the overall size of the balcony to minimise impacts on the visual privacy of surrounding properties.

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

Fences and gates

The proposed new timber fencing to the rear of the site is considered to be satisfactory in terms of Part 5.2.5 of the PDCP.

Parking, access and servicing facilities

No original elements or structures will require removal to facilitate the new car space.

The original proposal did not comply with the minimum internal dimensions of a car space as required by AS 2890.1 and the existing boundary wall imposed on sight distances. The proposed development was therefore amended to comply with the minimum internal dimensions for car spaces and a new 50% transparent fence was proposed to accommodate sight distances. Council's Technical Services does not normally accept car spaces aligned at a shallow angle with the access road as it reduces the sight distance to pedestrians and through traffic. A vehicle exiting the space and entering the access road is also likely to do so at greater speed given a lesser turning manoeuvre is required.

However, due to the location of the site and width of the access lane, the alignment and location of the car space is considered acceptable for the following reasons:

- The access lane width is 3.05 metres boundary to boundary and therefore any traffic within the lane is unlikely to exceed 10km/hr.
- The access lane is unlikely to experience any through traffic. Rowe Lane branches off Liverpool Street, intersects Mary Place then reconnects to Liverpool Street. Mary Place is more accessible from its western end which intersects with Glenmore Road.
- The northern end of Rowe Lane intersects Mary Place at an angle such that traffic can only turn right from Rowe Lane into Mary Place. Due to this, the predominant traffic flow will be from south to north which is ideal with the alignment of the proposed car space.

The proposal is therefore considered to be acceptable in terms of Part 5.2.6 of the PDCP.

Materials and details

The revised materials and details that have been selected are considered to satisfy Part 5.2.8 the PDCP.

Exterior colours

The exterior colours have not been specified on the application. A condition of consent has therefore been recommended to ensure compliance with Part 5.2.9 of the PDCP. Refer to **Condition C4** of the recommendation.

13.3 Woollahra Access DCP

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

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

13.4 Other DCPs, codes and policies

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

14. APPLICABLE REGULATIONS

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

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

15. THE LIKELY IMPACTS OF THE PROPOSAL

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

16. THE SUITABILITY OF THE SITE

Acid Sulphate Soil Area

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

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

17. SUBMISSIONS

The proposal was advertised and notified in accordance with Council's Advertising and Notifications DCP. 7 Submissions were received from:

Helen Stanwell, 23 Prospect Street (letter of support).
Kate Minogue, 25 Prospect Street
Eve Wynhausen, 29 Prospect Street
Mrs A Ashcroft, 24 Liverpool Street
Margaret Alexander, 26 Liverpool Street
Dorothy Piggott, 28 Liverpool Street

The objections raised the following issues:

- **Loft addition out of keeping with the character of the area:**
Comment: Council's Heritage officer considers the revised proposed to be satisfactory with regard to the character of the Heritage Conservation Area.
- **Overshadowing to No. 25:**
Comment: The proposed development is considered to be acceptable in terms of overshadowing for reasons stated above in section 5.1.7 of this report.

- **Loss of Light to No. 25:**

Comment: The height and size of the proposed pavilion structure has been significantly reduced (1.724m and 160mm respectively) to minimise loss of light to adjoining properties.

- **Loss of privacy to No. 25**

Comment: The proposed dormer window is considered to be sufficiently separated (approximately 14m) from the rear yard of No. 25.

- **Noise from cars**

Comment: The proposed car space is considered to be sufficiently separated from bedrooms at adjoining properties and is not considered to adversely affect the acoustic privacy of surrounding properties.

- **Excavation works for new car space**

Comment: From the information provided, no or minimal excavation works would be required for the new car space.

- **Reduction to the existing breezeway**

Comment: The reduction to the existing breezeway is minor and is acceptable under the current controls.

- **Loss of Privacy to No. 27**

Comment: The proposed deck and the amount of glazing facing No. 27 has been significantly reduced. In addition the deck would look in the direction of the adjoining skylight but not into the skylight at this property. The remaining areas at No. 27 are considered to be sufficiently separated from the proposed development.

- **Loss of light to No. 29**

Comment: The proposed pavilion structure has been reduced in height and size to minimise loss of light to adjoining properties.

- **Site Coverage & FSR**

Comment: The site coverage will be marginally increased. No FSR control is applicable to the subject site. This is further discussed in Part 5.1.5 of this report.

- **Materials**

Comment: Council's heritage officer considers the revised proposal and revised materials to be satisfactory.

- **Manoeuvrability of vehicles and narrow laneway**

Comment: Council's Technical Services Department considers the proposal to be satisfactory in terms of manoeuvrability.

- **Non-compliance with the private open space and soft landscaping requirements:**

Comment: This is considered to be acceptable for reasons stated above in part 5.1.6 of the report.

- **Extension to wall and loss of light/sky to Nos. 24 & 26 Liverpool Street**

Comment: The revised involves a significant reduction to the length of the wall for the new pavilion structure (approximately 1.7m), thus minimising loss of light and sky to Nos. 24 & 26 Liverpool Street.

18. CONCLUSION - THE PUBLIC INTEREST

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

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

THAT the Council, as the consent authority, grant development consent to Development Application No. 4/2007 for alterations and additions including attic conversion on land at 27 Prospect Street Paddington, subject to the following conditions:

A. General Conditions

A.1 Conditions

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

Standard Condition: A1

A.2 Definitions

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

Applicant means the applicant for this Consent.

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

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

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

Council means Woollahra Municipal Council

Court means the Land and Environment Court

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

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

- a. The collection of stormwater,
- b. The retention of stormwater,
- c. The reuse of stormwater,
- d. The detention of stormwater,

- e. The controlled release of stormwater; and
- f. Connections to easements and public stormwater systems.

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

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

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

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

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

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

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

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

Site means the land being developed subject to this consent.

WLEP 1995 means *Woollahra Local Environmental Plan 1995*

Work for the purposes of this consent means:

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

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

Standard Condition: A2

A.3 Approved Plans and supporting documents

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

Reference	Description	Author/Drawn	Date(s)
Drawing No. 02G, 02T, 2RS, 2SE, 2NE, 2EW, 3DP, 2DS, 2LS, 2AS	Architectural Plans	Refined Living Architectural Design	27/05/2007

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

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

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

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

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

A.5 Prescribed Conditions

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

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

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

B.1 Construction Certificate required prior to any demolition

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

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

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

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

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

- a. The dormer window to the rear of the main roof slope shall contain a traditional timber framed double hung window.
- b. The lightwell courtyard shall be paved or covered with a porous/semi-porous material in accordance with Part 5.1.6 of the Paddington Development Control Plan, 1999.

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

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

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

C.2 Drainage to Lightwell Garden

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

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

C.3 Materials

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

C.4 Water conservation

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

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

C.5 Payment of Security, Levies and Fees (S80A(6) & S94 of the Act, Section 608 of the Local Government Act 1993)

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

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

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

Description	Amount	Indexed	Council Fee Code
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.	\$2 000	No	T600
Security Administration Fee	\$163	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$2 163 Plus any relevant indexed amounts and long service levy		

Building & Construction Industry Long Service Payment

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

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

How must the payments be made?

Payments must be made by:

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

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

- a. the guarantee is by an Australian bank for the amount of the total outstanding contribution;
- b. the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first;

- c. the bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent; and
 - d. the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.
- Standard Condition: C5

C.6 Road and Public Domain Works – Council approval required

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

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

Specific works include:

- a. Full width vehicular crossings having a width of 3.0m in accordance with Council's standard drawing RF2.

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

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

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

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

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

Standard Condition: C13

C.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 specifications for all structural, electrical, hydraulic, hydro-geological, geotechnical, mechanical and civil work complying with this consent, approved plans, the statement of environmental effects and supporting documentation.

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

Standard Condition: C36

C.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.

Access levels and grades must comply with access levels and grade required by Council under the Roads Act 1993. The vehicle access ramp and garage level is elevated no less than 150mm above the road surface so as to prevent stormwater runoff within the roadway entering the site in any case.

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 existing *Stormwater Drainage System* (Clause 25(2) WLEP 1995)

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

- a. the location of the existing *Stormwater Drainage System* including all pipes, inspection openings, surface drains, pits and their discharge location,
- b. the state of repair of the existing *Stormwater Drainage System*,
- c. any remedial works required to upgrade the existing *Stormwater Drainage System* to comply with the BCA,
- d. any remedial works required to upgrade the existing *Stormwater Drainage System* crossing the footpath and any new kerb outlets,
- e. any new *Stormwater Drainage System* complying with the BCA,
- f. interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath,
- g. any rainwater tank required by BASIX commitments including their overflow connection to the *Stormwater Drainage System*, and
- h. general compliance with the Council's draft Development Control Plan Stormwater Drainage Management (draft version 1, public exhibition copy dated 23 August 2004)

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

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

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

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

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

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

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

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

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

This condition does not apply:

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

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

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

D.2 Construction Management Plan – Approval & Implementation

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

The Plan must:-

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

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

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

D.3 Site Signs

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

“Erection of signs

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

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

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

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

D.4 Toilet Facilities

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

Each toilet provided:

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

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

In this condition:

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

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

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

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

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

D.5 Erosion and Sediment Controls – Installation

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

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

Where there is any conflict The Blue Book takes precedence.

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

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

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

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

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

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

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

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

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

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

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

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

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

D.7 Notification of Home Building Act 1989 requirements

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

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

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

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

E. Conditions which must be satisfied during any development work

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

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

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

This condition does not apply:

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

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

Standard Condition: E1

E.2 Compliance with Australian Standard for Demolition

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

Standard Condition: E2

E.3 Compliance with Construction Management Plan

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

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

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

Standard Condition: E3

E.4 Critical Stage Inspections

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

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

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

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

Standard Condition: E5

E.5 Hours of Work –Amenity of the neighbourhood

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

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

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

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

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

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

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

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

E.6 Maintenance of Vehicular and Pedestrian Safety and Access

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

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

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

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

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

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

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

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

Part C Management of Waste:

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

Part E Public roads:

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

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

E.7 Erosion and Sediment Controls – Maintenance

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

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

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



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

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

E.8 Disposal of site water during construction

The *principal contractor* or *owner builder* must ensure:

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

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

Standard Condition: E17

E.9 Placement and use of Skip Bins

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

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

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

Standard Condition: E21

E.10 Prohibition of burning

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

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

Standard Condition: E22

E.11 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.12 Replacement of Sandstone Kerb or Gutter

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

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

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

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

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

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

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

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

F.2 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

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

No relevant conditions

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

H.1 Removal of Ancillary Works and Structures

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

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

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

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

No relevant conditions.

J. Miscellaneous Conditions

No relevant conditions.

K. Advisings

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

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

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

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

Warnings as to potential maximum penalties

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

Warning as to enforcement and legal costs

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

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

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

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

Standard Advising: K1

K.2 Dial before you dig



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

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

Standard Advising: K2

K.3 Builders Licences and Owner Builders Permits

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

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

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

Standard Condition: K5

K.4 Building Standards - Guide to Standards and Tolerances

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

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

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

The Guide can be down loaded from:

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

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

Standard Condition: K6

K.5 Workcover requirements

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

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

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

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

Standard Condition: K7

K.6 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.7 Lead Paint

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

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

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

Standard Advising: K9

K.8 Appeal

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

George Fotis, Team Leader on (02) 9391 7089

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

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

Standard Condition: K14

K.9 Recycling of Demolition and Building Material

It is estimated that building waste, including disposable materials, resulting from demolition, excavation, construction and renovation, accounts for almost 70% of landfill. Such waste is also a problem in the generation of dust and the pollution of stormwater. Council encourages the recycling of demolition and building materials.

Standard Condition: K17

K.10 Owner Builders

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

Standard Condition: K18

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

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

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

Standard Condition: K19

K.12 Compliance with the Building Code of Australia

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

Part 3.7 - Fire safety
Part 3.7.2 Smoke alarms

Part 3.8 - Health and amenity
Part 3.8.1 Wet areas
Part 3.8.4 Light
Part 3.8.5 Ventilation

Part 3.9 - Safe movement and access
Part 3.9.1 Stair construction
Part 3.9.2 Balustrades

Note: There must be no removal of heritage building fabric unless expressly authorised under this consent where compliance with the BCA cannot be achieved without work not authorised under this consent application to amend this consent is required.
Standard Condition: K20 (Autotext KK20)

Ms L Northridge
ASSESSMENT OFFICER

Mr G Fotis
TEAM LEADER

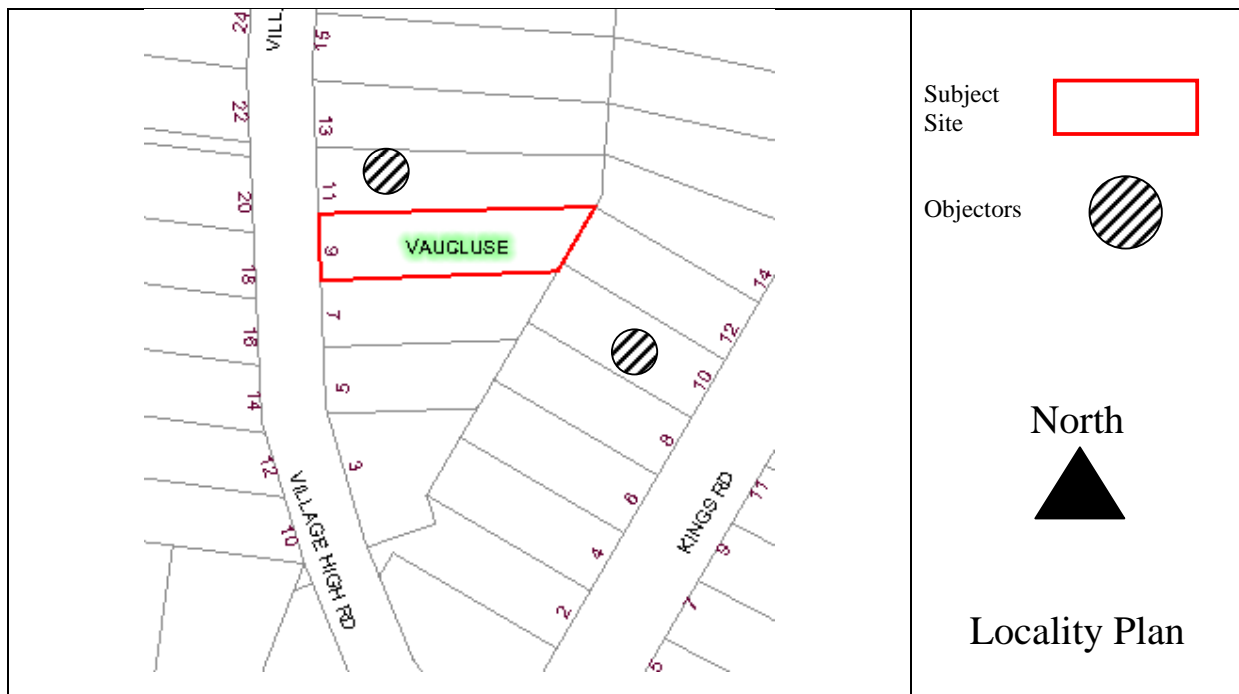
ANNEXURES

1. Plans and elevations
2. Perspectives
3. Technical Services referral
4. Heritage Officer referral

SECTION 96 APPLICATION ASSESSMENT REPORT

ITEM No.	D3
FILE No.	DA 707/2005/2
ADDRESS:	9 Village High Road, Vacluse
EXISTING CONSENT:	The demolition of the existing dwelling-house and swimming pool and the construction of new two-storey dwelling-house, swimming pool, front fence, landscaping and siteworks
TYPE OF CONSENT:	Local Development
DATE OF CONSENT:	15 August 2006
PROPOSED MODIFICATION:	Reinstatement of the roof terrace (deletion of Condition 3) and removal of a Chinese Weeping Elm Tree (deletion of Condition 34)
DATE S96 LODGED:	30/11/2006
CONSENT AUTHORITY:	Council
APPLICANT & OWNER:	Mrs E L Zoellner
AUTHOR:	Mr D Waghorn

LOCALITY PLAN



1. SUMMARY

Reason for report

The objector's concerns cannot be resolved comprehensively via conditions of development consent. Accordingly, the matter is referred to the Application Assessment Panel for determination in accordance with Council delegations.

Issues

- objector's concerns

Objections

Two (2)

Recommendation

The proposed modifications to the development consent are recommended for approval because:

- they are considered to be satisfactory with regard to the relevant provisions under Section 96 and Section 79C of the Environmental Planning and Assessment Act 1979
- the consent, as proposed to be modified, is considered to be substantially the same as that originally granted
- they will not adversely affect the amenity of the public domain or adjoining properties such that refusal is justified

2. DESCRIPTION OF APPROVED PROPOSAL

The approved development involved the following works:

- demolition of the existing dwelling-house and swimming pool
- construction of a new two-storey dwelling-house with a roof terrace and basement level car park for four (4) vehicles
- new swimming pool in the rear yard
- new front fence
- landscaping and siteworks

The application was approved by Council's Application Assessment Panel on 15 August 2006, subject to conditions, specifically including the following condition:

3. *Roof Terrace*

The proposed roof terrace, balustrade, stairs and any access thereto is to be deleted and replaced with a flat roof structure. This condition has been imposed as the roof terrace would have an adverse impact on the privacy of 7 and 11 Village High Road. Conversely, any privacy screening measures would result in increased view loss for 10 and 12 Kings Road. Details demonstrating compliance are to be submitted with the construction certificate application.

3. DESCRIPTION OF PROPOSED MODIFICATION

The proposed modifications involve the following works:

- the reinstatement of the 26m² roof terrace, balustrade and access stairs (deletion of **Condition 3**)
- the removal of the Chinese Weeping Elm Tree and replacement with an appropriate species (deletion of **Condition 34**)

4. DESCRIPTION OF SITE AND LOCALITY

The site is located on the eastern (high) side of Village High Road, is irregular in shape and has an area of 871.4m². The site has a western frontage to Village High Road of 15.24m in length, a northern (side) boundary of 63.205m in length, a southern (side) boundary of 54.02m in length and an eastern (rear) boundary of 17.11m in length. The topography of the site is such that land slopes downwards from the eastern (rear) boundary towards Village High Road; a fall of approximately 8m.

The site is currently occupied by a part one, part two storey dwelling-house with a garage located within the lower ground floor level and a swimming pool and spa in the rear yard.

The adjoining property to the north (11 Village High Road) consists of a two storey dwelling-house with a detached single garage located on the street frontage. Adjoining the site to the south (7 Village High Road) is a part one, part two storey dwelling house with lower ground floor level car parking.

The locality is characterised by one, two and three storey dwelling-houses of various architectural styles and designs.

5. PROPERTY HISTORY

None relevant.

6. REFERRALS

6.1 Trees and Landscape Officer

Council's Tree's and Landscape Team Leader – Louise Bennett has stated that no additional arboricultural evidence has been submitted with the application to support the removal of the Chinese Weeping Elm Tree and the subsequent deletion of **Condition 34**. Given that the Chinese Weeping Elm tree will be the only significant tree to be retained within the front setback area and is considered important in maintaining the landscape character of the locality, there are no arboricultural reasons to remove the tree. As such, the Chinese Weeping Elm Tree is to be retained as approved.

ASSESSMENT UNDER S96

7.1 S96 (1) Correction of minor error, misdescription or miscalculation

Not applicable.

7.2 S96 (1A) Modification involving minimal environmental impact

Not applicable.

7.3 S96 (2) Other modifications

Potential adverse environmental impacts associated with the proposed modifications are loss of amenity impacts upon adjoining properties involving visual impact, loss of privacy and loss of views. Accordingly, the subject Section 96 Application is deemed to fall within this category.

7.4 S96AA Modification of a consent granted by the Court

Not applicable.

7.5 Substantially the same development

The proposed modifications to the development consent are the first. The proposed modifications are minor relative to the scope of the development consent (new dwelling-house) such that the development consent, as proposed to be modified, is considered to be substantially the same as that originally approved.

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

Not applicable.

7.7 Threatened species

Not applicable.

ENVIRONMENTAL ASSESSMENT UNDER S.79C

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

8. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

8.1 SEPPs

None relevant.

8.2 REPs

SREP (Sydney Harbour Catchment) 2005

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

8.3 Section 94A contribution

Not applicable.

8.4 Other relevant legislation

Not applicable.

9. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

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

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

9.2 Statutory compliance table

Site Area: 871.4m ²	Approved Development	Proposed Modification	Control	Complies
Overall Height	8.8m	9.2m	9.5m	Yes

9.3 Height

The proposed modifications attain a maximum height of 9.2m, which complies with Council's 9.5m statutory height control stipulated under Clause 12 of WLEP 1995. Further, the proposed modifications are considered to uphold the objectives underlying the height standard contained in Clause 12AA of WLEP 1995.

9.4 Other special clauses/development standards

Clause 25 Water, wastewater and stormwater

Clause 25 of WLEP 1995 requires Council to take into consideration the provisions of adequate stormwater drainage and the provisions of adequate water and sewage services.

The proposed modifications do not increase the demand for water or the generation of wastewater. The development consent contains conditions addressing the issue of stormwater drainage. The subject application does not seek to modify those conditions, which adequately address the issue of management of the additional stormwater run-off associated with the proposed modifications.

10. DRAFT AMENDMENTS TO STATUTORY CONTROLS

None relevant.

11. DEVELOPMENT CONTROL PLANS

11.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

Site Area: 871.4m ²	Approved Dwelling	Proposed Modification	Control	Complies
Setbacks (roof terrace)				
Front Setback (west)	12.5m	13.4m	11.5m	Yes
Rear Setback (east)	17-24.1m	30.8m	14.6m	Yes
Side Setback (north)	3.4-3.5m	4.8m	4.6m	Yes
Side Setback (south)	1.5-4.3m	5.6m	4.2m	Yes

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

The relevant desired future character objectives of the Vaucluse East precinct relate to the mitigation of adverse impacts upon the local public domain, maintaining the existing landscape character of the locality and ensuring the development responds to the existing built forms in the streetscape.

The proposal is considered to satisfy the above-mentioned objectives for the following reasons:

- the scale and bulk of the proposal is considered to relate appropriately to the built form and context of surrounding development within the locality
- the roof terrace will be setback 1.8m from the front building alignment, thereby ensuring the proposed modifications will not be readily discernible when viewed from Village High Road
- the proposal will not alter the landscape character of the locality

The proposal involves the following non-compliances with the relevant performance criteria stipulated under Part 4.14 of WRDCP 2003:

Significant vegetation

C 4.14.7.8 stipulates that significant trees and vegetation is to be maintained and preserved. The proposed modifications include the removal of the existing Chinese Weeping Elm tree (to be retained under **Condition 34**) to be replaced by a 45L or 1.5m high Chinese Weeping Elm in the north-western corner of the site. Council's Trees and Landscape Officer – Louise Bennett has examined the proposal and states that no further evidence has been submitted with the application supporting the removal of the Chinese Weeping Elm trees. Furthermore, the Chinese Weeping Elm tree will be the only significant tree to be retained within the front setback area and is considered important in maintaining the landscape character of the locality. As such, the removal of the existing Chinese Weeping Elm is considered to be inconsistent with the above-mentioned requirement and is not supported in this instance.

Accordingly, **Conditions 34-41** are to be maintained as approved.

Streetscape performance criteria (*Section 5.1*)

The objectives of Council's streetscape performance criteria require development to achieve a scale and character in keeping with the desired future character for the locality and development contributes to cohesive streetscapes and desirable pedestrian movements, a safe environment and recognise predominant streetscape qualities.

The proposed modifications will be comparable with the architectural style, scale and form of the existing dwelling-house and surrounding development. The height of the approved building, coupled with the 1.8m setback from the front building alignment will ensure the proposed roof terrace will not be readily discernible when viewed from Village High Road. Accordingly, the proposal is considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under Part 5.1 of WRDCP 2003.

Building size and location performance criteria (Section 5.2)

The reinstatement of the roof terrace will not alter the approved building envelope with the frameless glass balustrading being setback a minimum of 1.5m from the approved building envelope, which complies with Council's setback requirements. Furthermore, the setback of the frameless glass balustrade will ensure the roof terrace will not significantly increase the approved levels of solar access for adjoining properties. Accordingly, the proposed modifications are considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under Part 5.2 of WRDCP 2003.

Open space and landscaping performance criteria (Section 5.3)

The proposed modifications comply with the relevant numerical requirements for open space and landscaping. Furthermore, subject to the retention of **Conditions 34-41**, the proposal is considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under Part 5.3 of WRDCP 2003.

Views performance criteria (Section 5.5)

No objections have been received from adjoining property owners with respect to loss of views. Notwithstanding this, the original development application assessment report stated the following:

*Council's Senior Assessment Officer has calculated that a privacy screen to a height of 1.5m would need to be erected to eliminate direct sight lines to habitable room windows and the private open space of 7 and 11 Village High Road. However, if these 1.5m high privacy screens are erected, the iconic views of 10 and 12 Kings Road would be further eroded. As such, **Condition 3** requires the roof terrace, balustrade and associated access stairs are to be deleted and replaced with a flat roof.*

This assessment was made prior to the applicant reducing the area and amending the footprint of the roof terrace to ensure that privacy screens were not required for the northern, southern and eastern edges of the roof terrace to obscure direct sightlines onto habitable rooms and private open space of adjoining properties. These privacy screens, especially on the eastern edge, would have an adverse impact on views from 10 & 12 Kings Road.

The applicant has modified the design of the roof terrace and provided sightlines demonstrating that no direct overlooking will occur onto the primary area of private open space of adjoining properties, as such no additional privacy screens are required. However, the proposed stair access to the roof terrace and glass balustrade will extend 0.45m (RL 66.93) above the approved rear elevation (RL66.48) for a maximum width of 1.6m and 4.5m respectively. Given that the proposed balustrade will consist of clear frameless glass, the only modification with the potential to result in loss of views is the stair access to the roof terrace.

In assessing the reasonableness or otherwise of the degree of additional views loss from the proposed roof terrace this report has had regard to the case law established by *Tenacity Consulting v Waringah* [2004] NSWLEC 140 (pars 23-33) which has established a four-step assessment of view sharing. The steps are as follows:

1. What is the value of the view?

The Court said: "*The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*"

From 10 Kings Road

The views affected by the proposed modifications are the iconic views of the Harbour Bridge and Opera House towards the west.

From 10 Kings Road

The views affected by the proposed modifications are harbour views towards the north-west.

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

The Court said: "*The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*"

From 12 Kings Road

Given the proposed stair access to the roof terrace and glass balustrade will be 0.45m above the approved rear elevation (RL66.48), the views effected by the proposed modifications will be the iconic views which are obtained from the ground floor level living areas and the first floor level master bedroom. The views are obtained from a standing and seated position across the rear boundary.

From 10 Kings Road

Given the proposed stair access to the roof terrace and glass balustrade will be 0.45m above the approved rear elevation (RL66.48), the views effected by the proposed modifications will be the harbour views are obtained from the ground floor level bedrooms and first floor level living rooms. The views are obtained from a standing and seated position across the rear boundary.

3. What is the extent of the impact?

The Court said: "*The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*"

From 12 Kings Road

The following view loss assessment was made for the approved development:

- the iconic views towards the Harbour Bridge from a sitting and standing position on the ground level private open space would be lost as a result of the proposal
- the sitting views of the Opera House and road deck of the Harbour Bridge from the ground level living area would be lost as a result of the proposal, however, the sitting views of the arch of the Harbour Bridge and all standing views towards the Harbour Bridge will be retained
- the views from the first floor level master bedroom will not be affected by the proposal

The proposed modifications will not alter the view loss from the ground level private open space or first floor level, but will marginally increase the extent of view loss from the ground floor level. In this regard the following assessment is made:

- the sitting views of the Opera House, road deck and a portion of the arch of the Harbour Bridge from the ground level living area would be lost as a result of the proposed modifications. While a portion of the road deck of the Harbour Bridge will be lost as a result of the proposed modifications

Quantitatively, it is estimated that an additional 5% of views will be affected by the proposed modifications; resulting in approximately 25% of the total views will be affected by the proposal. Qualitatively, given that 12 Kings Road will partially lose iconic views from a sitting and standing position from the ground level living room, the view loss is still considered to be moderate-severe.

From 10 Kings Road

The following view loss assessment was made for the approved development:

- the harbour views towards the north-west from a sitting and standing position on the ground floor level bedrooms would be partially lost as a result of the proposal. The iconic views towards the west will be retained
- the harbour and iconic views from the first floor level living rooms will not be affected by the proposal

The proposed modifications will not alter the view loss from the first floor level, but will marginally increase the extent of view loss from the ground floor level. In this regard the following assessment is made:

- the harbour views towards the north-west from a sitting and standing position on the ground floor level bedrooms would be partially lost as a result of the proposed modifications. The iconic views towards the west will be retained

Quantitatively, it is estimated that an additional 5% of views will be affected by the proposed modifications; resulting in approximately 15% of the total views will be affected by the proposal. Qualitatively, the view loss is still considered to be minor.

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

The Court said: "*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. 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. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*"

The Court poses two questions in *Tenacity Consulting v Warringah* [2004] NSWLEC 140. The first question relates to whether a non-compliance with one or more planning controls results in view loss? The proposed modifications will not alter the approved building envelope; however, the proposed roof terrace will comply with the relevant height and setback requirements.

Given that the proposal complies with the height and setback requirements, the second question posed by the Court relates to whether a more skilful design could provide the same development potential whilst reducing the impact on views? The answer, in this instance, is considered to be no. The design of the proposed stair access to the roof terrace and glass balustrade is the minimum height possible to protect the views and amenity of properties in Kings Road. As demonstrated in the body of this report, the proposed roof terrace will provide the occupants with an alternative area to obtain views from the dwelling-house without having an adverse affect on the views, privacy, solar access and sense of enclosure from adjoining properties.

Accordingly, the view loss for 10 and 12 Kings Road is considered to be satisfactory for the following reasons:

- the proposed modifications comply with the 9.5m height requirement under Clause 12 of WLEP 1995
- the ground floor level living areas of 12 Kings Road will partially retain the iconic views of the Harbour Bridge from a sitting and standing position, while the first floor level iconic views will not be affected
- the objector's view is afforded through the permissible building envelope of the subject site
- the full retention of existing views for 10 and 12 Kings Road would not satisfy the objects (Clause 5) of the EPA Act 1979 relating to the orderly economic development of land

Accordingly, the proposal is considered to be consistent with the objectives and performance criteria stipulated under Part 5.5 of the WRDCP 2003.

Stormwater management performance criteria (Section 5.7)

The provisions of Part 5.7 of Council's RDCP 2003, require adequate stormwater management. The development consent contains conditions addressing the issue of stormwater drainage. The subject application does not seek to modify those conditions, which adequately address the issue of management of the additional stormwater run-off associated with the proposed modifications.

Acoustic and visual privacy performance criteria (Section 5.8)

The owners of 11 Village High Road and 10 Kings Road have objected to the proposal on the grounds of loss of visual and acoustic privacy from the roof terrace.

Objective 5.8.1 of WDCP 2003 requires development to ensure adequate acoustic and visual privacy for occupants and adjoining properties, while performance criteria C 5.8.6 requires balconies, terraces, decks and other like areas within a development are suitably screened to prevent direct views into habitable rooms or private open space of adjacent dwellings.

In considering the issue of whether the proposal maintains adequate visual privacy to the adjacent properties, the following case law (*Meriton Properties Management P/L v Sydney City Council*), has been referred to:

When visual privacy is referred to in the context of residential design, it means the freedom of one dwelling and its private open space from being overlooked by another dwelling and its private open space. Most planning instruments and development control plans acknowledge the need for privacy, but leave it to be assessed qualitatively. Numerical guidelines for the separation of dwellings exist in the Australia-wide guideline, AMCORD; as well as in the New South Wales-specific Residential Flat Design Code attached to SEPP 65. AMCORD recommends a separation of 9 m between habitable rooms. The Residential Flat Design Code recommends increasing separation between buildings as they get taller. For buildings up to three storeys, it suggests 12 m between habitable rooms and balconies, 9 m between a habitable and non-habitable room and 6 m between non-habitable rooms.

Generalised numerical guidelines, such as above, need to be applied with a great deal of judgment, taking into consideration density, separation, use and design. The following principles may assist:

- *The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities, there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities, it is more difficult to protect privacy.*
- *Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development, it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)*
- *The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.*
- *Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.*
- *Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.*
- *Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.*
- *Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.*
- *In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.*

Furthermore, Senior Commissioner Roseth in *Arttech Design v Woollahra Municipal Council [2006] NSWLEC 314* stated the following:

If the sight line from the proposed roof terraces is such that a 2m high person standing at the face of the house at 7 Boronia Road cannot be seen from the roof terraces, then the privacy of that property is protected to the extent that is reasonable in an urban situation.

In applying these principles, the applicant has amended the original plans by reducing the trafficable portion of the roof terrace and providing elevational sight lines from the proposed roof terrace together with separation distances to adjoining properties. The following privacy assessment is made for each of the adjoining properties:

Privacy Impact on 11 Village High Road

The owner of 11 Village High Road has objected to the proposal on the grounds of loss of privacy due to direct line of sight into the first floor level study and the primary area of private open space from the roof terrace.

With regard to the direct sightline into habitable room windows and loss of acoustic privacy, the only window affected by the roof terrace is the first floor level study window. Whilst the separation distance from the roof terrace to the window is approximately 7.5m, no privacy screen is considered to be required for the following reasons:

- the roof terrace will have an area of 26m² and only be used by the occupants and their guests
- the roof terrace is accessed from the first floor level (bedroom level) with the primary living areas and primary area of private open space being on the ground floor level, which is conducive to infrequent use by the occupants
- **Condition 3** requires that no temporary or permanent structures are to be placed on the roof terrace which further reduces the likelihood of excessive use by a number of people
- the average person standing on the roof terrace will be elevated 3.5m above the head height of the first floor level study window. Given the iconic and harbour views towards the west, the views of occupants and guests will be directed towards the west and away from the study window of 11 Village High Road
- the first floor level study window facing the proposed roof terrace is a habitable room that is not used frequently or for extended periods during the day
- the first floor level study window is south facing which will not receive solar access, with the blind drawn on each occasion Council's Senior Assessment Officer has visited the site.

Furthermore, the study has a west facing window which benefits from iconic and harbour views

With regard to the direct sightlines to the primary area of private open space, sectional sightline A (on plan numbered 115/RT01, dated October 2006 and drawn by Scotten Yee Architects) demonstrates that, in accordance with *Arttech Design v Woollahra Municipal Council [2006] NSWLEC 314* principle, a person standing 2m tall in the primary area of private open space for 11 Village High Road will not be seen from the roof terrace. It is acknowledged that there is a change in level towards the eastern (rear) corner of the objector's property which appears to have been taken into account in sectional sightline B (on plan numbered 115/RT01, dated October 2006 and drawn by Scotten Yee Architects) which demonstrates that a person, standing 2m tall will not be seen from the roof terrace. Accordingly, the privacy of the primary area of private open space is considered to be maintained.

Privacy Impact on 7 Village High Road

No objection has been received from the owners of 7 Village High Road with regard to loss of visual and acoustic privacy. Notwithstanding this, the proposed roof terrace is considered to be satisfactory to maintain the visual privacy of 7 Village High Road for the following reasons:

- all habitable room windows on the first floor level will have either windows with a sill height above 1.7m or contain obscure glazing
- sectional sightlines C, D and E (on plan numbered 115/RT01, dated October 2006 and drawn by Scotten Yee Architects) demonstrate that a person standing 2m tall will not be seen from the roof terrace

With regard to loss of acoustic privacy, the size and location of the proposed roof terrace is considered to be satisfactory for the following reasons:

- the roof terrace will have an area of 26m² and only be used by the occupants and their guests
- the roof terrace is accessed from the first floor level (bedroom level) with the primary living areas and primary area of private open space being on the ground floor level, which is conducive of infrequent use by the occupants
- **Condition 3** requires that no temporary or permanent structures are to be placed on the roof terrace which further reduces the likelihood of excessive use by a number of people

Privacy Impact on 10 Kings Road

The owners of 10 Kings Road have objected to the proposal on the grounds of loss of visual and acoustic privacy from the proposed roof terrace. Notwithstanding this, the proposed roof terrace is considered to be satisfactory to maintain the visual privacy of 10 Kings Road for the following reasons

- the proposed roof terrace will be separated from the closest habitable room window of 10 Kings Road by approximately 43m which is considered to be satisfactory separation within a low density residential area
- the elevation of the objector's dwelling-house above the dwelling-houses in Village High Road, coupled with the height and density of the existing landscaping will minimise the potential for direct sightlines from the proposed roof terrace

With regard to loss of acoustic privacy, the size and location of the proposed roof terrace is considered to be satisfactory for the following reasons:

- the roof terrace will have an area of 26m² and only be used by the occupants and their guests
- the roof terrace is accessed from the first floor level (bedroom level) with the primary living areas and primary area of private open space being on the ground floor level, which is conducive of infrequent use by the occupants
- **Condition 3** requires that no temporary or permanent structures are to be placed on the roof terrace which further reduces the likelihood of excessive use by a number of people

Privacy Impact on 12 Kings Road

No objection has been received from the owners of 12 Kings Road with regard to loss of visual and acoustic privacy. Notwithstanding this, the proposed roof terrace is considered to be satisfactory to maintain the visual privacy of 12 Kings Road for the following reasons:

- the proposed roof terrace will be separated from the closest balcony of 10 Kings Road by approximately 47m which is considered to be satisfactory separation within a low density residential area
- the elevation of the objector's dwelling-house above the dwelling-houses in Village High Road, coupled with the height and density of the existing landscaping will minimise the potential for direct sightlines from the proposed roof terrace

With regard to loss of acoustic privacy, the size and location of the proposed roof terrace is considered to be satisfactory for the following reasons:

- the roof terrace will have an area of 26m² and only be used by the occupants and their guests
- the roof terrace is accessed from the first floor level (bedroom level) with the primary living areas and primary area of private open space being on the ground floor level, which is conducive of infrequent use by the occupants
- **Condition 3** requires that no temporary or permanent structures are to be placed on the roof terrace which further reduces the likelihood of excessive use by a number of people

Access and mobility performance criteria (Section 5.13)

Refer to *Access DCP* below.

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

Not applicable.

11.3 Woollahra Access DCP

The proposed modification will not substantially alter the approved access arrangements for the dwelling-house.

11.4 Other DCPs, codes and policies

None relevant

12. APPLICABLE REGULATIONS

There are no other regulations applicable to the subject Section 96 Application.

13. THE LIKELY IMPACTS OF THE MODIFIED DEVELOPMENT

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

14. SUBMISSIONS

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

1. L & A Kawalsky – 10 Kings Road, Vaucluse NSW 2030
2. F & P Isaacs – 11 Village High Road, Vaucluse NSW 2030

The objectors raised the following issues:

- *loss of visual and acoustic privacy*
- *aesthetic appearance of the building*

The objector's concerns have been addressed throughout the body of the report, with the exception of the following:

- *aesthetic appearance of the building*

Condition 3 requires the floor of the roof terrace to be painted a dark and recessive colour to minimise glare for adjoining properties. **Condition 4** requires all glass balustrading to be non-reflective, thereby satisfying the objector's concerns.

15. CONCLUSION - THE PUBLIC INTEREST

The proposal is acceptable against the relevant considerations under s96 and s79C of the EPA Act 1979.

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

THAT Council, as the consent authority, modify development consent to Development Application Development Application No. 707/2005 for the demolition of the existing dwelling-house and swimming pool and the construction of new two-storey dwelling-house, swimming pool, front fence, landscaping and siteworks on land at 9 Village High Road Vaucluse, in the following manner:

The modification of the following conditions:

1. Approved Plans

The development must be carried out in accordance with plans numbered 115/01, 115/02, 115/03B, 115/04B, 115/05B, 115/06B, dated 19 July 2006, drawn by Scotton & Yee Architects, including landscape plans numbered L01 and L02, Issue C, dated 11 November 2005, drawn by Nicholas Bray Landscapes, all of which carry a Council stamp "**Approved DA Plans**" and the signature of a Council officer, as amended by the works shown in colour on plans numbered 115/02B, 115/04C - 115/06C, dated November 2005, and 115/RT01 dated October 2006, all drawn by Scotton & Yee Architects, all of which carry a Council stamp "**Approved S96 Plans**" and the signature of a Council officer on the plans except where amended by the following conditions.

3. Roof terrace

The proposed roof terrace must detail the following modifications in the *Construction Certificate* plans and specification:

- no structures, movable or immovable are to be erected on the roof terrace including, but not limited to, items such as sunscreens, shade devices, umbrellas, marquee or the like without Council approval for such temporary structure under section 68 of the Local Government Act 1993.
- all materials associated with the proposed roof terrace, with the exception of the frameless glass balustrade are to be painted a colour (s) which is dark and visually recessive so as to minimise glare and to maintain the amenity of adjoining properties

Reason: This condition has been imposed to protect the amenity of neighbours and to maintain views across and over the roof terrace.

Note: Temporary structures that may adversely affect views across over the roof terrace must not be erected without Council approval.

The addition of the following condition:

67. Outdoor lighting – Roof Terraces

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.

All lighting to be installed on the roof terrace will be recessed lights or will be surface wall/balustrade mounted lights at a maximum height of 600 mm above the finished floor level of the roof terrace.

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

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

The retention of Condition Nos. 34-41

Mr D Waghorn
ASSESSMENT OFFICER

Mr N Economou
TEAM LEADER

ANNEXURES

1. Plans and elevation
2. Original Assessment Report

SECTION 96 APPLICATION ASSESSMENT REPORT

ITEM No.	D4
FILE No.	DA 190/2002/3
ADDRESS:	550 New South Head Road, Rose Bay
EXISTING CONSENT:	Renovation of existing club house and construction of a café within the complex
TYPE OF CONSENT:	Local Development
DATE OF CONSENT:	26 February 2002
ZONING:	Open Space 6 - General Recreation
PROPOSED MODIFICATION:	Internal and external modifications
DATE S96 LODGED:	22 September 2006
CONSENT AUTHORITY:	Woollahra Council
APPLICANT:	Mr J G Curtis
OWNER:	Commonwealth of Australia
AUTHOR:	Simon Taylor

1. SUMMARY

The approved development involves the following works: -

- conversion of the existing clubhouse to a cafe with kitchenette
- provision of a semi-circular timber deck to the northern elevation of the existing structure
- refurbishment of the existing administration and tennis equipment merchandise area
- conversion of the existing concrete roof to a seating area for the proposed cafe
- relocation of the three car parking spaces (lost to the proposed timber deck) to the west of the existing building by extending the existing car parking area

On 9 February 2006, DA190/2002/2 was approved, which involved the following modifications: -

- reconfiguration of change rooms and kitchenette
- deletion of internal stairs to the roof top
- minor relocation of three approved car spaces towards the north

The subject Section 96 application involves the following modifications: -

- extension to the approved paved area to the immediate north of the building adjacent to the timber deck
- relocation of steps allowing access to the timber deck
- new staircase to the upper level deck
- new partition to the interior of the cafe
- revised kitchen layout
- extension of existing timber fence along the western side of the site
- revised roof profile
- several new downpipes
- new balustrade to the pedestrian pathway
- new exhaust duct
- new glazing to northern elevation of building
- extension of wall line on the eastern elevation
- increase in the deck level and balustrade by 0.4m

The matter was recommended for approval and was considered at the Application Assessment Panel meeting on 6 March 2007 with the following resolution: -

THAT DA 190/2002/3 - proposed modifications internal and external, on land at 550 New South Head, Rose Bay (Lyne Park Tennis Centre), be deferred to a future meeting of the Application Assessment Panel to allow: -

1. *Submission of plans with RL's so as to indicate possible changes to the building levels and overall height (including sail structures).*
2. *Clarification on whether the overall height of the building, including the sail structures, is to be increased and if so, the plans are modified accordingly.*
3. *Deletion of the proposed kitchen exhaust that is to be the subject of a separate development application as required by Condition No. 20 of the original determination of DA 190/2002.*

Attached at Annexure 2 is a copy of the original assessment report.

2. COMMENTS

In relation to the above, the following comments are provided: -

2.1 RL heights

The original plans submitted with the development application did not specify RLs on the elevations nor did the two subsequent Section 96 applications. This proved difficult to confirm which components of the building were increasing in height and which were remaining unchanged.

The plans submitted to Council on 14 May 2007 specify the RL heights of the building. These vary from the original RL heights on the approved development application plans but only because the original plans specified the lowest RL point as RL 0.000.

As such, the following is a summary of the changes in terms of the height of the building: -

- the height of curved roof structure above the entry foyer on the ground floor level is being reduced by 1.023m
- the FFL of the roof terrace and the RL height of the balustrade is increasing by 0.48m. The accompanying staircase (which is being reinstated) will extend to the same RL height. The balustrade itself is not increasing in height when measured from the FFL of the roof terrace
- the RL height of the sail structures and pole located above are unchanged. As such, the head height underneath the sail structures is being reduced from 2.385m to 1.935m.

Of importance, the FFL of the roof terrace is increasing by 0.48m and not 0.40m as previously specified in the original Section 96 application report. The difference arose because the height was scaled on the original drawings whilst one is able to rely on the accuracy in the RL heights specified on the revised plans.

2.2 Sail structures

Despite a 0.45m increase in the deck level and balustrade, the overall height of the building (including the sail structures and pole located above) will not increase. This is specified specifically in **Condition 59**.

Significantly, the height of the curved roof structure above the entry foyer on the ground floor level is being reduced by 1.023m. When viewed from the south, it will remain marginally above the height of the balustrade for 40% of the elevation. This is noted on the plan numbered LPS96-013.

2.3 Kitchen exhaust

Condition 20 of DA190/2002/1 specified the following: -

20. *Mechanical ventilation/services*

To ensure the amenity of the locality is maintained, a separate Development Application for the installation of any mechanical ventilation services is to be submitted to Council.

The initial plans for DA190/2002/3 specified a kitchen exhaust. The plans submitted to Council on 14 May 2007 now specify the deletion of the kitchen exhaust. The applicant is aware that any kitchen exhaust must form a separate application to Council.

3. ASSESSMENT AGAINST SECTION 79C

The primary concern in relation to the height of the tennis centre related to view loss. The owner of 669 New South Head Road (located opposite the subject site on the southern side of New South Head Road) objected to the proposed development on the basis of loss of views.

Having regard to *Tenacity Consulting v Warringah* (2004) NSWLEC 140 (paragraphs 23-33) and C5.5.6 of WRDCP 2003, the following assessment was provided in the original development application.

- the assessment of the views affected

The view is of Rose Bay.

- consideration from what part of the property the views are obtained

The view is obtained from a lounge/living room and adjoining balcony on the first floor level of the building.

- the extent of the impact

The proposal will eliminate a minute portion of the lower edge of Rose Bay. Of most importance, the shade structure on the roof top terrace already has development consent as part of DA190/2002/1. The 0.4m increase in the floor level of the terrace and the balustrade are largely inconsequential to the extent of view loss. In this regard, the impact is considered to be negligible to minor.

- the reasonableness of the proposal that is causing the impact

The Court poses two questions in *Tenacity Consulting v Warringah* (2004) NSWLEC 140 (paragraphs 23-33). The first question relates to whether a non-compliance with one or more planning controls results in view loss.

The proposed development does not involve any specific non-compliances. Whilst not applicable, the proposal remains compliant with the height control.

The second question relates to whether a more skilful design would improve the extent of view loss. In this instance, the proposal could benefit from a more skilful design, namely the reduction in the pitch of the roof. However, whether it is required is the main issue.

A more skilful design is not considered necessary given the extent of the view loss. In this regard, the proposal is considered to be acceptable with regard to the concept of view sharing and with regard to the relevant objectives and controls of Section 5.5.

Further comment

The above assessment was made in relation to a 0.4m increase in the FFL of the roof terrace. The actual increase is an additional 0.08m. Despite this, the stance in relation to the view loss being minute (particularly when considering the 1.2m reduction in the height of the curved structure) is maintained.

4. COUNCIL'S ENFORCEMENT POLICY

The submitted plans indicate that the works are 'as built'. Given the inability to confirm the RL heights of the structure, it is assumed that these and other modifications were carried out without approval and are therefore unauthorised works:

Council has three available options with respect to the unauthorised building works - demolition, prosecution or no further action subject to certain conditions being met. Council may take enforcement action or prosecute following consideration of the following issues: -

- the nature and seriousness of the breach
- balancing the public interest and the cost to Council
- available methods of enforcement
- circumstances of the case

The nature and seriousness of the breach

The unauthorised works have not resulted in any significant adverse impact upon the local environment or the amenity of adjoining properties, particularly adverse view loss.

Balancing the public interest and cost to Council

The unauthorised works have not incurred any significant additional cost to Council.

Available methods of enforcement

The unauthorised works are considered to be acceptable in terms of environmental impact and therefore it is not recommended that court action be taken in respect of the illegal works.

The circumstances of the case

The unauthorised works are considered to be minor in nature and have not resulted in any significant adverse environmental impact including the amenity of adjoining properties.

Legal advice has been received advising that Council is able to grant retrospective approval to Section 96 applications involving unauthorised work where such work is acceptable on merit and are substantially the same as the original development consent. It is considered that the unauthorised works satisfy both considerations and therefore it is recommended that Council approve the works retrospectively.

5. CONCLUSION - THE PUBLIC INTEREST

The recommendation is maintained in its current form. The proposal is considered to be acceptable against the relevant considerations under Section 79C.

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

- A.** THAT Council, as the consent authority, modify development consent to Development Application No. 190/2002 part 3 for the renovation of the existing club house and construction of a café within the complex on land at 550 New South Head Road, Rose Bay, in the following manner: -

The modification of Condition No. 1: -

1. Approved Section 96 Plans

This consent relates to the work, shown in colour, on plans numbered LP-DA-07 to LP-DA-20 (issue A) inclusive, dated 25 January 2002 and drawn by Alex Schumack, all of which carry a Council stamp “**Approved DA Plans**” and the signature of a Council officer, and as amended by the works, shown in colour, on plans numbered ASB-001 (Issue A and dated 15 November 2005, and plans numbered LPS96-002, LPS96-003, LPS96-004, LPS96-005, LPS96-007, LPS96-008 and LPS96-009 and dated 9 September 2006, and the plan numbered LPS96-006 and dated 7 May 2007, all of which are drawn by Alex Shumack Architect and carry a Council stamp “**Approved Section 96 Plans**” and the signature of a Council officer, except where amended by the following conditions.

The addition of Condition Nos. 57, 58 and 59: -

57. Pram Ramp

To ensure a suitable level of accessibility, a pram ramp is installed at the intersection of the pathway from the development to the car park road (as indicated on plan numbered LPS96-002). Details are to be included in the application for a Construction Certificate.

58. Paving

The infill paving is to match the existing paving and is undertaken to remove the 90° directional changes in the existing pathway in the pathway area adjacent to the 'new service yard'. Details are to be included in the application for a Construction Certificate.

59. Height of building

The height of the tennis building is not to exceed RL 9.407 as measured to the top of the sail structure and RL 6.366 as measured to the FFL of the roof terrace.

B. THAT, as the unauthorised works are considered to be satisfactory with regard to the relevant objectives and controls of Woollahra LEP 1995 and Woollahra RDCP 2003, Council take no action to require these works to be removed subject to the owners making an application for, and Council issuing, a building certificate under Section 149A-149G of Environmental Planning and Assessment Act 1979 for the works. The required building certificate application is to be submitted to Council within twenty (28) days of this determination and is to be accompanied by the following;

- full works as executed plans, duly coloured showing all works that have been undertaken without prior Council consent
- a certificate from a practising structural engineer certifying the structural adequacy of the works that have been undertaken without prior Council consent. Such certificate should also certify the impact of the works that have been undertaken on the structural adequacy of the existing building
- a survey report prepared by a registered surveyor, showing the location of all structures on the subject property relative to the boundaries of the site.

C. THAT this matter be referred to the Manager – Compliance to take appropriate action under Part 6 of the Environmental Planning and Assessment Act 1979 in accordance with Council's Policy on Unauthorised Uses, Buildings and Works for failure to obtain Council's consent prior to carrying out the unauthorised works.

Mr Simon Taylor
ASSESSMENT OFFICER

Mr Nick Economou
TEAM LEADER

ADVISINGS

1. Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Simon Taylor. However, if you wish to pursue your rights of appeal in the Land and Environment Court you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, instead of a full Court hearing. This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the Section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed assessor having the full authority to completely determine the matter at the conference.

ANNEXURES

1. Additional plan showing RLs and deletion of kitchen exhaust
2. Original assessment report
3. Plans and elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D5
FILE No.	DA 704/2006/1
PROPERTY DETAILS	550 New South Head Road, Rose Bay (Lyne Park Tennis Centre)
	Lot & DP No.: Lot 1538 DP 40022
	Side of Street: Northern
	Site Area (m²): Not applicable
	Zoning: Open Space 6 - General Recreation
PROPOSAL:	Extension of existing tennis centre building
TYPE OF CONSENT:	Local Development
APPLICANT:	Mr J G Curtis
OWNER:	Commonwealth of Australia
DATE LODGED:	9 October 2006
AUTHOR:	Mr Simon Taylor

1. SUMMARY

The proposal involves the addition of a video coaching room on the New South Head Road side or southern end of the existing tennis centre/cafe measuring 40.9m² in floor area. Attached at Annexure 2 is a copy of the original assessment report.

The matter was recommended for approval and was considered at the Application Assessment Panel meeting on 6 March 2007 with the following resolution: -

THAT Development Application No. 704/2006 for extension of existing tennis centre building, on land at No. 550 New South Head Rose Bay (Lyne Park Tennis Centre), be deferred to a future meeting of the Application Assessment Panel to allow for an assessment of the proposal against the relevant provisions of SEPP 55 – Remediation of land.

The original assessment in relation to SEPP 55 – Remediation of Land detailed the following: -

During the assessment of DA190/2002/1, the subject site was found to be potentially contaminated. As such, the following conditions were included in the original determination -

51. Site investigation

Three additional samples are to be taken in the area of the proposed deck, within the leased area of the site. The additional investigations are to be undertaken by a suitably qualified consultant, in accordance with SEPP 55 and associated guiding documents.

52. *Site contamination - site audit statement*

The site investigation report is to be reviewed by an auditor accredited under the Contaminated Land Management Act 1997. The accredited auditor must provide Council with a copy of the site audit report and site audit statement prior to the issue of a construction certificate. The auditor's recommendations regarding the management of any contamination found on the site are to be actioned prior to the issue of an occupation Certificate.

If remediation work is recommended by the auditor, development consent for such remediation work is to be applied for and obtained and the site is to be remediated prior to the issue of an occupation certificate.

It is prudent to apply these conditions to the subject development application as the works are concentrated in the southern corner of the site, which is removed from the location of where the works as part of DA190/2002/1 were concentrated. Accordingly, subject to **Conditions 21 and 22**, the proposal is therefore acceptable with regard to SEPP 55: Remediation of Land.

This was considered to be inadequate and further investigation was required.

2. **REFERRALS/ASSESSMENT AGAINST SECTION 79C**

Council's Health Officer has provided the following comment: -

Comments are provided in terms of SEPP No. 55 requirements for the proposed alterations and additions to the Lyne Park Tennis Centre.

Soil Contamination-SEPP No. 55

An initial evaluation of the site is to be undertaken to assess the likelihood of soil contamination in accordance with the NSW EPA (1997) Guidelines for Consultants Reporting on Contaminated Sites and State Environmental Planning Policy No. 55 - Remediation of Land. The initial evaluation can be based on readily available factual information such as: -

- *current zoning and permissible uses*
- *existing records held by the planning authority that show an activity listed in Table 1*
- *are there any land restrictions on the subject land relating to possible contamination, such as notices issued by the EPA or other regulatory authority*
- *previous development and building applications*

If after carrying out the initial evaluation, there are indications that contamination is, or may be, present, the proponent shall forward to Council a Preliminary Site Soil Contamination Report containing detailed appraisal of the site's history and state whether a detailed investigation of the site is required.

A site evaluation would normally be required. The applicant has, however, indicated that the works will occur on an existing concrete slab and no disturbance of soil will occur whatsoever. This has been confirmed on site and the applicant/owner is satisfied for this to form a condition of the development consent. Accordingly, an assessment with regard to SEPP 55: Remediation of Land is not required, subject to **Condition 21**.

3. **CONCLUSION - THE PUBLIC INTEREST**

With no disturbance to the soil, **Conditions 21 (Site investigation) and 22 (Site contamination - site audit statement)** are no longer required. In its place is Condition 21, which does not allow any works to soil on the subject site.

In this regard, the proposal is acceptable against the relevant considerations under Section 79C.

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

THAT the Council, as the consent authority, grant development consent to Development Application No. 704/2006 for the extension of the existing tennis centre on land at 550 New South Head Road Rose Bay, subject to the following conditions: -

1. Approved Plans

This consent relates to the work, shown in colour, on plans numbered LPDA-V-01, LPDA-V-02, LPDA-V-03, LPDA-V-04, LPDA-V-05 and LPDA-V-06, dated 9 September 2006 and Alex Shumack Architect, all of which carry a Council stamp “**Approved DA Plans**” and the signature of a Council officer, except where amended by the following conditions.

2. Screen planting

In order to enable a suitable level of screening when viewed from New South Head Road, vegetation, with a mature height of 3.0m, is to be undertaken along the southern and western sides of the video coaching room. Details are to be included in the application for a Construction Certificate.

3. Protection of Parkland

Works must not impact on adjacent areas of Lyne Park. An Erosion and Sediment Control Plan must be submitted to Council prior to the lodgment of the Construction Certificate and implemented during construction to ensure that material does not migrate off site into Lyne Park.

4. Storage of building material in Public Open Space

Building, excavation or demolition material and plant must not be stored on Council’s public open space.

5. Requirement for a Construction Certificate

In accordance with the provisions of Section 81A of *the Environmental Planning and Assessment Act 1979*, the erection of the building must not be commenced until:

- detailed plans and specifications of the building have been endorsed with a Construction Certificate by Council or an accredited certifier
- a principal certifying authority (PCA) has been appointed and the Council has been notified in writing of the appointment
- at least two days notice, in writing, has been given to Council of the intention to commence work

6. Structural adequacy

A statement from a qualified practising Structural Engineer, certifying to the adequacy of the existing structural members, walls and footings to support the additional loads imposed by the proposed development, must be submitted with the Construction Certificate application. This condition is imposed to ensure the structural integrity of the proposed building work.

7. Structural details

Structural engineering details and design calculations, prepared and certified by a qualified practising Structural Engineer, must be submitted with Construction Certificate application, for all reinforced concrete work, structural steel work, retaining walls, brick fences, shoring and underpinning, isolated piers, chimneys, parapets and other structural members. This condition is imposed to ensure the structural integrity of the proposed building work.

8. Demolition and construction hours

Demolition, excavation and construction work must not take place outside the hours of 7.00am to 5.30pm Monday to Friday and 7.00am to 1.00pm Saturday. No work and no deliveries are to take place on Sundays and public holidays. Noise from construction activities associated with the development must comply with the guidelines contained in the NSW EPA *Environmental Noise Control Manual* Chapter 171.

9. Building Inspections

The Applicant, Owner and Builder, jointly and severally, must ensure that they call their Principal Certifying Authority ("the PCA") to carry out such critical phase building inspections required by the PCA, the PCA Service Agreement and that the PCA is satisfied with the level of compliance achieved before the Builder proceeds to the next phase of construction. Ample notice of required inspections must be given to the PCA in accordance with the PCA Service Agreement. The Applicant, Owner and Builder must comply with the PCA Service Agreement (Service Contract) and any lawful direction given by the Principal Certifying Authority.

Note: It is the responsibility of the PCA to ensure that critical phase building inspections are undertaken in accordance with a PCA Service Agreement and issue to the Applicant, Owner and Builder appropriate Notice under Section 109L of the Environmental Planning & Assessment Act 1979 ("the Act") where any breach of this consent occurs. Failure of the PCA to issue such notice may result in Council taking action under Section 109V of the Act. Failure of the Applicant, Owner and Builder to comply with a PCA Service Agreement and comply with lawful directions of the PCA under this condition may result in Council issuing fines, notices, orders and commencing legal proceedings. Council will only enter into PCA Agreements with the Owner of the land being developed. Council, if appointed as the PCA, will report to the owner of the land being developed.

10. Occupation of premises

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.

Note: In circumstance where the works do not relate to occupation the required *occupation certificate* is essentially a certificate of completion of the approved work.

11. Connection to existing drainage system

Stormwater run-off from the proposed addition must drain to the existing stormwater drainage system.

The existing stormwater drainage pipes on the property affected by the development must be checked and certified by a practising hydraulic engineer to ensure that existing stormwater pipes are in good condition and are operating satisfactorily. Certification and a plan showing pipe locations and diameters must be submitted to the Accredited Certifier prior to the issue of the final Occupation Certificate.

If the existing stormwater pipes are not in good condition and/or not operating satisfactorily, the existing drainage system must be upgraded. Certification and a plan showing pipe locations and diameters of the upgraded system must be submitted to the Accredited Certifier prior to the issue of the final Occupation Certificate.

Stormwater disposal is to comply with the requirements and conditions as set out in Council's Draft Stormwater Drainage Management DCP (Draft Version 1, Public Exhibition Copy dated 23/08/2004). This is available from Council's website <http://www.woollahra.nsw.gov.au>.

Note: Connection of stormwater run-off to the Sydney Water sewer system is not permitted.

12. Fire safety

A schedule of all existing and proposed safety measures within the building must be submitted to Council with or before the application for a Construction Certificate.

13. Stockpiles

Stockpiles of topsoil, sand, aggregate, soil or other material must not be located on any drainage line or easement, natural watercourse, footpath or roadway, or within the dripline of any Street Tree. Stockpiles within the construction site must be protected with adequate sediment controls, in accordance with Council's Code for Sediment Control.

14. Location of building operations

Building operations such as brick cutting, washing tools or brushes and mixing mortar must not take place on public roadways or footways or in any other location which could lead to the discharge of materials into the stormwater drainage system or onto Lyne Park. Footpaths, gutters and roadways must be swept regularly to keep them free from sediment.

15. Site fencing

The site must be appropriately secured and fenced to the satisfaction of Council during demolition, excavation and construction work to ensure there are no unacceptable impacts on the amenity of adjoining properties. Permits for hoardings and or scaffolding on Council land must be obtained and clearly displayed on site.

16. Payment of Long Service Levy and Security

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 prior to the issue of a construction certificate.

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation	No	
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit - making good damage caused to any property of the Council as a consequence of the doing of anything to which the consent relates	\$2,000	No	T600

INSPECTION FEES			
under section 608 of the Local Government Act 1993			
Security Administration Fee	\$163	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$2,163 plus any relevant indexed amounts and long service levy		

How must the payments be made?

Payments must be made by:

1. Cash deposit with Council,
2. Credit card payment with Council, or
3. 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.

Do you need HELP indexing the levy?

Please contact our customer service officers. Failure to correctly calculate 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).

17. Repair of Damaged Infrastructure

If Council's infrastructure is damaged during the course of works, Council's Development Engineer must be notified and necessary repairs must be undertaken within the time stipulated by Council, to Council's specifications, and at no cost to Council. Works generally must be in accordance with the relevant clauses of the current edition of AUS-SPEC.

If work is not undertaken to the satisfaction of the Development Engineer with regard to time or quality, Council may carry out remedial works and deduct the cost from the Damage Security Deposit.

18. Standard for demolition

All demolition work must be undertaken in accordance with the provisions of *Australian Standard AS2601-2001: The Demolition of Structures*.

19. Compliance with Building Code of Australia

- (a) All building work must be carried out in accordance with the provisions of the *Building Code of Australia*.
- (b) This condition does not apply to the extent to which an exemption is in force under Clause 187 or 188, of the *Environmental Planning and Assessment Regulation 2000*, subject to the terms of any condition or requirement referred to in Clause 187 (6) or 188 (4) of the Regulation.

20. Signs to be erected on building and demolition sites

- (a) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out: -
 - (i) stating that unauthorised entry to the work site is prohibited; and
 - (ii) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.
- (b) Any such sign must be removed when the work has been completed.
- (c) This clause does not apply to: -
 - (i) building work carried out inside an existing building; or
 - (ii) building work carried out on premises that must be occupied continuously (both during and outside working hours) while the work is being carried out.

21. Site contamination

Due to the likelihood of site contamination on the subject site, no disturbance of soil is to occur. All works are to be confined above the existing ground level.

If the procedure for construction of the video coaching room alters, an initial evaluation of the site is to be undertaken to assess the likelihood of soil contamination in accordance with the NSW EPA (1997) Guidelines for Consultants Reporting on Contaminated Sites and SEPP 55 - Remediation of Land. This documentation must be immediately notified to Council and the Principal Certifying Authority and a new development application is to be lodged.

Mr Simon Taylor
ASSESSMENT OFFICER

Mr Nick Economou
TEAM LEADER

ADVISINGS

1. Other approvals

This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, including an application for an Occupation Certificate under Section 109(C)(2) of the *Environmental Planning and Assessment Act 1979*. An application for an Occupation Certificate may be lodged with Council if the applicant has nominated Council as the Principal Certifying Authority.

2. Application for a Construction Certificate

The required Application for a Construction Certificate may be lodged with Council. Alternatively, you may apply to an accredited private certifier for a Construction Certificate.

<p>WARNING: Failure to obtain a Construction Certificate prior to the commencement of any building work is a serious breach of Section 81A(2) of the Environmental Planning & Assessment Act 1979. It is also a criminal offence which attracts substantial penalties and may also result in action in the Land and Environment Court and orders for demolition.</p>

3. Occupational Health and Safety

All site works must comply with the occupational health and safety requirements of the NSW WorkCover Authority.

4. Compliance with the Disability Discrimination Act

This decision does not ensure compliance with the *Disability Discrimination Act*. You should therefore investigate your liability under that Act. *Australian Standard 1428 - Design for Access and Mobility*, Parts 2, 3 and 4 may assist in determining compliance with the Disability Discrimination Act.

5. Modifications to the consent

Changes to the external configuration of the building, changes to the site layout or any changes to the proposed operation or use *will* require the submission and approval of an application under Section 96 of the *Environmental Planning & Assessment Act 1979* before the issue of a Construction Certificate.

6. Storage bins on footpath and roadway

Approval is required from Council prior to the placement of any storage bin on Council's footpath and/or roadway.

7. Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Simon Taylor. However, if you wish to pursue your rights of appeal in the Land & Environment Court you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, instead of a full Court hearing. This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved.

The use of the Section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed assessor having the full authority to completely determine the matter at the conference.

ANNEXURES

1. Plans and elevations
2. Original assessment report

SECTION 82A REVIEW OF DETERMINATION REPORT

ITEM No.	D6
FILE No.	DA 402/2006
ADDRESS:	3 Raine Street WOOLLAHRA
PROPOSAL:	Alterations and additions including new pergola/carport
DATE DA DETERMINED:	16 October 2006
SUBJECT OF REVIEW:	Refusal
DATE S82A REVIEW APPLICATION LODGED:	01/02/2007
APPLICANT:	Brace Design
OWNER:	Mr J W Cameron
REVIEW OFFICER:	Mr D Lukas

LOCALITY PLAN



1. SUMMARY

Reason for report

The original development application was refused under delegated authority. In accordance with Council's delegations, the application is referred to the Application Assessment Panel for determination.

Issues

- FSR
- Design
- Privacy
- Solar access
- Structural stability of party wall

Objections

There was one submission received.

Recommendation

Approval.

2. BACKGROUND

The original application was refused under delegated authority on 16 October 2006 for the following reasons:

1. The proposal will result in an adverse impact to the Woollahra Heritage Conservation Area and is not considered acceptable under Clause 27 of the Woollahra Local Environmental Plan 1995.
2. The proposal will result in significant alteration to the original principal building form (roof) which does not comply with Control C1 under Part 3.2.1 – *Conservation of significant items and group significant items* of the Woollahra Heritage Conservation Area Development Control Plan 2003.
3. The proposal is not consistent with or sympathetic to the group significant buildings and does not comply with Objectives O2, O3 and Controls C5 and C6 under Part 3.2.1 – *Conservation of significant items and group significant items* of the Woollahra Heritage Conservation Area Development Control Plan 2003.
4. The proposed addition is not compatible with the existing building and will compromise the building form. The proposal does not comply with Objective O1 and Controls C3 and C7 under Part 3.2.3 – *Alterations and additions to significant items* of the Woollahra Heritage Conservation Area Development Control Plan 2003.
5. The proposal is not considered compatible with the group of terrace house and does not comply with Objective O1 and Control C1 under Part 3.3.4 – *Terrace houses* of the Woollahra Heritage Conservation Area Development Control Plan 2003.

6. The proposal will result in an excessive floor space ratio and will create unacceptable overshadowing. The proposal does not comply with Control C1, C7 and C8 under Part 3.4.4 – *Building height, form, bulk, scale and character* of the Woollahra Heritage Conservation Area Development Control Plan 2003.
7. The proposed roof form is not consistent with the existing building and adjoining buildings. The proposal does not comply with Objective O1 and Control C1 under Part 3.4.8 – *Roofs and skylight* of the Woollahra Heritage Conservation Area Development Control Plan 2003.
8. The proposal is not in the public interest.

The applicant has subsequently lodged a review of the determination and submitted amended plans for consideration.

3. DESCRIPTION OF PROPOSAL SUBJECT OF REVIEW

The proposal was for alterations and additions to the existing dwelling including a new second storey, infilling of lightwell, new pergola/carport and roller door.

4. DESCRIPTION OF PROPOSED REVIEW

The proposal is for alterations and additions to the existing two storey terrace house comprising of internal modifications including glass enclosure of lightwell, new rear extension and new roller door with masonry nibs with operable pergola structure over a hard car parking space to the rear of the site.

The primary difference between the original proposal and the one subject of this review is the deletion of the second floor addition above the original terrace.

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

5. COUNCIL'S STATUTORY RESPONSIBILITIES UNDER S82A

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

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

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

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

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

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

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

6. CONSIDERATION OF REVIEW

6.1 Substantially the same development

The proposal is considered to be substantially the same development to that which was originally refused.

6.2 REFERRALS

6.2.1 Building

The proposal would comply with the relevant criteria prescribed by the Building Code of Australia.

6.2.2 Technical Services

Council's reviewing Development Engineer has concurred with the original referral comments which supported the application subject to conditions.

The recommended conditions form the basis of the recommendation.

6.2.3 Heritage

Council's reviewing Heritage Officer has reviewed the proposal and provided the following comments:

"The submitted revised plans have satisfactorily resolved heritage issued previously raised."

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:

6.3 RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

6.3.1 SEPPs

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

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

State Environmental Planning Policy No. 55

Under clause 7 (1) (a) of State Environmental Planning Policy No. 55 – Remediation of Land, consideration has been given as to whether the land is contaminated. The site and adjacent sites have only been used for residential purposes and as such the land does not require further consideration under clause 7 (1) (b) and (c) of SEPP 55.

6.3.2 REPs

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject site is within the area to which the SREP applies. The objectives of the Plan are established at Clause 2 and the proposal will not have an adverse visual impact on the Harbour foreshore and the proposal is consistent with the objectives of the SREP. It is therefore considered that the proposal meets the relevant requirements of the SREP and is acceptable in this regard.

6.3.3 Section 94A contribution

Applicable – condition applied.

6.3.4 Other relevant legislation

None relevant.

6.4 WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

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

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

6.4.2 Statutory compliance table

	Existing	Proposed	Control	Complies
Overall Height	9m	6.7m	9.5m	YES

6.4.3 Height

The proposal would comply with the maximum height control and would satisfy the relevant objectives of the development standard.

6.4.4 Other special clauses/development standards

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

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

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

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

Clause 25D Acid Sulfate Soils: The 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 proposed works would be limited to the rear of the existing terrace and would not involve any removal of original or significant building fabric or alter the setting of the terrace or the group to which it forms a part.

The proposed materials would be compatible with the period of architecture of the terrace and the heritage conservation area.

The proposed extension to the rear first floor would extend beyond the predominant alignment of the terrace group and the extent of glazing to the rear elevation is considered excessive. Subject to a condition requiring the refinement of these aspects, the proposal would be acceptable in terms of Clause 26-33.

6.5 DRAFT AMENDMENTS TO STATUTORY CONTROLS

N/A

6.6 DEVELOPMENT CONTROL PLANS

6.6.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

Site Area (134m ²)	Existing	Original Proposal	Section 82A Review	Control	Complies
Floor Space Ratio (m ²)	1.097:1 (147)	1.27:1 (170)	1.19:1 (160)	1.04:1 (139.36)	NO
Deep Soil Landscaped Area (m ²)	4.8% (6.4)	5.5% (7.4)	5.5% (7.4)	8% (10.72)	NO
Solar Access to Ground Level Open Space of Adjacent Properties	< 50% Dimension – 2.5m <2 hours	<50% Dimension – 2.5m <2 hours	<50% Dimension – 2.5m <2 hours	50% Dimension – 2.5m 2 hours	NO
Private Open Space Per Dwelling	Area >21m ² (>16%) Dimension > 3m	Area >21m ² (>16%) Dimension > 3m	Area >21 m ² (>16%) Dimension > 3m	Area – 21m ² (16%) Dimension – 3m	YES
	Principal Area – >12m ² Dimension > 3m	Principal Area – >12m ² Dimension > 3m	Principal Area – >12m ² Dimension > 3m	Principal Area – 12m ² Dimension – 3m	YES
Car Parking Spaces	1	1	1	Max 2	YES
Max Carport door height, max parapet height, min pier width	<2200mm <2400mm >350mm	<2200mm <2400mm >350mm	<2200mm <2400mm >350mm	2200mm 2400mm 350mm	YES YES YES
Location of Car Parking Structures	Rear of the site	Rear of the site	Rear of site	Behind Front Building Line	YES

Precinct Controls

The proposal conserves the significant characteristics of the Fletcher Precinct.

Significant items and group significant buildings

The proposed rear first floor extension would extend beyond the predominant rear first floor alignment of the adjoining terraces to which the subject building forms part of the group. Accordingly, the proposed rear first floor should not extend any further to the rear than No.1 Raine Street adjoining to the south.

Additionally, the solid to void ratio of the rear first floor is excessive and should be reduced to reflect the proportions of the group to which it forms a part.

These variations can be achieved by condition and the recommended variations would not detrimentally impact on the internal amenity of the first floor. The condition recommended would be flexible to allow for internal modification of the floor plan layout to the rear to allow the applicant to adequately proportion the rooms suited to their needs.

Subject to conditions, the proposal would satisfy the relevant criteria prescribed by the DCP.

Building Type Controls - *Terrace Houses*

As stated above, the rear first floor alignment, which is highly visible from the public domain, extends beyond the predominant alignment of the terrace group and should be reduced to ensure the integrity of the group.

The proposed infill of the lightwell would have no detrimental impact on the building or the group that it forms a part as it would be screened by the existing party wall.

Subject to conditions, the proposal would satisfy the relevant criteria prescribed by the DCP.

Building location and built form

The proposal would exceed the maximum FSR prescribed for the site. The ramifications of the excess FSR is the extension to the rear first floor, which as advised, would extend beyond the predominant alignment of the group of terrace houses. The resultant impact is excessive scale and bulk and a reduction to solar access to the property adjoining to the south.

It is therefore recommended to setback the rear first floor of the dwelling as previously discussed. The recommended setback would result in a reduction of 4m² of FSR. Though minor, the scale and bulk of the proposal would be consistent with development adjoining and in the vicinity of the site as seen from the public and private domain. The excess FSR is a result of the infill of the lightwell on the southern side. As it is screened by the existing party wall, there would be no resultant impact from this aspect of the development.

An inevitable loss of sunlight would occur to the property immediately adjoining to the south from the proposed first floor additions. Subject to the condition to limit the first floor extension to the rear to align with other first floor additions, the proposal would maximise solar access to the adjoining property to the south and ensure consistency in scale and bulk of the terraces.

Subject to conditions, the proposal would satisfy the relevant objectives prescribed by the DCP.

Materials, finishes and colours

The proposal would satisfy the relevant criteria prescribed by the DCP.

Open space and landscaping

The proposal would provide additional deep soil landscape area beyond what currently exists on the site. Having regard to the limitations of the site area, being small and narrow and the applicants desire to provide off-street parking in accordance with the requirements of the DCP, the proposal is considered acceptable in this instance.

Roofs and skylights

The proposal would satisfy the relevant criteria prescribed by the DCP.

Parking and garages

The proposal would satisfy the relevant criteria prescribed by the DCP.

Acoustic and visual privacy

The proposed glazing and the balcony to the rear first floor addition would allow overlooking onto the rear private open space of the two immediately adjoining properties. As discussed earlier, the extent of glazing is excessive in relation to solid to void ratio and should be reduced.

The proposed balcony should also be replaced with a Juliette style balcony similar to the rear of No.1 Raine Street adjoining to the south. Coupled with the recommended setback of the rear first floor addition, the modifications would ensure that the amenity of adjoining properties with respect to privacy is not unduly compromised by the proposed works.

Subject to conditions, the proposal would satisfy the relevant criteria prescribed by the DCP.

Stormwater management

The proposal would satisfy the relevant criteria prescribed by the DCP.

Parking and garages

The proposal would satisfy the relevant criteria prescribed by the DCP.

Energy efficiency

The proposal would satisfy the relevant criteria prescribed by the DCP.

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

As discussed above, the proposal would satisfy the relevant criteria prescribed by the DCP.

6.8 Woollahra Access DCP

The proposal would satisfy the relevant criteria prescribed by the DCP.

6.9 Other DCPs, codes and policies

None relevant.

6.10 APPLICABLE REGULATIONS

The proposal would comply by condition with Australian Standard AS 2601-1991: *The demolition of structures*.

6.11 THE LIKELY IMPACTS OF THE PROPOSAL

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

6.12 THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

6.13 SUBMISSIONS

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

1. Ms M Dowling – 5 Raine Street, Woollahra (and supporting letter from Hannah Stone)

The objection raised the following issues:

- *Resultant damage to the party walls and roofing*
- *Works encroaching onto adjoining property*
- *Structural stability*

The proposed extension of the party wall is not opposed and the concerns of the neighbours do not preclude Council from issuing consent to the extension of the party wall. It would be prudent that appropriate conditions are implemented to certify the structural stability of the party wall and dilapidation reports are provided in relation to the party walls and roofing.

In relation to encroachment, again, a condition can be implemented to ensure the works are constructed wholly within the boundaries of the subject site.

Subject to appropriate conditions, the proposed works would ensure no adverse impact on adjoining properties.

7. REVIEW OF ORIGINAL REASONS FOR REFUSAL

The revised drawings have been assessed against the reasons for refusal as follows:

The proposal will result in an adverse impact to the Woollahra Heritage Conservation Area and is not considered acceptable under Clause 27 of the Woollahra Local Environmental Plan 1995.

The reason for refusal has been satisfactorily addressed as discussed above.

The proposal will result in significant alteration to the original principal building form (roof) which does not comply with Control C1 under Part 3.2.1 – Conservation of significant items and group significant items of the Woollahra Heritage Conservation Area Development Control Plan 2003.

The reason for refusal has been satisfactorily addressed as discussed above.

The proposal is not consistent with or sympathetic to the group significant buildings and does not comply with Objectives O2, O3 and Controls C5 and C6 under Part 3.2.1 – Conservation of significant items and group significant items of the Woollahra Heritage Conservation Area Development Control Plan 2003.

The reason for refusal has been satisfactorily addressed as discussed above.

The proposed addition is not compatible with the existing building and will compromise the building form. The proposal does not comply with Objective O1 and Controls C3 and C7 under Part 3.2.3 – Alterations and additions to significant items of the Woollahra Heritage Conservation Area Development Control Plan 2003.

The reason for refusal has been satisfactorily addressed as discussed above.

The proposal is not considered compatible with the group of terrace house and does not comply with Objective O1 and Control C1 under Part 3.3.4 – Terrace houses of the Woollahra Heritage Conservation Area Development Control Plan 2003.

The reason for refusal has been satisfactorily addressed as discussed above.

The proposal will result in an excessive floor space ratio and will create unacceptable overshadowing. The proposal does not comply with Control C1, C7 and C8 under Part 3.4.4 – Building height, form, bulk, scale and character of the Woollahra Heritage Conservation Area Development Control Plan 2003.

The reason for refusal has been satisfactorily addressed as discussed above.

The proposed roof form is not consistent with the existing building and adjoining buildings. The proposal does not comply with Objective O1 and Control C1 under Part 3.4.8 – Roofs and skylight of the Woollahra Heritage Conservation Area Development Control Plan 2003.

The reason for refusal has been satisfactorily addressed as discussed above.

The proposal is not in the public interest.

The reason for refusal has been satisfactorily addressed.

8. CONCLUSION

A review of the previous planning report and recommendation (attached as **Annexure 1**) has been undertaken under the Section 82A review process. The revised plans have satisfactorily addressed the original reasons for refusal.

Subject to modifications as discussed, the proposal is considered to be acceptable against the relevant considerations under s79C of the EPA Act 1979.

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

THAT the Council, as the consent authority, grant development consent to Development Application No. 402/2006 for alterations and additions including new pergola/carport on land at 3 Raine Street Woollahra, subject to the following conditions:

1. Approved Plans

The development must be carried out in accordance with plan number 2.01A, dated June 2006 and plans numbered 2.02B, 2.04B, 2.05B, 2.06B, 2.07B and 2.08B, dated Dec 2006, all drawn by Brace Design, including landscape plan number 4.03A, dated June 2006, drawn by Brace Design, all of which carry a Council stamp “*Approved DA Plans*” and the signature of a Council officer, except where amended by the following conditions.

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

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

- a. The rear first floor addition is to align with the rear first floor addition of No.1 Raine Street immediately adjoining to the south. The internal layout to the first floor to the rear of the front two bedrooms may be modified to cater for the required setback; and,
- b. The two east facing first floor timber framed windows are to be replaced by masonry or a material of similar appearance; and,
- c. The rear first floor balcony is to be replaced with a Juliette style balcony.
- d. All works are to be contained wholly within the boundaries of the allotment.

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

3. Requirement for a Construction Certificate

In accordance with the provisions of Section 81A of the *Environmental Planning and Assessment Act 1979*, the erection of the building must not be commenced until:

- (a) detailed plans and specifications of the building have been endorsed with a Construction Certificate by:
 - (i) Council; or
 - (ii) an accredited certifier; and

- (b) a principal certifying authority (PCA) has been appointed and the Council has been notified in writing of the appointment, and
- (c) at least two days notice, in writing, has been given to Council of the intention to commence work.

4. Structural adequacy

A statement from a qualified practising Structural Engineer, certifying to the adequacy of the existing structural members, walls and footings to support the additional loads imposed by the proposed development, must be submitted with the Construction Certificate application.

This condition is imposed to ensure the structural integrity of the proposed building work.

5. Structural details

Structural engineering details and design calculations, prepared and certified by a qualified practising Structural Engineer, must be submitted with Construction Certificate application, for all reinforced concrete work, structural steel work, retaining walls, brick fences, shoring and underpinning, isolated piers, chimneys, parapets and other structural members.

This condition is imposed to ensure the structural integrity of the proposed building work.

6. Demolition, excavation and construction hours

Demolition, excavation and construction work must not take place outside the hours of 7.00am to 5.30pm Monday to Friday and 7.00am to 1.00pm Saturday. No work and no deliveries are to take place on Sundays and public holidays. Noise from construction activities associated with the development must comply with the guidelines contained in the NSW EPA *Environmental Noise Control Manual* Chapter 171.

7. Building Inspections

The Applicant, Owner and Builder, jointly and severally, must ensure that they call their Principal Certifying Authority ("the PCA") to carry out such critical phase building inspections required by the PCA, the PCA Service Agreement and that the PCA is satisfied with the level of compliance achieved before the Builder proceeds to the next phase of construction. Ample notice of required inspections must be given to the PCA in accordance with the PCA Service Agreement. The Applicant, Owner and Builder must comply with the PCA Service Agreement (Service Contract) and any lawful direction given by the Principal Certifying Authority.

Note: It is the responsibility of the PCA to ensure that critical phase building inspections are undertaken in accordance with a PCA Service Agreement and issue to the Applicant, Owner and Builder appropriate Notice under Section 109L of the Environmental Planning & Assessment Act 1979 ("the Act") where any breach of this consent occurs. Failure of the PCA to issue such notice may result in Council taking action under Section 109V of the Act. Failure of the Applicant, Owner and Builder to comply with a PCA Service Agreement and comply with lawful directions of the PCA under this condition may result in Council issuing fines, notices, orders and commencing legal proceedings. Council will only enter into PCA Agreements with the Owner of the land being developed. Council, if appointed as the PCA, will report to the owner of the land being developed.

8. Connection to existing drainage system

Stormwater run-off from the proposed first floor addition must drain to the existing stormwater drainage system.

The existing stormwater drainage pipes on the property affected by the development must be checked and certified by a practising hydraulic engineer to ensure that existing stormwater pipes are in good condition and are operating satisfactorily. Certification and a plan showing pipe locations and diameters must be submitted to the Accredited Certifier prior to the issue of the final Occupation Certificate.

If the existing stormwater pipes are not in good condition and/or not operating satisfactorily, the existing drainage system must be upgraded. Certification and a plan showing pipe locations and diameters of the upgraded system must be submitted to the Accredited Certifier prior to the issue of the final Occupation Certificate.

Stormwater disposal is to comply with the requirements and conditions as set out in Council's Draft Stormwater Drainage Management DCP (Draft Version 1, Public Exhibition Copy dated 23/08/2004). This is available from Council's website <http://www.woollahra.nsw.gov.au>.

Note: Connection of stormwater run-off to the Sydney Water sewer system is not permitted.

9. 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.

Note: 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.

10. Standard for demolition

All demolition work must be undertaken in accordance with the provisions of *Australian Standard AS2601-2001: The Demolition of Structures*.

11. Dilapidation reports

A dilapidation report on the current structural condition of the existing buildings at:

- 1 Raine Street, Woollahra
- 5 Raine Street, Woollahra

must be prepared by a practicing structural engineer. The Report must be completed and submitted to Council prior to the commencement of any demolition, excavation or construction works.

A second dilapidation report recording structural condition must be carried out on the properties listed above at the completion of the works and be submitted to Council.

12. Compliance with Building Code of Australia

- (a) All building work must be carried out in accordance with the provisions of the *Building Code of Australia*.
- (b) This condition does not apply to the extent to which an exemption is in force under Clause 187 or 188, of the *Environmental Planning and Assessment Regulation 2000*, subject to the terms of any condition or requirement referred to in Clause 187 (6) or 188 (4) of the Regulation.

13. Residential building work

- (a) Building work that involves residential building work (within the meaning of the *Home Building Act 1989*) must not be carried out unless the principal certifying authority (PCA) for the development to which the work relates:
 - in the case of work to be done by a licensee under that Act:
 - (i) has been informed in writing of the licensee's name and contractor license number; and
 - (ii) is satisfied that the licensee has complied with the requirements of Part 6 of that Act; or
 - in the case of work to be done by any other person:
 - (iii) has been informed in writing of the person's name and owner-builder permit number; or
 - (iv) has been given a declaration, signed by the owner of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in Section 29 of that Act,

and is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.

Note: The amount referred to in paragraph (a) (iv) above is prescribed by regulations under the *Home Building Act 1989*. As at the date on which this Regulation was Gazetted, that amount was \$5,000. As those regulations are amended from time to time, so that amount may vary.

- (b) A certificate purporting to be issued by an approved insurer under Part 6 of the *Home Building Act 1989* that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

14. Excavations and backfilling

- (a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.

- (b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

15. Retaining walls and drainage

If the soil conditions require it:

- (a) retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided; and
- (b) adequate provision must be made for drainage.

16. Support for neighbouring buildings

- (a) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:
 - (i) must preserve and protect the building from damage; and
 - (ii) if necessary, must underpin and support the building in an approved manner; and
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (b) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.
- (c) In this condition, allotment of land includes a public road and any other public place.

17. Protection of public places

- (a) If the work involved in the erection or demolition of a building:
 - (i) is likely to cause pedestrian or vehicular traffic on a public place to be obstructed or rendered inconvenient, or
 - (ii) building involves the enclosure of a public place;a hoarding or fence must be erected between the work site and the public place.
- (b) If necessary, an awning must be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- (c) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- (d) Any such hoarding, fence or awning must be removed when the work has been completed.

Note: Prior to the erection of any hoarding, fence or the like on any footpath or other property owned or controlled by Council, permission must be sought and obtained from Council and the prescribed rental fee paid.

18. Signs to be erected on building and demolition sites

- (a) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - (i) stating that unauthorised entry to the work site is prohibited; and
 - (ii) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.
- (b) Any such sign must be removed when the work has been completed.
- (c) This clause does not apply to:
 - (i) building work carried out inside an existing building; or
 - (ii) building work carried out on premises that must be occupied continuously (both during and outside working hours) while the work is being carried out.

19. Toilet facilities

- (a) Toilet facilities must 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.
- (b) Each toilet provided:
 - (a) must be a standard flushing toilet; and
 - (b) must be connected:
 - (i) to a public sewer; or
 - (ii) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council; or
 - (iii) 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.
- (c) The provision of toilet facilities in accordance with this clause must be completed before any other work is commenced.
- (d) 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 Regulation.

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.

20. Residential building work over \$12,000 in value

Council must be provided with the following information prior to the commencement of any works;

- (a) the proposed builder's details (in writing); and
- (b) proof of payment of the required insurance premium pursuant to Part 6 of the *Home Building Act 1989*.

21. Stormwater Management Plan

A Stormwater Management Plan for the site must be submitted with the application for a Construction Certificate. This Condition is imposed to ensure site stormwater is disposed in a controlled and sustainable manner.

The Stormwater Management Plan must be in accordance with Council's Draft Stormwater Drainage Management DCP (Draft Version 1, Public Exhibition Copy dated 23/08/2004). This is available from Council's website <http://www.woollahra.nsw.gov.au>. The plan must generally be in accordance with the drainage plans and documentation prepared by prepared by Brace Design Dwg No. 4.04 Issue A dated June 2006

Stormwater run-off from the proposed development must drain to Short Lane. New drainage systems must be designed in accordance with Section 6 - "Connection to drainage system" of Council's Draft Stormwater Drainage Management DCP.

A detailed Stormwater Management Plan must be produced by a suitably qualified civil or hydraulic engineer. The plan must be at a scale of 1:100 and 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 (as appropriate for the site and determined by the Hydraulic Consultant):

- All pipe layouts, dimensions, grades, lengths and material specifications
- All invert levels reduced to Australian Height Datum (AHD)
- Location and dimensions and of all drainage pits
- Point of connection to Councils drainage infrastructure
- Overland flow paths over impervious areas.
- Copies of certificates of title, showing the creation or existence of private easements to drain water by gravity, if required.
- Subsoil drainage details (layout, grades, material), clean out points and discharge point.

22. Stormwater Certification and Work-As-Executed (WAE) Plans

Prior to the release of the Final Building Certificate, Certification and Work-As-Executed (WAE) plans must be submitted and approved by the Accredited Certifier demonstrating that the site drainage system has been provided according to the submitted calculations and/or approved plans.

Certifications must be provided by a suitably qualified engineer. WAE plans must be prepared and certified by a Registered Surveyor.

The following must be provided:

a) Certification that:

- The drainage system has been installed in accordance with the drainage Conditions of Development Consent and relevant Australian Standards.
- That all drainage components are structurally adequate and have been installed in accordance with the relevant Codes and Standards and/or specifications.

b) Work-As-Executed (WAE) plans showing:

- Pipe and drainage system layout, including all pits, pipe diameters, grades, materials, invert levels and surface levels.
- Details (exact point and method) of connection to Council system

23. Compliance with erosion and sediment control plan

The erosion and sediment control plan by Brace Design Dwg No. 4.01 Issue A dated June 2006 must be implemented during site works and construction activities. 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 accredited certifier and Council officers on request.

24. Stockpiles

Stockpiles of topsoil, sand, aggregate, soil or other material must not be located on any drainage line or easement, natural watercourse, footpath or roadway, or within the dripline of any Street Tree. Stockpiles within the construction site must be protected with adequate sediment controls, in accordance with Council's Code for Sediment Control.

25. Location of building operations

Building operations such as brick cutting, washing tools or brushes and mixing mortar must not take place on public roadways or footways or in any other location which could lead to the discharge of materials into the stormwater drainage system.

Footpaths, gutters and roadways must be swept regularly to keep them free from sediment.

26. Damage security deposit

A security deposit of **\$8,000 (Eight thousand dollars)** for the cost of making good any damage to Council property caused as a consequence of the construction work, plus an administration fee of **\$163.00**, must be paid to Council prior to the issue of the Construction Certificate. The security deposit, which may be in the form of a bank guarantee, has been calculated in accordance with the following schedule.

Estimated cost of work	Deposit
Works up to \$50,000	\$2,000
Works in excess of \$50,000 & up to \$100,000	\$4,000
Works in excess of \$100,000	\$4,000+\$200/\$10,000 estimated cost>\$100,000

Council may use all or part of the Damage Security Deposit to complete damage restoration works if they do not meet Council's requirements.

27. Footpath levels

The existing footpath levels are to be adjusted to be in accordance with Council's Standard Drawing RF2. The grade of the street at the property boundary must be maintained.

28. Protection of services

Prior to any excavation works, the location and depth of all services (telephone, cable TV, electricity, gas, water, sewer, drainage, etc.) must be ascertained. The developer must meet all costs of any adjustment, relocation or reinstatement of any services.

29. Road Opening Permit

Prior to the commencement of any excavation in Council controlled roadways or footpath areas, the developer must obtain a road opening permit from Council's Customer Services Counter. Restoration of roads, footpaths, retaining walls, kerbs and gutters must be carried out in accordance with the relevant clauses of the current edition of AUS-SPEC.

30. Storage of materials and plant on Council's footpath

Building, excavation or demolition materials and plant must not be stored on Council's footpath and/or roadway unless prior written approval has been obtained from Council's Development Engineer.

31. Public footpaths

A safe pedestrian circulation route a minimum of 1.5m wide and with a pavement free of trip hazards must be maintained at all times on or adjacent to the public footpaths fronting the construction site. Where the footpath is damaged, repair works must be carried when directed by Council officers and in accordance with the relevant clauses of the current edition of AUS-SPEC.

Where circulation is diverted on to the roadway clear directional signage and protective barricades must be installed in accordance with Aust AS1742-3 1996 "*Traffic Control Devices for Work on Roads*".

If pedestrian circulation is not satisfactorily maintained, and action is not taken promptly to rectify the defects, Council may carry out remedial works and deduct the cost from the Damage Security Deposit.

32. Completion of infrastructure work

All infrastructure works must be completed and be certified by the accredited certifier as meeting all Council requirements and as-built drawings are to be submitted to Council's Development Engineer, prior to the release of the Infrastructure Works Bond. Works generally must be in accordance with the relevant clauses of the current edition of AUS-SPEC.

33. Driveways and associated works

The following works must be undertaken at the applicant's expense prior to the final building inspection and the issue of the Occupation Certificate.

- In Short Lane, construction of a new full width concrete driveway crossing 3.5m wide and layback in accordance with Council's Standard Drawing RF2. Levels in the footpath area must match existing.
- Reinstatement of footpath, kerb and gutter to match existing.

An "Application to carry out works in a public road" must be completed and submitted to Council's Customer Service Centre and approved by Council prior to commencement of construction of a new driveway. For any technical enquiries regarding alteration to existing footpath levels, alignments or inspections, please contact Council's Works Supervisor on 9391 7982.

34. Repair of Damaged Infrastructure

If Council's infrastructure is damaged during the course of works, Council's Development Engineer must be notified and necessary repairs must be undertaken within the time stipulated by Council, to Council's specifications, and at no cost to Council. Works generally must be in accordance with the relevant clauses of the current edition of AUS-SPEC.

If work is not undertaken to the satisfaction of the Development Engineer with regard to time or quality, Council may carry out remedial works and deduct the cost from the Damage Security Deposit.

35. Vehicular access and garaging

The following vehicular access and garaging detail must be submitted and approved by the Accredited Certifier prior to the issue of the Construction Certificate.

- Driveway details are to be provided of the new driveway to the new garage. The driveway profile is to comply with AS 2890.1
- The internal clear dimensions of the proposed carspace is to be minimum of 3m wide and 5.4m long to comply with AS 2890.1

- Driveways and access ramps must be designed not to scrape the underside of cars.

In all other respects, proposed garage/car park/basement car park, driveways and access ramps must be designed to comply with Australian Standard AS 2890.1 – “Off-Street car parking.”

36. Internal Garage Floor Transition comments

The existing footpath level and grade at the street alignment of the property must be maintained. Any driveway slab adjustment required to meet the internal garage crossfall is to be constructed entirely on private property. All grades and crossfalls are to be in accordance with AS2890.1.

37. 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

- prior to the issue of a *construction certificate*, where a construction certificate is required; or
- prior to the issue of a *subdivision certificate*, where only a subdivision certificate is required; or
- 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.	\$8,000.00	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	\$3,000.00 + Index Amount	Yes, quarterly	T94
INSPECTION FEES under section 608 of the Local Government Act 1993			
Security Administration Fee	\$163	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$11,163.00 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

Mr D Lukas
REVIEW OFFICER (SNR ASSESSMENT OFFICER)

Mr M Schofield
TEAM LEADER

ADVISINGS

1. Other approvals

This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, including:

- an Application for Approval under Section 68 of the *Local Government Act 1993* for an activity under that Act, including the erection of a hoarding. All such applications must comply with the Building Code of Australia.
- an application for an Occupation Certificate under Section 109(C)(2) of the *Environmental Planning and Assessment Act 1979*.
- An application for an Occupation Certificate may be lodged with Council if the applicant has nominated Council as the Principal Certifying Authority.

2. Works and requirements of other authorities

- *Sydney Water* may require the construction of additional works and/or the payment of additional fees. Other Sydney Water approvals may also be necessary prior to the commencement of construction work. You should therefore confer with *Sydney Water* concerning all plumbing works, including connections to mains, installation or alteration of systems, and construction over or near existing water and sewerage services.
- Contact Sydney Water, Rockdale (Urban Development Section) regarding the water and sewerage services to this development.
- *AGL Sydney Limited* has requirements for the provision of gas connections.
- *Telstra* has requirements concerning access to services that it provides.

3. Application for a Construction Certificate

The required Application for a Construction Certificate may be lodged with Council. Alternatively, you may apply to an accredited private certifier for a Construction Certificate.

WARNING: Failure to obtain a Construction Certificate prior to the commencement of any building work is a serious breach of Section 81A(2) of the *Environmental Planning & Assessment Act 1979*. It is also a criminal offence which attracts substantial penalties and may also result in action in the Land and Environment Court and orders for demolition.

4. Occupational Health and Safety

All site works must comply with the occupational health and safety requirements of the NSW WorkCover Authority.

5. Trade waste agreement

A Trade Waste Agreement must be obtained from Sydney Water prior to the discharge of trade wastewater to the sewer system. Trade wastewater is defined as 'discharge water containing any substance produced through industrial or commercial activities or operation on the premises'.

6. Hazardous Material Management (to be included in all Development Consents)

"Builders are advised to obtain a copy of the EPA publication *Solutions to Pollution for Builders* which provides environmental information including hazardous material management. The EPA can be contacted by phone on 131 555 or at www.epa.nsw.gov.au "

7. Hazardous waste removal

Hazardous or intractable wastes arising from the demolition process must be removed and disposed of in accordance with the requirements of WorkCover and the EPA, and in accordance with the provisions of:

- New South Wales *Occupational Health and Safety Act, 1983*;
- New South Wales *Construction Safety Act, 1912; Regulation 84A-J Construction Work Involving Asbestos or Asbestos Cement 1983*;
- The *Occupational Health and Safety (Hazardous Substances) Regulation 1996*;
- The *Occupational Health and Safety (Asbestos Removal Work) Regulation 1996*; and
- The *Waste Minimisation and Management Act and Regulations*.

8. Compliance with the Disability Discrimination Act

This decision does not ensure compliance with the *Disability Discrimination Act*. You should therefore investigate your liability under that Act. *Australian Standard 1428 - Design for Access and Mobility*, Parts 2, 3 and 4 may assist in determining compliance with the Disability Discrimination Act.

9. Modifications to the consent

Changes to the external configuration of the building, changes to the site layout or any changes to the proposed operation or use *will* require the submission and approval of an application under Section 96 of the *Environmental Planning & Assessment Act 1979* before the issue of a Construction Certificate.

10. Tree preservation

Where tree work has not been approved by this Development Consent the developer is notified that a general Tree Preservation Order applies to all trees in the Municipality of Woollahra with a spread of branches greater than three (3) metres and also on all trees, irrespective of the spread of branches, with a height greater than five (5) metres. This order prohibits the ringbarking, cutting down, topping, lopping, pruning, transplanting, injuring, or wilful destruction of such trees except with the prior written consent of the council. Written consent from Council for such tree works must be in the form of a Tree Preservation Order Permit for Pruning or Removal of Protected Trees obtained from the Parks and Streetscape Section of Council.

11. Storage bins on footpath and roadway

Approval is required from Council prior to the placement of any storage bin on Council's footpath and/or roadway.

12. Home Building Act insurance

Home Building Act Insurance must be obtained from an insurance company approved by the Department of Fair Trading prior to the commencement of demolition or construction work.

13. Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Mr Dimitri Lukas. However, if you wish to pursue your rights of appeal in the Land & Environment Court you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, instead of a full Court hearing. This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the Section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed assessor having the full authority to completely determine the matter at the conference.

ANNEXURES

1. Original assessment Report
2. Plans and elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D7
FILE No.	DA 844/2006/1
PROPERTY DETAILS	5 Northland Road BELLEVUE HILL
	Lot & DP No.: LOT: 3 SEC: 2 DP: 13285
	Side of Street: Southern
	Site Area (m²): 717.2m ²
	Zoning: Residential 2(a)
PROPOSAL:	Alterations and additions including an extension to the first floor with balcony, new carport and landscape works
TYPE OF CONSENT:	Local
APPLICANT:	Bruce Stafford & Associates
OWNER:	Dr C D Gruia
DATE LODGED:	13/12/2006
AUTHOR:	Ms B Thomas

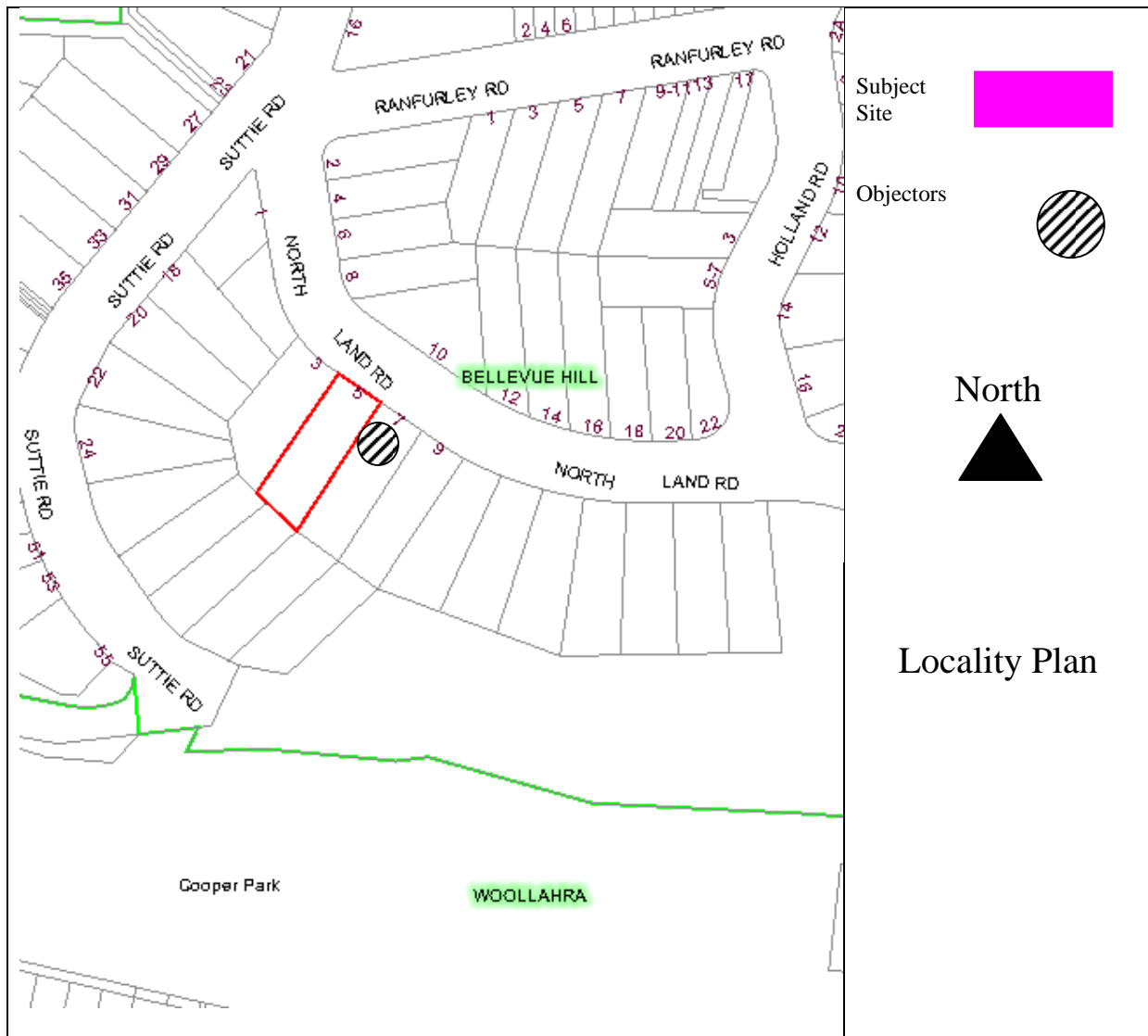
1. RECOMMENDATION PRECIS

The proposal is recommended for approval.

2. PROPOSAL PRECIS

The proposal is for alterations and addition to an existing dwelling house including an extension to the first floor with balcony, new carport and landscape works.

3. LOCALITY PLAN



4. DESCRIPTION OF PROPOSAL

The proposal includes:

- Extension of existing attic level including a main bedroom and ensuite bathroom with new access stairway and attic balcony.
- New carport is proposed on to Northland Street boundary with alterations to the existing boundary wall.
- Landscaping works in front setback including increase in deep soil landscaping.
- New bin storage area
- Modifications to front fence to match existing
- New pergola over front gate entry

The applicant submitted correspondence on 17 March 2007 agreeing to the following modifications to address Council's and objector's concerns including:

- deletion of side pergola (refer to Condition C3(c))
- amendments to eastern attic window (erect vertical louvers and increase sill height) (refer to condition C3(a))
- proposed carport-reduction in height to 2.4m and increased front setback by 700mm (refer to Condition C3(d)(i) and C3(d)(ii))
- front fence to be 50% open (refer to Condition C3 (b))
- Sliding gate for carport proposed to be 50% open timber structure (refer to Condition C3(d)(i))

5. SUMMARY

Reasons for report	Issues	Submissions
Objectors concerns cannot be met.	Privacy, sunlight, overshadowing, bulk	1 submission was received.

6. ESTIMATED COST OF WORKS

Council adopted (DCC 6 June 2005) administrative changes for determining DA fees based on the estimated cost of work. Where the estimated cost of work is greater than \$750,000 or where the applicant's estimate is considered to be neither genuine nor accurate, the applicant has to provide a Quantity Surveyor's report. The applicant's estimated cost of the development is \$93,500 which has been checked using Council's adopted practice and is considered to be accurate.

7. DESCRIPTION OF SITE OF LOCALITY

THE SITE AND LOCALITY	
Physical features	The subject site is located on the southern side of Northland Road and has an area of 717.2m ² , a frontage of 15.24metres and is generally rectangular in shape.
Topography	The subject site's level drops from the front of the site to the rear approximately 5metres
Existing buildings and structures	Standing on the site is a one and two storey brick dwelling with tiled roof. The surrounding development consists of one and two storey dwellings. The area is predominantly residential.
Environment	The area is characterised by two storey dwelling houses with varying ground levels. Cooper Park is located to the south of the subject site.

8. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	Dwelling House
Previous relevant applications	DA123/2001 for alterations and additions to the existing dwelling house including the extension of the existing lower ground floor terrace, new planter boxes and new external stair and pool safety fence was approved on 14 August 2001.
Pre-DA	N/A
Requests for additional information	20 December 2006 request for scaled plan of the existing building. 11 May request for lower ground floor plan.
Amended plans/ Replacement Application	14 March 2007 an unsatisfactory development proposal letter was sent to the applicant advising Council's concerns with privacy, streetscape, location of car parking, front fence, overshadowing and roof design. The applicant responded on 17 March 2007 with proposed amendments (including deletion of proposed pergola on eastern boundary, modifications to front fence ,carport, modifications and to the south eastern attic window). 18 May 2007 lower ground floor plan provided.
Land & Environment Court appeal	N/A

9. REFERRALS

9.1 The following table contains particulars of internal referrals.

INTERNAL REFERRALS		
Referral Officer	Comment	Annexure
Development Engineer	Satisfactory subject to conditions.	2
Landscaping Officer	Council's Tree & Landscape Officer has no objection to this proposal.	3

9.2 The following table contains particulars of external referrals.

Not relevant.

ENVIRONMENTAL ASSESSMENT UNDER S.79C

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

10. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

10.1 SEPPs

State Environmental Planning Policy No. 55

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 site indicates the land does not require further consideration under clause 7 (1) (b) and (c) of SEPP 55.

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

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

10.2 REPs

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The proposal would not affect the urban landscape and would not have any adverse visual impact on the Harbour foreshore. The proposal is therefore consistent with the objectives of the SREP and would not satisfy the relevant requirements of the SREP.

10.3 Section 94 contribution

Not applicable to this development.

10.4 Other relevant legislation

No other legislation is 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 Residential 2(a) zone.

11.2 Statutory compliance table

Site Area:717.2m ²	Existing	Proposed	Control	Complies
Overall Height	9.5m	9m	9.5m	Yes

* Existing non-compliance

11.3 Height

The proposal would comply with the height control and satisfy the relevant objectives prescribed by the LEP.

11.4 Other special clauses/development standards

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

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

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

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

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

Clauses 26-33 Heritage and conservation area provisions: The subject site is not a heritage item, is not within a heritage conservation area and is not within the vicinity of a heritage item.

12. DRAFT AMENDMENTS TO STATUTORY CONTROLS

None apply.

13. DEVELOPMENT CONTROL PLANS

13.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

Site Area (717.2m ²)	Existing	Proposed	Control	Complies
Number of Storeys	3	3	2	No*
Carport Building Boundary Setbacks Front	7m N/A	700mm 0m	Average of adjacent property's front setback 1.5m	No No
Side NW Ground Floor	8.5m	3.7m	4.5m	No
Setback of First Floor Addition	3.5m	3.2m	4.5m	No
Side Setback East	21m	19.5m	Average of adjacent property's front setback	No
Side Setback West			setback (4.7m)	Yes
Front Setback				
Floor Space Ratio	0.59:1 (426.69m ²)	0.66:1 (472.79m ²)	0.55:1 (394.46m ²)	No
Floor to Ceiling Height – Habitable Rooms	N/A	2m-3m	2.7m	Yes
Solar Access to Open Space of Adjacent Properties (Hrs on 21 June)	N/A	50% (or 35m ²) for 2 hours	50% (or 35m ²) for 2 hours	Yes
Deep Soil Landscaping – Front Setback	26% (30.62m ²)*	39% (46.4m ²)	40% (47.6m ²)	No
Deep Soil Landscaping – Front Setback (Consolidated Area)	17.38m ²	12m ² /20m ²	12m ² /20m ²	Yes
Front Fence Height	1.5m /Solid	1.7m	1.2m/1.5m where 50% transparent	No*
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	Behind Front Setback	Located in front setback	Behind Front Setback	No
Garage Frontage Width	N/A	36% (5.4m ²)	40% (6m)	Yes
Car Parking Spaces – Dwellings	N/A	2	2	Yes

* Existing non-compliance

Site analysis performance criteria (Part 3)

The proposed works would fit in with the surrounding environment and pattern of development responding to the urban form local topography and landscape. The proposed new attic balcony at the rear would utilise the views towards Cooper Park from the dwelling house. The proposal would satisfy the relevant criteria prescribed by the DCP.

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

The future character objectives of the Bellevue Hill North Precinct aim to maintain public views, minimise alterations to the landform, preserve the existing tree canopy and establish a transition of development scale from detached dwelling houses to residential flat buildings.

There is a diversity of architectural styles in the freestanding houses located in the precinct. The proposed works would continue this diversity style. The existing house is a mixture of styles as the original house was a 1970's linear design and subsequent alterations destroyed this geometry. The applicant proposed a contemporary design to contrast with the existing.

Performance Criteria 4.7.5 in Section 4.7 of the DCP stipulates that car parking structures and driveways should be located behind the building line and should not dominate the streetscape. Further, car parking structures should be limited to a width no greater than 40% of the street frontage where the width is less than 20m.

The proposed carport would be non compliant as it would be located in front of the building line, however it would be located in a much more practical and useable location and should be supported for the following reasons:

- Properties on the higher side of the street feature garages forward of the building line.
- The carport would not dominate the streetscape as the proposed carport is no greater than 40% of the street frontage.
- The applicant has proposed to plant star jasmine over the structure to soften it.
- The proposed development would address the street via the proposed fence and entry gate
- Driveways on site would be reduced from 2 to 1 not dominating the streetscape.
- Deep soil landscaping in the front setback would substantially increased in keeping with C4.7.9.5 in Section 4.7 of the DCP.

The proposed works would address the street by presenting a modified front fence. The existing height of the columns for the front fence is 1.7metre and the proposed fence would be in keeping with this. The applicant proposed to amend the fence to be 50% transparent as conditioned by C3.

The proposed carport door would be replaced with sliding gates (refer to Condition C3(d)(i)) which would be sympathetic to the streetscape.

Criteria 4.7.9.3 requires development to have a maximum of 2 storeys in height, where the site falls more than 2metres from the street to the rear an additional basement storey may be permitted.

The subject site has an existing lower ground floor level, ground floor level and attic level. The site drops more than 2metres from the street to the rear. The proposal is to increase the attic level by 60m². Due to the location of the attic level and the topography of the site the proposed addition of attic space can be considered acceptable as it would not be viewed from the streetscape and would not adversely affect the amenity of the adjoining properties.

The proposed modifications would be comparable and consistent with the architectural style, scale and form of the surrounding area, and would therefore satisfy the relevant criteria prescribed by the DCP.

Streetscape performance criteria (Section 5.1)

The subject site features two existing driveways, with the proposed development one of the driveways would be removed which would improve the streetscape and increase the opportunity for kerbside parking which would be in keeping with 05.15 in Section 5.1 of the DCP as it would recognise the predominate streetscape quality.

The proposal provides a pedestrian entry to the street via the proposed front entry gate and pergola, which would allow for the new entrance to be readily apparent from the street as stipulated by C5.1.8 in Section 5.1 of the DCP. The proposed front fence would clearly define public and private space as outlined by performance criteria C.5.1.6 in Section 5.1 of the DCP.

The proposed design and location of the parking structure does not conform with the desired future character objectives and performance criteria for the North Bellevue Hill precinct in terms of building a carport in front of the building line. However the proposal would meet O5.1.3 in Section 5.1 of the DCP and ensure that the development would contribute to a cohesive streetscape and the fence would create a desirable pedestrian environment by improving the sites relationship to the street and improving deep soil landscaping. The proposal would satisfy the relevant criteria prescribed by the DCP.

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

The proposed carport would be forward of the building line and would have no setback from the North West boundary. The proposed carport would not detrimentally affect the amenity of the adjoining properties. The proposed carport would address O5.2.2 and would ensure that the location and size of the carport would not impact on views and would preserve privacy and sunlight access for neighbouring residents.

Performance Criteria 5.2.10 of Section 5.2 of the DCP identifies that habitable rooms must achieve a minimum floor to ceiling height of 2.7m and may be accepted if development is within the roof space and the environmental quality of the internal living space is not adversely affected.

The proposed development involves an extension of an existing attic level to include a main bedroom and ensuite bathroom in the roof space. The floor to ceiling height would be 2.1 metres at its lowest point and 3m at its highest point, the environmental quality of the internal living space would not be adversely affected and therefore can be considered acceptable.

The increased gross floor area of the attic would be 60.5m². The maximum floor space ratio for the subject dwelling house is 0.55:1, the existing floor space ratio for the dwelling is 0.54:1 (389.4m²) and the proposed floor space ratio would increase to 0.66:1 (444.6m²) which is non compliant.

There is no impact with regard to the level of bulk when viewed from the street, visual and acoustic privacy, overshadowing or loss of views from adjoining properties or an interruption to the existing vegetation pattern on the subject site.

The proposed form and scale of the development would not be excessive as the majority of the works are at the rear of the dwelling and can not be seen from the streetscape. The proposal would maintain objective 5.2.3 of Section 5.2 of the DCP, ensuring the size and location of the building will allow for the sharing of views and preserve privacy and sunlight access for neighbouring residents and therefore can be considered appropriate.

Performance Criteria C5.2.5 of Section 5.2 of the DCP requires a side boundary setback of 4.5metres on the east and 4.5metre on the west. The attic extension would encroach on the setback requirement and be 3.7m and 3.2m respectively. However, the non compliance in setback can be supported as the development would not affect side access. Visual and aural privacy of residents in the adjoining properties would not be affected. The works would not result in an unreasonable sense of enclosures and no significant views and vistas would be detrimentally affected. The setbacks of the proposal can be considered acceptable.

Performance Criteria C5.2.12 of Section 5.2 of the DCP, details that building bulk is distributed to minimise overshadowing on neighbours, streets and public open space.

The proposed building bulk would be distributed to minimise overshadowing on the adjoining neighbours and be compliant with the DCP.

Performance Criteria 5.2.13 of Section 5.2 of the DCP stipulates that sunlight is provided to at least 50% of the main ground level private open space of adjacent properties for a minimum of two hours between 9am and 3pm on June 21.

The proposal would be compliant and would provide at least 50% of the main ground level private open space of adjacent properties for a minimum of 2hours between 9am and 3pm on June 21.

Overall the proposal would satisfy the relevant criteria prescribed by the DCP.

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

Objective 5.3.1 in Section 5.3 of the DCP aims to ensure that adequate provision of accessible and useable private and communal open space is provided.

The proposed works would improve the provision of accessible and useable private open space in the front setback. The proposed new grass area in the front setback would enhance the appearance and amenity of the subject site.

Performance Criteria 5.3.2 in Section 5.3 of the DCP requires the for dwelling houses at least 50% of the unbuilt upon area located at ground level to comprise of deep soil landscaping

The proposal would increase the deep soil landscaping from 30.62m² (26%) to 46.4m² which is approximately 39%. This would be a vast improvement to the site and would allow for more directly accessible north facing open space from the main living area of the dwelling. The proposal would meet 05.3.1 in Section 5.3 of the DCP and would be providing more accessible and useable open space in the front setback.

The increase deep soil landscaping in the front setback would comply with 05.3.4 in Section 5.3 of the DCP by enhancing the appearance and amenity of housing through integrated landscape design. The proposal would satisfy the relevant criteria prescribed by the DCP

Fences and walls performance criteria (*Section 5.4*)

The proposed height of the fence is 1.7metres to match the existing non compliant fence. The proposed fence would meet objective 05.4.1 in Section 5.4 of the DCP and would improve the amenity for existing and new residents and contribute positively to the streetscape and adjacent buildings. The applicant proposed amendments to the front fence to make it 50% open (refer to Condition C3).

The material to be used for the fence would be brick to match the existing fence. The proposed fence would be sympathetic to the topography and be in keeping with O5.4.4 in Section 5.4 of the DCP. There is no precedence of styles or height of fences within Northland Road. The proposed front fence would assist in highlighting the entrance to the dwelling with a new gate and pergola. Overall the proposed modifications to the front fence would be appropriate.

Views performance criteria (Section 5.5)

The proposed works in the roof space would enable views across to Cooper Park

Energy efficiency performance criteria (Section 5.6)

The proposal would promote the use of natural light and minimise energy use for internal lighting during the day in the attic extension with the proposed glazing in the form of sliding doors and windows subject to Condition C3.

Stormwater management performance criteria (Section 5.7)

Stormwater management would improve as there would be a reduction in hard surfaces.

Acoustic and visual privacy performance criteria (Section 5.8)

The proposed amendment to the development applications as provided by the applicant would ensure adequate acoustic and visual privacy for occupants and neighbours as outlined in Objective 5.8.1.

Performance Criteria 5.8.7 in Section 5.8 of the DCP, stipulates windows and balconies of an upper level dwelling are designed to prevent overlooking of the private open space of a lower level dwelling directly below and within the same development.

On the north west boundary proposed windows in the attic would be replacing existing windows and therefore would not have any more adverse impacts than existing. A proposed privacy screen would be located on the north west elevation over the balustrade of the balcony which would limit overlooking into the open space area of 3 Northland Avenue.

The adjoining neighbours at No. 7 Northland Avenue would be affected by the proposed south east attic window as it would allow for overlooking of their open space and balcony. The applicant's proposed amendments to the design would be vertical timber privacy louvres along the entire length of the proposed main bedroom window on the south eastern elevation fixed at 45 degrees, the sill height of this window would be increased by 500mm from floor level.

The proposed 45 degree fixed louvers on the attic south east window would prevent overlooking of the private open space of a lower level dwelling directly below. Council recommends that the increase in sill height of the proposed window should be 1 metre from floor level and would further restrict views into the adjoining neighbours open space. (Please refer to Condition C3(a)).

The proposed new balcony in the attic space would not be viewed from the street or nearby public space. The proposal would ensure that acoustic and visual privacy for occupants and neighbours (subject to conditions) and can be considered to be appropriate.

Car parking and driveways performance criteria (Section 5.9)

The proposed car parking location in front of the dwelling house would be utilising an existing driveway and paved area. The proposal would improve the car parking access for the residential property. The proposal would meet Objective 5.9.2 in Section 5.9 of the DCP and would provide convenient and safe car parking access for the residents. A positive impact from the development would be an increase in deep soil landscaping planted within the front setback which would reduce the impervious surface on site and comply with Objective 5.9.4 in Section 5.9 of the DCP.

The applicant proposes that the carport be setback of 700mm from the front boundary line and reduce the height of the carport to 2.4m including the natural timber fascia which would match the timber detailing of the dwelling house and complement the building design. Star jasmine would be grown over the timber car port structure. The relocation of the proposed carport would allow for the removal of the second driveway from site. This would ensure that the proposal would be in keeping with Objective 5.9.3 in Section 5.9 of the DCP and would ensure that the on site car parking and driveway would not dominate or detract from the appearance of the development and local streetscape.

Performance Criteria 5.9.15 stipulates that garage doors must be designed to complement the building design and important character elements of the street.

The proposed carport door would be a sliding gate for carport proposed to be 50% open timber structure. This proposal would complement the streetscape and the carport design. However, further modification to the gates including matching the height and materials of the fence would allow for increased surveillance from the subject site and the streetscape. (Refer to Condition C3 (d)).

Site facilities performance criteria (Section 5.10)

Not relevant.

Harbour foreshore development performance criteria (Section 5.11)

Not relevant.

Mixed development in business zones performance criteria (Section 5.12)

Not relevant.

Access and mobility performance criteria (Section 5.13)

Not relevant.

Inter-war flat buildings performance criteria (Section 5.14)

Not relevant.

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

Not relevant.

13.3 Woollahra Access

Not relevant.

13.4 Other DCPs, codes and policies

No other relevant DCPs, codes or policies.

14. APPLICABLE REGULATIONS

Clause 92 of the EPA Regulation 2000 requires us to consider Australian Standard AS 2601-1991: The **demolition of structures**. The proposal would be covered by condition.

15. THE LIKELY IMPACTS OF THE PROPOSAL

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

16. THE SUITABILITY OF THE SITE

The site is suitable for the application.

17. SUBMISSIONS

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

Lisa and John Ballhausen
5 Northland Road
Bellevue Hill 2023
NSW

The objectors raised the following issues:

- *Overshadowing*

New bedroom would extend beyond existing ground floor. New works would cast shadow affecting natural afternoon light on southern boundary also affecting light in objector's principle bedroom and bathroom.

The proposal would provide at least 50% of the main ground level private open space of adjacent properties for a minimum of 2hours between 9am and 3pm on June 21.

- *Bulk*

The proposed works would have a significant visual impact from objectors outdoor dining area, will lead to increased difficulties in seeking development approval for objector's property in future. The proposed works exceed councils FSR.

The proposed works would be built within the existing roof space which would limit the visual impact. There is an additional 60m² of floor space which would increase the FSR; however the bulk would be distributed to minimise overshadowing and would not be seen from the streetscape. The proposed development would not affect any future developments on the objector's property.

- *Loss of light*

The proposed pergola would reduce light into the bedrooms of the objector's dwelling.

The pergola has been deleted.

- *Increase in light*

Outdoor lighting should be installed in a way so that light does not shine into the objector's bedroom or living areas.

No new lighting is proposed to be installed.

- **Privacy**

New window is unnecessary and obtrusive overlooks family room and outdoor dining area. The window and glass balustrade would also impact upon the amenity of swimming pool and entertainment area.

Condition C3(a) has been imposed to maintain the objector's amenity of their private open space

18. CONCLUSION - THE PUBLIC INTEREST

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

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

THAT the Council, as the consent authority, grant development consent to Development Application No. 844/2006 for alterations and additions including an extension to the first floor with balcony, new carport and landscape works on land at 5 Northland Road Bellevue Hill, 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)
Site Plan-Attic Floor Plan 01 A Ground Floor Plan and Elevation 02 A Elevation and Site analysis 03 A	Architectural Plans	Bruce Stafford and Associates Pty Ltd	December 2006

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

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

B.1 Construction Certificate required prior to any demolition

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

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

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

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

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

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

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

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy Use Calculator: http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation or use their online calculator	No	
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit - Making good any damage caused to any property of the <i>Council</i> as a consequence of the doing of anything to which the consent relates.	\$4000	No	T600
INSPECTION FEES under section 608 of the Local Government Act 1993			
Security Administration Fee	\$163	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$4163 Plus any relevant indexed amounts and long service levy		

Building & Construction Industry Long Service Payment

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

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

How must the payments be made?

Payments must be made by:

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

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

- a. the guarantee is by an Australian bank for the amount of the total outstanding contribution;
 - b. the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first;
 - c. the bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent; and
 - d. the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.
- Standard Condition: C5

C.2 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.3 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. That vertical timber privacy louvers be erected along the entire length of the proposed main bedroom window on the south eastern elevation. The louvers are to be fixed at 45 degrees which direct away from the rear terrace of no.7 Northland Avenue, the sill height of this window should reach a height of 1metre from floor level.
- b. That the entire front fence be 50% transparent.
- c. That the new pergola over outdoor dining on Site Plan-Attic Floor Plan 01A, Ground Floor Plan and Elevation 02 A, Elevation and Site analysis 03 A is deleted.
- d. That the carport be modified as follows:
 - (i) The proposed carport door be deleted and replaced with 50% transparent gates to match the fence height and materials, and be located on the street boundary;
 - (ii) The carport be reduced in height to 2.4m and the fascia to 300mm and be made from natural timber;
 - (iii) Setback the carport 700mm from the street boundary line.

Note: Condition C3b and C3d have been imposed to reduce the visual impact from the street.

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.4 Road and Public Domain Works – Council approval required

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

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

Specific works include:

- North Side - Full width vehicular crossings having a width of 5m in accordance with Council's standard drawing RF2.
- South Side - Removal of the redundant driveway and restoration of the footpath and Kerb & Gutter

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

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

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

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

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

Standard Condition: C13

C.5 Utility Services Generally

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

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

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

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

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

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

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

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

C.6 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.7 Bicycle, Car and Commercial Parking Details

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

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

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

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

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

- a. the location of the existing *Stormwater Drainage System* including all pipes, inspection openings, surface drains, pits and their discharge location,
- b. the state of repair of the existing *Stormwater Drainage System*,
- c. any remedial works required to upgrade the existing *Stormwater Drainage System* to comply with the BCA,
- d. any remedial works required to upgrade the existing *Stormwater Drainage System* crossing the footpath and any new kerb outlets,
- e. any new *Stormwater Drainage System* complying with the BCA,
- f. interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath,
- g. any rainwater tank required by BASIX commitments including their overflow connection to the *Stormwater Drainage System*, and
- h. general compliance with the Council's draft Development Control Plan Stormwater Drainage Management (draft version 1, public exhibition copy dated 23 August 2004)

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

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

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

Note: Stormwater Drainage Systems must not discharge to any Sewer System. It is illegal to connect stormwater pipes and drains to the sewerage system as this can overload the system and cause sewage overflows. See:

<http://www.sydneywater.com.au/Publications/Factsheets/SewerfixLookingAfterYourSewerPipes.pdf>

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

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

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

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

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

This condition does not apply:

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

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

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

D.2 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.3 Erosion and Sediment Controls – Installation

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

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

Where there is any conflict The Blue Book takes precedence.

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

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

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

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

E. Conditions which must be satisfied during any development work

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

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

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

This condition does not apply:

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

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

Standard Condition: E1

E.2 Compliance with Australian Standard for Demolition

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

Standard Condition: E2

E.3 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, piling, cutting, boring, drilling, rock breaking, rock sawing, jack hammering or bulk excavation of land or loading of material to or from trucks must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday.
- e. No rock excavation being cutting, boring, drilling, breaking, sawing, jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

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

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

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

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

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

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

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

E.4 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.5 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.6 Maintenance of Vehicular and Pedestrian Safety and Access

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

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

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

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

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

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

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

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

Part C Management of Waste:

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

Part E Public roads:

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

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

E.7 Maintenance of Environmental Controls

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

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

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

E.8 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.9 Placement and use of Skip Bins

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

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

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

E.10 Dust Mitigation

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

This generally requires:

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

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

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

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

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

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

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

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

F.2 Commissioning and Certification of Public Infrastructure Works

The *principal contractor* or *owner builder* must submit, to the satisfaction of Woollahra Municipal Council, certification from a *professional engineer* that all public infrastructure works have been executed in compliance with this consent and with Council’s *Specification for Roadworks, Drainage and Miscellaneous Works* dated January 2003.

The certification must be support by closed circuit television / video inspection provided on DVD of all stormwater drainage together with works as executed engineering plans and a survey report detailing all finished reduced levels.
Standard Condition: F9

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

No relevant conditions.

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

H.1 Removal of Ancillary Works and Structures

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

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

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

H.2 Road Works (including footpaths)

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

- a. stormwater pipes, pits and connections to public stormwater systems within the *road*;
- b. driveways and vehicular crossings within the *road*;
- c. removal of redundant driveways and vehicular crossings;
- d. new footpaths within the *road*;
- e. new or replacement street trees;
- f. new footway verges, where a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street.
- g. new or reinstated kerb and guttering within the *road*; and
- h. new or reinstated road surface pavement within the *road*.

Note: Security held by Council pursuant to section 80A(6) of the Act will not be release by Council until compliance has been achieved with this condition. An application for refund of security must be submitted with the *Final Occupation Certificate* to Council. This form can be downloaded from Council's website www.woollahra.nsw.gov.au or obtained from Council's customer service centre.
Standard Condition: H13

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

No relevant conditions.

J. Miscellaneous Conditions

No relevant conditions.

K. Advisings

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

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

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

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

Warnings as to potential maximum penalties

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

Warning as to enforcement and legal costs

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

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

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

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

Standard Advising: K1

K.2 Appeal

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

Mark Schofield, Team Leader on (02) 9391 7045

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

Miss B Thomas
ASSESSMENT OFFICER

Mr M Schofield
TEAM LEADER

ANNEXURES

1. Plans and elevation
2. Development Engineer Referral Response
3. Landscaping Officer Referral Response