Agenda: Development Control Committee
Date: Monday 16 March 2009
Time: 6.00pm & 8.00pm
Session: One & Two
Part: Two of Three
Item: D1 to D11
Outline of Meeting Protocol & Procedure:

- The Chairperson will call the Meeting to order and ask the Committee/Staff to present apologies or late correspondence.
- The Chairperson will commence the Order of Business as shown in the Index to the Agenda.
- At the beginning of each item the Chairperson will ask whether a member(s) of the public wish to address the Committee.
- If person(s) wish to address the Committee, they are allowed four (4) minutes in which to do so. Please direct comments to the issues at hand.
- If there are persons representing both sides of a matter (e.g., applicant/objector), the objector speaks first.
- At the conclusion of the allotted four (4) minutes, the speaker resumes his/her seat and takes no further part in the debate unless specifically called to do so by the Chairperson.
- If there is more than one (1) person wishing to address the Committee from the same side of the debate, the Chairperson will request that where possible a spokesperson be nominated to represent the parties.
- The Chairperson has the discretion whether to continue to accept speakers from the floor.
- After considering any submissions the Committee will debate the matter (if necessary), and arrive at a recommendation (R items which proceed to Full Council) or a resolution (D items for which the Committee has delegated authority).

Delegated Authority ("D" Items):

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

Recommendation only to the Full Council ("R" Items):

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

Committee Membership: 8 Councillors

Quorum: The quorum for a committee meeting is 5 Councillors.
WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

9 March 2009

To:    His Worship The Mayor, Councillor Andrew Petrie ex-officio
Councillors    Chris Howe    (Chair)
              Sean Carmichael
              Lucienne Edelman    (Deputy)
              Susan Jarnason
              David Shoebridge
              Susan Wynne
              Malcolm Young
              Toni Zeltzer

Dear Councillors

Development Control Committee Meeting – 16 March 2009

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council’s Development Control Committee to be held in the Committee Room, ground floor level, 536 New South Head, Double Bay, on Monday 16 March 2009 at 6.00pm.

Gary James
General Manager
Additional Information Relating to Committee Matters

Site Inspection

Other Matters
## Meeting Agenda
### Session One – Commencing 6.00pm
### Part One of Three Parts

<table>
<thead>
<tr>
<th>Item</th>
<th>Subject</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Leave of Absence and Apologies</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Late Correspondence</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Declarations of Interest</td>
<td></td>
</tr>
</tbody>
</table>

### Items to be Decided by this Committee using its Delegated Authority

- **D1** Confirmation of Minutes of Meeting held on 2 March 2009  
  Pages: 1

### Site Inspection Items

- **D2** DA778/2004 Part 7 – 95 Wentworth Road, Vaucluse – Section 96  
  Application – Proposed modifications to internal & external – 2/12/2008  
  *See Recommendation Page 3*

- **D3** DA778/2004 Part 6 – 95 Wentworth Road, Vaucluse – Section 96  
  Application – Proposed modifications to internal & external – 25/11/2008  
  *See Recommendation Page 18*

- **D4** DA692/2008 – 150 Fletcher Street, Woollahra – Alterations & additions to existing two storey attached dwelling including a new loft garage – 23/10/2008  
  *See Recommendation Page 38*

### Other Delegated Items

  *See Recommendation Page 107*

- **D6** DA262/2004 Part 2 – 409-411 New South Head Road, Double Bay – Section 96 Application – Proposed modification of Condition No. 2 requiring the payment of Section 94 Contribution – 9/10/2008  
  *See Recommendation Page 149*
## Meeting Agenda

**Session Two – Commencing 8.00pm**

**Part Two of Three Parts**

<table>
<thead>
<tr>
<th>Item</th>
<th>Subject</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>D7</td>
<td>DA829/2008 – 2-8 Elizabeth Street, Paddington – Adaption &amp; re-use of existing buildings &amp; new infill buildings including car parking, amalgamation of 4 lots for commercial/retail use &amp; remediation of the site – 16/12/2008  <em>See Recommendation Page 216</em></td>
<td>181-284</td>
</tr>
</tbody>
</table>

*See Recommendation Page 216*
### Meeting Agenda
#### Session Two – Commencing 8.00pm
#### Part Three of Three Parts

<table>
<thead>
<tr>
<th>Item</th>
<th>Subject</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>D8</td>
<td>DA678/2008 - 27 &amp; 29 Wilberforce Avenue, Rose Bay – Demolition of two existing dwelling-houses &amp; ancillary structures, consolidation of two lots into one &amp; construction of new three storey residential flat building consisting of six units, basement level carparking for 14 vehicles, new swimming pool, strata subdivision &amp; landscaping works – 20/10/2008</td>
<td>285-408</td>
</tr>
<tr>
<td></td>
<td>*See Recommendation Page 321</td>
<td></td>
</tr>
<tr>
<td>D9</td>
<td>DA690/2008 – 70-72 Wolseley Road, Point Piper – New deck &amp; landscaping within the foreshore building line – 23/10/2008</td>
<td>409-457</td>
</tr>
<tr>
<td></td>
<td>*See Recommendation Page 421</td>
<td></td>
</tr>
<tr>
<td>D10</td>
<td>Register of Current Land and Environment Court Appeals for Development Applications</td>
<td>458-484</td>
</tr>
<tr>
<td></td>
<td>*See Recommendation Page 458</td>
<td></td>
</tr>
<tr>
<td>D11</td>
<td>Register of SEPP 1 Objections</td>
<td>485-486</td>
</tr>
<tr>
<td></td>
<td>*See Recommendation Page 485</td>
<td></td>
</tr>
</tbody>
</table>
### Additional Report

### Meeting Agenda

**Session Two – Commencing 8.00pm**

**Part Four**

<table>
<thead>
<tr>
<th>Item</th>
<th>Subject</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>D12</td>
<td>DA616/2007 – 88 Old South Head Road, Woollahra – Alterations &amp; additions to existing building including a new three car garage with roof top garden above garage, spa &amp; decking to yard, air-conditioning system &amp; new 1st floor balcony – 20/9/2007</td>
<td>487-574</td>
</tr>
</tbody>
</table>

*See Recommendation Page 515*
Item No: D1  Delegated to Committee
Subject: Confirmation of Minutes of Meeting held on 2 March 2009
Author: Les Windle, Manager - Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 2 March 2009 were previously circulated. In accordance with the guidelines for Committees’ operations it is now necessary for those Minutes be formally taken as read and confirmed.

Recommendation:

That the Minutes of the Development Control Committee Meeting of 2 March 2009 be taken as read and confirmed.

Les Windle
Manager - Governance
DEVELOPMENT CONTROL COMMITTEE SITE INSPECTION REPORT

ITEM No. D2
FILE No. DA 778/2004/7
ADDRESS: 95 Wentworth Road VAUCLUSE 2030
PROPOSAL: Internal and external modifications
APPLICANT: Tifad Developments Pty Ltd
OWNER: Tifad Developments Pty Ltd
DATE LODGED: 02/12/2008
AUTHOR: Mr D Booth

Site Inspection

A site inspection in relation to this Development Application was conducted on Wednesday 4 March 2009, with the following Councillors and staff present:

Present: Councillors Sean Carmichael
         Lucienne Edelman
         Nicola Grieve
         Chris Howe
         Malcolm Young

Staff: D Booth (Senior Assessment Officer)
      N Economou (Team Leader – Team North East)
      C Jenner (Team Leader – Compliance)
      S O’Connor (Secretarial Support – Governance)
      P Robinson (Manager – Development Control)

Apologies: Nil

The following people addressed the Councillors:

Michael Staunton Barrister representing the Applicant & Adam & Maroun Rahme the Applicants
The Councillors at the site inspection submit the following recommendation for consideration by the Development Control Committee:

(Grieve/Young)

Recommendation: Pursuant to Section 96 of the Environmental Planning and Assessment Act, 1979

A. THAT Council, as the consent authority, refuse to modify Development Application No. 778/2004 part 7 for the demolition of an existing dwelling-house, a residential flat building containing 5 units and a garage and the erection of a new residential flat building containing 4 units and basement car parking for 9 vehicles on land at 95 Wentworth Road Vaucluse, for the following reasons:

1. The modification involves additional excessive FSR.

2. The excavation is excessive and is contrary to the excavation objectives and criteria stipulated in Council’s WRDCP 2003.

B. THAT Council’s compliance division continually monitor the development site.

Annexure: Development Assessment Report submitted to the Development Control Committee at its meeting on Monday 2 March 2009.
DEVELOPMENT CONTROL COMMITTEE SITE INSPECTION REPORT

ITEM No. D3
FILE No. DA 778/2004/6
ADDRESS: 95 Wentworth Road VAUCLUSE 2030
PROPOSAL: Change construction method for excavation of revised basement
APPLICANT: Gergely & Pinter Architects Pty Ltd
OWNER: Tifad Developments Pty Ltd
DATE LODGED: 25/11/2008
AUTHOR: Mr D Booth

Site Inspection

A site inspection in relation to this Development Application was conducted on Wednesday 4 March 2009, with the following Councillors and staff present:

Present: Councillors Sean Carmichael
         Lucienne Edelman
         Nicola Grieve
         Chris Howe
         Malcolm Young

Staff:  D Booth (Senior Assessment Officer)
       N Economou (Team Leader – Team North East)
       C Jenner (Team Leader – Compliance)
       S O’Connor (Secretarial Support – Governance)
       P Robinson (Manager – Development Control)

Apologies: Nil

The following people addressed the Councillors:

Michael Staunton Barrister representing the Applicant & Adam & Maroun Rahme the Applicants
The Councillors at the site inspection submit the following recommendation for consideration by the Development Control Committee:

(Grieve/Young)

Recommendation: Pursuant to Section 96 of the Environmental Planning and Assessment Act, 1979

A. THAT Council, as the consent authority, refuse to modify Development Application No. 778/2004 part 6 for the demolition of an existing dwelling-house, a residential flat building containing 5 units and a garage and the erection of a new residential flat building containing 4 units and basement car parking for 9 vehicles on land at 95 Wentworth Road, Vaucluse, for the following reasons:

1. The modification involves additional excessive FSR.

2. The excavation is excessive and is contrary to the excavation objectives and criteria stipulated in Council’s WRDCP 2003.

B. THAT Council’s compliance division continually monitor the development site.

Annexure: Development Assessment Report submitted to the Development Control Committee at its meeting on Monday 2 March 2009.
DEVELOPMENT CONTROL COMMITTEE SITE INSPECTION REPORT

ITEM No. D4
FILE No. DA 692/2008
ADDRESS: 150 Fletcher Street WOOLLAHRA 2025
PROPOSAL: Alterations and additions to existing two storey attached dwelling including a new loft garage
TYPE OF CONSENT: Local Development
APPLICANT: Mr G Harrison
OWNER: Mr H J George
DATE LODGED: 23/10/2008
AUTHOR: Ms S Chambers

Site Inspection

A site inspection in relation to this Development Application was conducted on Wednesday 4 March 2009, with the following Councillors and staff present:

Present: Councillors
Sean Carmichael
Lucienne Edelman
Nicola Grieve
Chris Howe (Chair)
Susan Jarnason
Malcolm Young
Toni Zeltzer

Staff: S Chambers (Senior Assessment Officer)
P Robinson (Manager – Development Control)
S O’Connor (Secretarial Support - Governance)
D Waghorn (Team Leader – Team Central)

The following people addressed the Councillors:

Ms M Levitt of 148 Fletcher Street & Lindsay Fletcher representing Ms Levitt objectors
Mr A & Mrs B Blecher 152 Fletcher Street & Mr Nash representing Ms Levitt objectors
Mrs George representing the owner & Tony Moody representing the applicant

The Councillors at the site inspection submit the following recommendation for consideration by the Development Control Committee:
Recommendation: Pursuant to Section 80(1) of the Environmental Planning and Assessment Act, 1979

THAT the Council, as the consent authority, defer Development Application No. 692/2008 for alterations and additions to an existing two storey attached dwelling including a new loft garage on land at 150 Fletcher Street, Woollahra subject to the following reasons:

1. The 1st floor level rear setback of 150 Fletcher Street is to match the 1st floor level rear setback of 148 Fletcher Street.
2. The western wall of 150 Fletcher Street is to be painted in a light reflective colour.

Annexure: Development Assessment Report submitted to the Development Control Committee at its meeting on Monday 2 March 2009.
Please note that Item D2 was called at the Application Assessment Panel meeting held on 10 March 2009 by Councillors Zelter & Edelman.

Reason for calling item:

1. Approx 20% breach in FSR- yet the southern neighbour loses much of the direct sunlight to the key habitable rooms and private courtyard garden to the rear of her property during midwinter.

2. Number 37 Moncur is a narrow site and is also compromised in length due to the on-site garaging with a loft.

   Thus, it is unreasonable to expect to fit 3 bedrooms, a bathroom and an ensuite upstairs, without adversely impacting on the neighbours at No. 35 Moncur St. to the south.

Referred to you for action.

Les Windle
Manager - Governance

Annexure: Application Assessment Report dated 10 March 2009
## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<table>
<thead>
<tr>
<th>ITEM No.</th>
<th>D5</th>
</tr>
</thead>
<tbody>
<tr>
<td>FILE No.</td>
<td>DA 614/2008</td>
</tr>
<tr>
<td>PROPERTY DETAILS</td>
<td>37 Moncur Street, Woollahra</td>
</tr>
<tr>
<td>Lot &amp; DP No.: LOT: 1 DP: 783448</td>
<td></td>
</tr>
<tr>
<td>Side of Street: East</td>
<td></td>
</tr>
<tr>
<td>Site Area (m²): 156m²</td>
<td></td>
</tr>
<tr>
<td>Zoning: Residential 2(a)</td>
<td></td>
</tr>
</tbody>
</table>

### PROPOSAL
Alterations and additions to dwelling

### TYPE OF CONSENT:
Local

### APPLICANT:
Mr J Stathis

### OWNER:
Natpave Pty Ltd

### DATE LODGED:
23 September 2008-original application
February 2009-amended application

### AUTHOR:
Ms B Thomas

### DOES THE APPLICATION INVOLVE A SEPP 1 OBJECTION
YES ☐ NO ☒

### 1. RECOMMENDATION PRECIS
It is recommended that development consent be granted.

### 2. PROPOSAL PRECIS
The proposal is for alterations and additions to an existing dwelling house.
3. **LOCALITY PLAN**

![Map of the locality plan]

**Subject Site**

**Objectors**

**North**

**Locality Plan**

4. **DESCRIPTION OF PROPOSAL**

The proposal was amended on 10th November and February 2009 in the following terms:

- The roof pitch to the loft was changed from flat to 45 degrees with a front dormer
- The skillion dormers on the western façade of the loft replace the sliding doors
- The roof pitch on the southern side of the main residence is setback 1100 from the boundary and sloped 30 degrees

The proposal, as amended, includes the following works:

**Ground Floor**
- Demolish the existing kitchen, dining area and patio
- Relocate the kitchen to the centre of the dwelling
- Reduce the size of the bathroom
- Reconfigure and relocate the staircase to the south
- Convert the bedroom and bath area to a dining area

**First Floor**
- Construction of Bed 1 and ensuite over the existing timber deck
- Bed 3 replaces existing spiral staircase
- Relocate the bathroom to the centre of the dwelling

**Garage and Loft**
- Construct garage with loft to the rear of the site
- One parking space, toilet, shower and laundry provided on the ground floor
5. SUMMARY

<table>
<thead>
<tr>
<th>Reasons for report</th>
<th>Issues</th>
<th>Submissions</th>
</tr>
</thead>
</table>
| The DA does not satisfy the criteria for determination under staff delegation as there is an unresolved objection | • Overshadowing  
• Privacy  
• Bulk and Scale | One 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 or accurate, the applicant has to provide a Quantity Surveyor’s report.

The applicant’s estimated cost of the proposed development at $460,000 has been checked using our adopted practice and is considered to be accurate.

7. DESCRIPTION OF SITE OF LOCALITY

<table>
<thead>
<tr>
<th>THE SITE AND LOCALITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical features</td>
</tr>
<tr>
<td>The site is located on the eastern side of Moncur Street. The site is predominantly rectangular in shape and has a total site area of 156m². It has a western frontage to Moncur Street measuring 4.8m, an eastern (rear) frontage to Dorhauer Lane measuring 4.875m, and northern and southern boundaries measuring approximately 33metres.</td>
</tr>
<tr>
<td>Topography</td>
</tr>
<tr>
<td>The site is relatively level.</td>
</tr>
<tr>
<td>Existing buildings and structures</td>
</tr>
<tr>
<td>Existing on site is a two storey brick and sandstone residence with no car parking currently provided on the site.</td>
</tr>
<tr>
<td>Environment</td>
</tr>
<tr>
<td>The surrounding area is residential, characterised by one and two storey dwelling houses.</td>
</tr>
</tbody>
</table>
8. PROPERTY HISTORY

<table>
<thead>
<tr>
<th>PROPERTY HISTORY</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Current use</td>
<td>Residential</td>
</tr>
<tr>
<td>Previous relevant applications</td>
<td>DA 15/2002/1 was for a rear wall roller shutter door facing the laneway to provide off street parking within site was approved on 15 April 2002. This consent has now lapsed.</td>
</tr>
<tr>
<td></td>
<td>At 39 Moncur Street, DA615/2008/1 was for the erection of a garage with loft and was approved on 16 December 2008. The garage and loft subject of this application matches the garage and loft approved at 39 Moncur Street.</td>
</tr>
<tr>
<td>Pre-DA</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Requests for additional information</td>
<td>Not applicable.</td>
</tr>
<tr>
<td>Amended plans/ Replacement Application</td>
<td>Amended Plans were received in November 2008 and February 2009.</td>
</tr>
<tr>
<td>Land &amp; Environment Court appeal</td>
<td>Not applicable.</td>
</tr>
</tbody>
</table>
9. REFERRALS

9.1 The following table contains particulars of internal referrals.

<table>
<thead>
<tr>
<th>Referral Officer</th>
<th>Comment</th>
<th>Annexure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development Engineer</td>
<td>Council’s Development Engineer considers the proposal satisfactory subject to conditions A3, A5, C1, C2, C5, C8, D5, D8, D9, E5, E6, E8, E12, E13, F2 and H3</td>
<td>2</td>
</tr>
<tr>
<td>Heritage Officer</td>
<td>Council’s Heritage Officer requested a condition to redesign the loft. Amended plans were submitted which modified the loft; therefore the condition is no longer relevant. Council’s Heritage Officer considers the proposal satisfactory subject to Conditions C1.f and C1.g.</td>
<td>3</td>
</tr>
</tbody>
</table>

9.2 No external referral bodies required.

ENVIRONMENTAL ASSESSMENT UNDER S.79C

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

10. STATE/REGIONAL INSTRUMENTS AND LEGISLATION

10.1 SEPPs

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The development application was accompanied by BASIX Certificate No. A40897 committing to environmental sustainability measures. Refer to Conditions C4, H2 and I1.

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

State Environmental Planning Policy No. 55

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

10.2 REPs

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject site is within the area to which the SREP applies. However, the site is not visible from the Harbour and is a considerable distance from the Harbour foreshore. The proposal is not affected by the provisions of the plan.
10.3 Section 94 Contribution

The proposal is not subject to Council’s Section 94 Contributions Plan as the proposed development does not increase demand on public facilities.

A contribution of 1% of the cost of the works is applicable under the provisions of Council’s S94A Contributions Plan (1% of $460 000 = $4600).

10.4 Other legislation

No other legislation required.

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

<table>
<thead>
<tr>
<th>Site Area (156m²)</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall Height (metres)</td>
<td>6m</td>
<td>6m</td>
<td>9.5m</td>
<td>Yes</td>
</tr>
</tbody>
</table>

11.3 Height

The proposal attains a maximum height of approximately 6m which complies with Council’s statutory height requirement of 9.5m under Clause 12 of WLEP 1995. Furthermore, the proposal complies with the relevant objectives under Clause 12AA of WLEP 1995.

11.4 Other special clauses/development standards

**Clause 18 Excavation**: Minimal excavation is required for the footings of the proposed works. The minor nature of excavation proposed would be within 1.5m of the eastern and southern boundary but would not foreseeably require support to the adjoining land of the neighbouring allotments. The excavation would not impact on any significant vegetation or landform. The proposed excavation is acceptable in terms of Clause 18.

**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 listed as a contributory item and is located within a heritage conservation area.
The proposed works would be restricted to the rear and would be visible from Dorhauer Lane which is characterised by garages. The new development is consistent with the character of the lane and as a result the location and design of the proposed works would not detract from the heritage significance of the contributory item or the streetscape.

Council’s Heritage Officer reviewed the amended plans and was satisfied that the roof form of the garage is acceptable as it matched the approved roof forms of number 39 Moncur Street.

The proposal is acceptable in terms of Clause 26 to 33 of the Woollahra LEP 1995.

12. **DRAFT AMENDMENTS TO STATUTORY CONTROLS**

None relevant.

13. **DEVELOPMENT CONTROL PLANS**

13.1 **Compliance table - Woollahra Heritage Conservation Area DCP 2003**

<table>
<thead>
<tr>
<th>Site Area (156m²)</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Floor Space Ratio (m²)</td>
<td>154.41m² (0.98:1)</td>
<td>187.28m² (1.19:1)</td>
<td>156.4m² (1:1)</td>
<td>No</td>
</tr>
<tr>
<td>Deep Soil Landscaped Area (m²)</td>
<td>&gt;8% 12.5m²</td>
<td>&gt;8% 12.5m²</td>
<td>8% 12.5m²</td>
<td>Yes subject to condition</td>
</tr>
<tr>
<td>Excavation Piling &amp; Subsurface Wall Setback (metres)</td>
<td>&lt;1.5m</td>
<td>&lt;1.5m</td>
<td>1.5</td>
<td>No*</td>
</tr>
<tr>
<td>Minimum Floor to Ceiling Height – Habitable Rooms (metres)</td>
<td>&gt;2.7</td>
<td>2.5m</td>
<td>2.7</td>
<td>No</td>
</tr>
<tr>
<td>Solar Access to Ground Level Open Space of Adjacent Properties</td>
<td>&lt;35m² Dimension – 2.5m 2 hours</td>
<td>&lt;35m² Dimension – 2.5m 2 hours</td>
<td>&lt;35m² Dimension – 2.5m 2 hours</td>
<td>No*</td>
</tr>
<tr>
<td>Private Open Space Per Dwelling</td>
<td>&gt;Area – 25m² Dimension – 3m 16%</td>
<td>&gt;Area – 25m² Dimension – 3m 16%</td>
<td>Area – 25m² Dimension – 3m 16%</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>&gt;Principal Area – 12m² Dimension – 3m</td>
<td>&gt;Principal Area – 12m² Dimension – 3m</td>
<td>Principal Area – 12m² Dimension – 3m</td>
<td>Yes</td>
</tr>
<tr>
<td>Side and Rear Fence Height (metres)</td>
<td>3.2m</td>
<td>1.8m</td>
<td>1.8</td>
<td>Yes</td>
</tr>
<tr>
<td>Car Parking Spaces</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>Yes</td>
</tr>
<tr>
<td>Location of Car Parking Structures</td>
<td>Behind Front Building Line</td>
<td>Behind Front Building Line</td>
<td>Behind Front Building Line</td>
<td>Yes</td>
</tr>
</tbody>
</table>

*Existing non compliance

13.2 **Precinct Controls**

The proposal conserves the significant characteristics of the West Woollahra Precinct and complies with the specific controls for the precinct.
13.3 Significant items and group significant buildings

The subject site is considered to be a contributory item as it contributes to the overall heritage significance of the HCA. The dwelling house is one of a pair of Victorian semi-detached houses.

C1 of Section 3.2.1 requires that significant items are to be retained and conserved.

The proposed works would not adversely impact on the significance of the group as the works would be restricted to the rear. Furthermore, Council’s Heritage Officer has examined the amended scheme and has no objections to the proposal, subject to **Condition C.1**.

C3 of Section 3.2.3 states that additions to significant items are to be located at the rear of the building; the proposal complies with this requirement.

C4 of Section 3.2.3 outlines that additions to significant items are to match the predominant rear setback of the adjacent buildings and the relevant historic development pattern.

The proposed works will reduce the existing ground floor level setback by 5m and be setback an additional 3m from the approved rear setback of 39 Moncur Street. This is considered to be acceptable.

The proposed first floor level will be setback 1.8m from the approved first floor level rear setback of 39 Moncur Street. This is considered to be acceptable.

The proposed works would be consistent with the rear first floor level setback of the adjoining property at 35 Moncur Street.

C7 of Section 3.2.3 of the DCP stipulates that the bulk, height and scale of additions to significant items must be less than, and must not compromise or dominate the principal building form of the building.

The proposed works to the built form would be minimal as the proposed addition would extend the first floor by 4m and reduce the length of the ground floor by 5m. Council’s Heritage officer has imposed **Condition C1** to ensure the wall between the existing living room and dining room would be retained.

There is minimal demolition of the interior of the existing significant building, therefore the alterations and additions are considered to be satisfactory.

The proposed garage and loft at the rear will not compromise the group’s integrity and be comparable with the garage and loft approved on 39 Moncur Street.

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

13.4 Building Type Controls

The dwelling on the site is a Victorian semi-detached house.

O1 of Section 3.3.3 aims to ensure that the original symmetrical characteristics of pairs of semi-detached houses are retained and enhanced.

The proposed works would ensure that the symmetrical characteristics of the pair are maintained and enhanced with the garages and lofts at the rear designed in a symmetrical form.
C1 of Section 3.3.3 specifies that alterations and additions to one house of a semi-detached pair must not compromise the uniformity and geometry of the principal or street front elevation or dominate the other house in the pair, particularly when the other house is unaltered.

The existing front façade would not be altered. The proposed works will not compromise the uniformity and geometry and is consistent with the height alignment, form, scale and architectural character of the group.

C5 of Section 3.3.3 outlines that additions must not dominate the original principal building form of the building.

The proposal will be restricted to the rear and will not dominate the original principal building form of the dwelling.

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

13.5 General controls for development

Building location

O1 of Section 3.4.3 aims to ensure that the siting, levels and front, side and rear building setbacks of additions and infill development continue the established historical pattern of development.

As discussed above, the proposal will not extend the ground floor beyond the established rear setback of 39 Moncur Street and is considered to be acceptable.

C5 of Section 3.4.3 stipulates that the proportion of site cover is to be no greater than that of adjoining properties.

The proposed works are considered to be comparable with the site coverage of the existing and adjoining properties. Furthermore, the proposal complies with Council’s requirements for height and private open space.

Excavation piling and sub-surface wall setback

C9 of Section 3.4.3 stipulates a minimum excavation and sub-surface walls shall not be less than 1.5m from any boundary.

Refer to assessment under Clause 18 above.

Building height, form, bulk, scale and character

C1 of Section 3.4.4 of the DCP requires that the height, bulk, scale, dominant roof forms, ridge lines and building envelope of new development be consistent with the predominant height bulk and scale of significant items in the streetscape that are of a similar building type. Control 1 further outlines that the bulk should be distributed to minimise overshadowing on adjoining properties.

Considering the proposed works would be located to the rear of the dwelling, they would not detract from the significance or character of the Moncur streetscape. The alterations and additions would retain the predominant patterns of height, bulk and scale distinctive to the streetscape of Moncur Street and the HCA generally. The bulk and scale is comparable to that of the existing building and given the increased rear setbacks presents less bulk and scale than the recently approved dwelling at 39 Moncur Street and 35 Moncur Street.
The proposed garage and loft at the rear will be consistent with the height, bulk and scale of the garages and lofts within the streetscape of Dorhauer Lane.

**Floor to Ceiling Heights**

C5 of Section 3.4.4 outlines that habitable rooms must achieve a floor to ceiling height of 2.7m. The proposed loft attains a floor to ceiling height of 2.5m-2.8 m; a non compliance of up to 0.2m.

The reduced floor to ceiling height would not adversely impact on the environmental quality of the internal living space amenity to the residents due to access to windows. Given the majority of the works comply with the BCA no objection is raised to the non compliance in this instance.

**Floor Space Ratio**

The Floor Space Ratio (FSR) of the existing site is 0.98:1 (154.4m²). C7 of Section 3.4.4. requires a maximum FSR 1:1 (156.4m²) for the site. The proposed works would increase the existing FSR by 32m² to 1.19:1 (187.38m²).

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

- The built form will not be significantly altered and is compatible with the built form of the existing building and adjoining properties in the streetscape
- The approved FSR for 39 Moncur Street is 1.18:1. As such, the symmetry, built form, bulk and scale for the two group significant buildings will be maintained
- The non-complying floor space does not result in any direct loss of privacy for the adjoining neighbours, subject to **Condition C1**
- The works would not unreasonably impact on sunlight considering the east west orientation of the site (see C.8-overshadowing below)
- The majority of the works would be within the existing building footprint
- The form and scale of the proposed works are not considered to be excessive

**Overshadowing**

C8 of Section 3.4.4 of the DCP requires that sunlight is provided to at least 50% (or 35m² with minimum dimensions 2.5m, which ever is smaller) of the main ground level private open space of adjacent properties for a minimum of two hours between 9am and 3pm on June 21. Where existing overshadowing is greater than this sunlight is not further reduced.

The level of overshadowing is less than the 35m² required for 2 hours, however sunlight is not further reduced by the proposal as discussed below.

For private open space to be assessed as being in sunlight, either half its area or a useable strip adjoining the living area should be in sunlight, depending on the size of the space. The amount of sunlight on private open space should be measured at ground level.

The definition for private open space in the DCP excludes swimming pools however a practical approach needs to be taken in assessing sunlight to the pool.

The proposed works would increase sunlight to the private open space of 35 Moncur Street at 12 and 1pm and increase sunlight to the swimming pool at 1pm and 2pm. The following table demonstrates the difference in area of sunlight to 35 Moncur Street.
### June 21

<table>
<thead>
<tr>
<th>Time</th>
<th>Existing Sunlight to Private Open Space</th>
<th>Existing Sunlight to Swimming Pool</th>
<th>Proposed Sunlight to Private Open Space</th>
<th>Proposed Sunlight to Swimming Pool</th>
</tr>
</thead>
<tbody>
<tr>
<td>9am</td>
<td>2m²</td>
<td>No sun</td>
<td>No sun</td>
<td>No sun</td>
</tr>
<tr>
<td>10am</td>
<td>2.4 m²</td>
<td>No sun</td>
<td>3m²</td>
<td>No sun</td>
</tr>
<tr>
<td>11am</td>
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</tr>
<tr>
<td>12pm</td>
<td>17 m²</td>
<td>6m²</td>
<td>24m²</td>
<td>0.56 m²</td>
</tr>
<tr>
<td>1pm</td>
<td>15 m²</td>
<td>8.4 m²</td>
<td>23m²</td>
<td>12 m²</td>
</tr>
<tr>
<td>2pm</td>
<td>7.6 m²</td>
<td>6 m²</td>
<td>6m¹</td>
<td>12m²</td>
</tr>
<tr>
<td>3pm</td>
<td>4 m²</td>
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</tr>
<tr>
<td>Total</td>
<td>61m²</td>
<td>20.4m²</td>
<td>69m²</td>
<td>24.56m²</td>
</tr>
</tbody>
</table>

The existing sunlight received to the private open space (measured in m²) of 35 Moncur Street from 9am -3pm on June 21 is 61m², the proposed works would allow for 69m²; an increase of 8m². The pool currently receives approximately 20.4m² of sunlight and the proposal would allow for 24.56m²; an increase of 4m².

The extent of overshadowing is also considered to be satisfactory for the following additional reasons:

- The proposal complies with Council’s statutory height requirement of 9.5m under WLEP 1995
- The proposal complies with open space and deep soil landscaping requirements
- The subject site is narrow in width and any fully compliant development would create a loss in solar access to the private open space and north facing windows to the adjoining property
- The removal of the 3.1m common boundary wall and its replacement with a 1.8m high wall will significantly improve solar access to the primary area of open space.
- Allowing a breezeway on the northern side is uncharacteristic of the majority of redeveloped dwellings on Moncur Street
- The objector’s property is twice the width of the subject site and the private open space is existing in shadows due to the boundary wall height of 3.1m

The objector contends that the courtyard on the northern side of the site is their primary area of private open space and as such the first floor level of the proposal should be setback 3.3m (inline with the existing privacy screen) to provide sufficient solar access.

As mentioned above the ground and first floor rear setbacks are comparable with No.35 and 39 Moncur Street. Requiring the applicants to setback the rear of the dwelling further than the two adjoining buildings will create an unreasonable sense of enclosure for the applicant with little gain to the neighbouring property in terms of solar access. Given No. 35 Moncur Street will receive increased amount of solar access due to the reduction of the fence and the rear setback of the ground floor level, the proposal is considered to be satisfactory.

Furthermore, the objector contends that the garage and loft should be reduced in depth by 500mm to be inline with the garage and loft for 35 Moncur Street. This reduction of 500mm will reduce the garage to below the minimum car parking requirement under AS2890.1, which is not considered to be acceptable. In addition, the reduction of the garage and loft will disrupt the symmetry of the two group significant items at 37 and 39 Moncur Street. **Condition C.1** is imposed to ensure that the western edge of the loft shall be setback to be inline with the garage, which is consistent with the loft at 39 Moncur Street.
Under the Woollahra Heritage Conservation Area DCP there are no controls for north facing windows; however the northern elevation windows of 35 Moncur Street currently receive more than 3 hours of sunlight. The proposed alterations and additions will still ensure the ground floor windows will receive 3 hours of solar access but the sunlight area would be reduced.

The first floor north facing windows would retain sunlight for more than 3 hours between 9am and 3pm.

The extent of overshadowing to the private open space and north facing windows of 35 Moncur Street is considered to be inevitable. The inevitability of the extent of overshadowing is a function of the density, subdivision pattern and east-west orientation of the two sites.

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

**Materials, finishes and colours**

Section 3.4.5 sets out requirements in relation to materials, finishes and colours, which should be appropriate to the building type and style.

The materials, finishes and colours for the proposed works including rendered brick, timber and custom orb colourbond roofing would be consistent with the existing building and the character of the area.

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

**Open space and landscaping**

The proposed works would ensure that adequate provision is made for accessible and useable private open space and deep soil landscaping in accordance with O1 of Section 3.4.6.

To further increase the private open space the first floor western edge of the loft shall be set back 0.534m to be inline with the garage. This would maximise the private open space available to the rear courtyard. Refer to Condition C1.

Condition C1 requires the applicant to provide an additional $5.1m^2$ of deep soil landscaping in the rear yard to maintain permeable and semi-permeable areas of open space.

Subject to Condition C1 the proposal would satisfy the relevant criteria prescribed by the DCP.

**Fences, gates and retaining walls**

C6 of Section 3.4.7 stipulates that the height of a side or rear fence is not to exceed 1.8metres.

The southern boundary fence between No. 37 and No. 35 Moncur Street has been reduced from 3.5m to 1.8m. The reduction in height of the fence shall create a non intrusive boundary wall which would improve the amenity for the residents of 35 Moncur Street and improve sunlight which is a concern of the residents.

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

A new skylight for the stairs on the first floor is located on the southern side of the roof. The proposed skylight would not be visible from the public domain.

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

Parking and garages

O5 of section 3.4.9 aims to limit loft structures over garages to appropriate locations.

Loft structures are permissible in the West Woollahra precinct. Furthermore, the proposal is consistent with the existing character of streetscape as there are several existing examples of garages with lofts within Dorhauer Lane.

The design of the proposed loft incorporates a contemporary design rather than imitating historic design features in accordance with control C7 of section 3.4.9 of the Woollahra HCA DCP.

C8 of Section 3.4.9 outlines that where rear lane parking is permitted and the property is wider than 4.25m, proposals must provide a visual connection between the private and public domain by the inclusion of a pedestrian gate or fencing panel with a minimum width of 900mm and maximum height of 1.8m. Planting along the rear boundary should be incorporated where possible. Garage doors and sections of solid wall should be of minimal width. Garage doors must open into the property.

The subject property is 4.8m and would provide a rear garage and loft without a visual connection to the private domain. It is acceptable for the proposal not to provide a visual connection to the private domain as the rear of the dwelling is not intact and the view from the lane is not significant.

C13 of Section 3.4.9 stipulates that loft structures will be permitted in the West Woollahra where the form, bulk and scale of the structure would not overwhelm the existing building on site.

The scale, bulk and form of the proposed garage and loft would not overwhelm the existing building on site. A dormer window is centrally located in both the front and rear elevations of the garage. The proportions and design of the proposed dormer windows are appropriate to the context of the precinct.

C14 of Section 3.4.9 specifies that suitable door types for new garages are in order of preference, bi-fold panelled doors, panel lift doors, vertical steel gates and roller shutter doors. Roller shutter doors without a surrounding masonry structure are not permitted.

The proposal seeks to provide a panel lift door fronting Dorhauer Lane which is surrounded with masonry and is considered to be acceptable.

C15 of Section 3.4.9 requires that where on site parking is permitted by the other controls dwelling houses may provide a maximum of two on-site parking spaces.

The proposal provides 1 parking space, the subject site is constrained and due to its size (156.4m²) would not be able to provide 2 spaces.

The proposed garage and loft is consistent with Table 3.29 of the DCP, except for the northern side pillar which is greater than 600mm. The side pillar on the northern edge would be reduced in width due to an engineering condition imposed to ensure access is compliant with the Australian Standard.
Refer to **Condition C1**. The pillar would not have an adverse impact on Dorhauer Lane and is appropriate in the context of the lane.

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

**Acoustic and visual privacy**

C8 of Section 3.4.12 stipulates that direct overlooking of the main living areas or private open space of an existing dwelling from windows, balconies, stairs, landings, terraces and decks or other private communal or public areas within a development is to be obscured or screened.

The proposed west facing dormer windows in the loft above the garage shall be glazed with translucent glass to a height of 1.7m above the finished first floor level. This is to ensure that the proposal would not result in any adverse impacts in terms of loss of privacy of the open space to the adjoining properties. Refer to **Condition C1**.

The first floor windows to the northern (side) elevation and the eastern (rear) elevation of the dwelling feature operable louvers and are considered satisfactory in terms of privacy being maintained for adjoining properties.

The new location of private open space is consistent with the private open space of 35 and 39 Moncur Street.

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

**Stormwater management**

The proposal generally accords with the aims and objectives of section 3.3.13

**Energy efficiency**

The proposed works would meet the BASIX certificate requirements complying with the Water, Thermal comfort and energy requirements. Refer to **Conditions C4, H2 and I1**.

13.7 **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. Refer to **Condition E2**.

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

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

16. **THE SUITABILITY OF THE SITE**

The subject site is suitable for the proposed works.
17. **SUBMISSIONS**

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

**Nick Juradowitch** from Ingham Planning on behalf of Mr Sam Leahy and Ms Clare Paspaley of 35 Moncur Street, Woollahra.

The objections raised the following issues:

- Overshadowing into the private open space of 35 Moncur Street. *Refer to Part 13.5 building height, form, bulk, scale and character*
- Privacy impacts from the west facing window of the loft and the east facing first floor bedroom window from the dwelling. *Refer to Part 13.5 Acoustic and visual privacy*
- Building bulk and scale of dwelling and loft as viewed from 35 Moncur Street. *Refer to Part 13.5 building height, form, bulk, scale and character*
- Reduction in Private Open space. The private open space proposed complies with Council’s controls.
- Reduction in boundary wall height. *Refer to Part 13.5 Fences, gates and retaining walls*

18. **CONCLUSION - THE PUBLIC INTEREST**

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

19. **DISCLOSURE STATEMENTS**

Under S.147 of the Environmental Planning and Assessment Act, 1979 there have been no disclosure statements regarding political donations or gifts made to any councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.

20. **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. 614/2008 for alterations and additions to dwelling on land at 37 Moncur Street Woollahra, 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, piering, 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.

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.

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Author/Drawn</th>
<th>Date(s)</th>
</tr>
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<tr>
<td>Sheet 1 of 2</td>
<td>Architectural Plans</td>
<td>Richard Altavilla &amp; Associates</td>
<td>1/12/08</td>
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<td>Sheet 2 of 2</td>
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<td>Ref: 020508</td>
<td>Stormwater Concept Plan shown on the lower floor plan</td>
<td>Richard Altavilla &amp; Assoc</td>
<td>1/12/08</td>
</tr>
<tr>
<td>Plan 1 of 2</td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

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.)

A.4 Prescribed Conditions

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

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

Standard Condition: A30
A.5 Ancillary Aspect of the Development (s80A(2) of the Act)

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

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

Standard Condition: A8

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

B.1 Construction Certificate required prior to any demolition

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

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

Standard Condition: B1

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

C.1 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. To ensure that an adequate level of visual privacy is maintained to the neighbouring properties the glazing to the first floor windows to the west elevation of the garage structure shall be translucent and fixed to a height of 1.7m above the finished first floor level
b. That western edge of the loft above the garage shall have its set back reduced by 0.534m to be inline with the garage. This would maximise the private open space available to the rear courtyard.

C. That the garage door access to be widened to a minimum of 3.6m
d. That 8% of the site area (12.5m²) shall contain deep soil landscaping as defined in Council’s Woollahra Heritage Conservation Area Development Control Plan 2003 to ensure the provision of permeable and semi-permeable areas of open space to assist with stormwater management.
e. The wall between the existing living and dining rooms must be retained, although the door may be widened to an approved width.
f. No textured finishes are to be used on the exterior.
g. The existing front façade, roof and verandah are to remain unchanged.
Note: The effect of this condition is that it requires design changes and/or further information to be provided with the Construction Certificate drawings and specifications to address specific issues identified during assessment under section 79C of the Act.

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

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

Standard Condition: C4

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

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

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

a. prior to the issue of a construction certificate, where a construction certificate is required; or
b. prior to the issue of a subdivision certificate, where only a subdivision certificate is required; or

c. prior to the issue of an occupation certificate in any other instance.

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<th>Description</th>
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<td><strong>LONG SERVICE LEVY</strong> under Building and Construction Industry Long Service Payments Act 1986</td>
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<td>$11,200,</td>
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<tr>
<td><strong>DEVELOPMENT LEVY</strong> under Woollahra Section 94A Development Contributions Plan 2005 This plan may be inspected at Woollahra Council or downloaded from our website <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a>.</td>
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<td>Development Levy (S94A)</td>
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<td>$4600+ Index Amount</td>
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<td><strong>INSPECTION FEES</strong> under section 608 of the Local Government Act 1993</td>
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<td>Public Road and Footpath Infrastructure Inspection Fee</td>
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<td>Security Administration Fee</td>
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<td><strong>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</strong></td>
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<tr>
<td>Plus any relevant indexed amounts and long service levy</td>
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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

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 development levy will delay the issue of any Part 4A Certificate and could void any Part 4A Certificate (construction certificate, subdivision certificate, or occupation certificate).

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

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

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

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

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

c. the bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent; and

d. the bank’s obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

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

Standard Condition: C5

C.3 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.4 BASIX commitments

The applicant must submit to the *Certifying Authority* BASIX Certificate No. A40897 with any application for a *Construction Certificate*.

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

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

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

*Standard Condition: C7*

C.5 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:

- Full width vehicular crossings having a width of 4.00m 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.

C.6 Structural Adequacy of Existing Supporting Structures

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

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

Standard Condition: C13

C.7 Stormwater management plan (Clause 25(2) WLEP 1995)

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

The Stormwater Management Plan must detail:

a. general design in accordance with by Richard Altavilla & Assoc Ref: 020508 Plan 1 of 2 dated 04.08.08 other than amended by this and other conditions;
b. the discharge of stormwater, by direct connection, to Dorhauer Lane;
c. compliance the objectives and performance requirements of the BCA;
d. any rainwater tank required by BASIX commitments including their overflow connection to the Stormwater Drainage System, and
e. general compliance with the Council’s draft Development Control Plan Stormwater Drainage Management (draft version 1, public exhibition copy dated 23 August 2004)

The Stormwater Management Plan must include the following specific requirements:
Layout plan

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

It must include:

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

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

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

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

Standard Condition: C51

C.8 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 and include:

- the widening of the garage door to a minimum on 3.6m. The shower and WC are to be located clear of this access so there is no conflict.

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

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.

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

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

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

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

a) the vertical height above footpath level of the structure being demolished is less than 4.0 m; or

b) the least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.
The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must —

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

The principal contractor or owner builder must pay all fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection. The principal contractor or owner builder must ensure that Overhead Protective Structures are installed and maintained in accordance with WorkCover NSW Code of Practice - Overhead Protective Structures, gazetted 16 December 1994, as commenced 20 March 1995.


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

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

Standard Condition: D11

D.3 Site Signs

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

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

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

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

D.4 Toilet Facilities

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

Each toilet provided:

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

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

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 downloaded 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:
   • appointed a principal certifying authority for the building work, and
   • 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:
   • notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
   • 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:
   a) 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
   b) notified the principal certifying authority of any such appointment, and
c) 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
d) 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**

1) 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*.

2) 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:

   a) in the case of work for which a *principal contractor* is required to be appointed:
      (i) the name and licence number of the principal contractor, and
      (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
   b) in the case of work to be done by an owner-builder:
      (i) the name of the owner-builder, and
      (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

3) 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.

4) 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 Construction Management Plan

As a result of the site constraints, limited space and access a Construction Management Plan is to be submitted to Council. Due to the lack of on-street parking availability a Work Zone may be required from Council during construction.

A construction management plan must be submitted and approved by Council’s Development Engineer. The plan must:-

a. describe the anticipated impact of the construction works on:
   • local traffic routes
   • pedestrian circulation adjacent to the building site
   • and on-street parking in the local area, and;

b. describe the means proposed to:
   • manage construction works to minimise such impacts,
   • provide for the standing of vehicles during construction,
   • provide for the movement of trucks to and from the site, and deliveries to the site, and;

c. show the location of:
   • any site sheds and any anticipated use of cranes and concrete pumps,
   • any areas of Council property on which it is proposed to install a Works Zone (Construction Zone),
   • structures to be erected such as hoardings, scaffolding or shoring,
   • any excavation.

d. describe the excavation impact on the area including
   • Number and types of trucks to be used
   • Time frame
   • Streets to be used
   • Routes to be taken
   • Directions of travel
   • Truck storage areas
   • It is recommended that vehicle routes be shared
   • Excavation is to only be carried out outside peak and school hours between 9.30am to 2.30pm week days
   • The CMP is to include both demolition and excavation works.

e. show the location of all Tree Protection (Exclusion) Zones as required within the conditions of this development consent.

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. Standing of cranes and concrete pumps on Council property will need approval on each occasion.

Note: A minimum of eight weeks will be required for assessment. Work must not commence until the Construction Management Plan is approved. Failure to comply with this condition may result in fines and proceedings to stop work.

Standard Condition: D9

D.9 Work (Construction) Zone – Approval & Implementation

A work zone is required for this development. The principal contractor or owner must apply for, obtained approval for, pay all fees for and implemented the required work zone before commencement of any work.
The principal contractor must pay all fees associated with the application and occupation and use of the road as a work zone. All Work Zone signs must have been erected by Council to permit enforcement of the work zone by Rangers and Police before commencement of any work. Signs are not erected until full payment of work zone fees.

Note: The principal contractor or owner must allow not less than four weeks (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under the Clause 22 of the Transport Administration (General) Regulation 2000 to exercise those functions delegated by the Roads and Traffic Authority under Section 50 of the Transport Administration Act 1988.

Note: The enforcement of the work zone is at the discretion of Council’s Rangers and the NSW Police Service. The principal contractor must report any breach of the work zone to either Council or the NSW Police Service.

Standard Condition: D10

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


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, piering, 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.


**Standard Condition: E6**

**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 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.

E.6 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;

E.7  Support of adjoining land and buildings

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

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

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

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

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

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

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

Standard Condition: E13

E.8  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

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.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, and

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 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 downloaded free of charge from Council’s web site www.woollahra.nsw.gov.au or obtained from Council’s office.

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

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

E.12 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.13 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

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

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

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

Note: new building includes an altered portion of, or an extension to, an existing building. Standard Condition: F1
F.2 Commissioning and Certification of Systems and Works

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

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

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

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

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

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

Standard Condition: F7

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

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 Fulfillment of BASIX commitments – Clause 154B of the Regulation

All BASIX commitments must be effected in accordance with the BASIX Certificate No. A40897.

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

H.3 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. relocation of existing power/light pole
f. relocation/provision of street signs
g. new or replacement street trees;
h. 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.
i. new or reinstated kerb and guttering within the road; and
j. 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

I.1 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. A40897.

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

No relevant conditions.

K. Advisings

K.1 Appeal

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

Belinda Thomas, Assessment Officer on (02) 9391 7085

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

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

Standard Condition: K14

K.2 Builders Licences and Owner Builders Permits

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

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

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

Standard Condition: K5

K.3 Building Standards - Guide to Standards and Tolerances

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

The quality of any development is a function of the quality of the principal contractor’s or owner builder’s supervision of individual contractors and trades on a daily basis during the development. The PCA does not undertake this role.
The NSW Office of Fair Trading have published a “Guide to Standards and Tolerances©” ISBN 0 7347 6010 8. The guide can be obtained from the Office of Fair Trading by calling 13 32 20 or by Fax: 9619 8618 or by post to: Marketing Branch, PO Box 972, Parramatta NSW 2124.


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

Standard Condition: K6

K.4 Workcover requirements

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

Note: Further information can be obtained from Workcover NSW’s website: http://www.workcover.nsw.gov.au/Industry/Construction/default.htm or through their head office: Location: Workcover NSW, 92-100 Donnison Street, GOSFORD 2250 Postal address: WorkCover NSW, Locked Bag 2906, LISAROW 2252, Phone (02) 4321 5000, Fax (02) 4325 4145.

Standard Condition: K7

K.5 Asbestos Removal, Repair or Disturbance

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

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

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

- The Occupational Health and Safety Act 2000;
- The Occupational Health and Safety Regulation 2001;
- The 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.6 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 80A of the Act.
The securities will not be released until a Final Occupation Certificate has lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council’s requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council’s requirements.

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

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

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


Standard Condition: K15

Ms B Thomas          Mr D Wagorn
ASSESSMENT OFFICER   TEAM LEADER

ANNEXURES

1. Plans and elevation
2. Council’s Heritage Officer’s Assessment
3. Council’s Development Engineer Assessment
SECTION 96 APPLICATION ASSESSMENT REPORT

ITEM No. D6
FILE No. DA 262/2004/2
ADDRESS: 409-411 New South Head Road, Double Bay
EXISTING CONSENT: Alterations and additions to commercial office space
TYPE OF CONSENT: Local Development
DATE OF CONSENT: 29 July 2004
PROPOSED MODIFICATION: Modification of Condition 2 requiring the payment of Section 94 Contribution
DATE S96 LODGED: 9 October 2008
CONSENT AUTHORITY Woollahra Council
APPLICANT: Mr LM Ratner
OWNER: The Proprietors of Strata Plan 66583
AUTHOR: Mr Simon Taylor

LOCALITY PLAN
1. **SUMMARY**

**Reason for report**

The application was called to the Development Control Committee by Councillor Plater for the following reasons:

1. The possibility that there is inconsistency in the imposition of Section 94 contributions for the subject site
2. The imposition of the contribution would limit the development potential of the approved application

**Issues**

Payment or waiving of Section 94 contributions.

**Objections**

None.

**Recommendation**

The proposed modification to **Condition 2** is recommended for approval because:

- Subject to the modification to the car parking contribution (not its deletion) the proposal is 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
- Subject to the modification to the car parking contribution (not its deletion), the proposal 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 (DA 262/2004) includes the following works:

- Enclosing the existing north facing open terrace on Level 4 for the use of the existing office (30m$^2$)
- New planter box
- New horizontal louvre outside of the north facing glazing
- New glass balustrade to the planter
- Extension of existing roof to the north

3. **DESCRIPTION OF PROPOSED MODIFICATION**

The Section 96 application involves the modification to **Condition 2** to delete the requirement to pay $36,698 towards the provision of public car parking in the Double Bay Commercial Centre.
4. PROPERTY HISTORY

DA162/1998/1 was approved by the Application Assessment Panel on 27 October 1998 and involved the demolition of the existing shop and construction of a new four-storey building containing one floor of retail and three storeys of commercial space above. As part of the approval, **Condition 2** required the payment of Section 94 contributions totalling $223,620, being the shortfall in on-site parking of 20 spaces (the 43.4 spaces required minus a credit of 23.1 spaces for the existing building).

There have been three subsequent Section 96 applications relating to DA162/1998.

DA262/2004 was approved under delegated authority on 29 July 2004 and gave consent for alterations and additions to an existing commercial office, which included the enclosure of an existing roof terrace, creating 30m² of additional floor space.

**Condition 2** of the development consent required a contribution of $38,040.17 for civic improvements, public car parking and an administration fee. In Section 3.3 of the original assessment report attached as Annexure 1, the officer states:

"According to Clause 6.7.2 of the Double Bay Centre DCP, 0.6 additional on-site parking spaces (round up to one parking space) will be required. As the proposal does not provide any on-site parking, a monetary contribution in accordance with Council's Section 94 Contribution Plan 2002 is considered necessary."

The applicant lodged a Section 82A application with Council on 18 November 2004 seeking a review of this condition. At its meeting on 18 November 2004, the Application Assessment Panel resolved as follows:

THAT the application for review of the determination of DA No. 262/2004 for alterations and additions to commercial office space on land at No. 409-411 New South Head Road, Double Bay, be deferred to a future meeting of the Application Assessment Panel to allow the reporting officer to review the determination of 29 July 2004, in its entirety, as required by Section 82A of the Environmental Planning and Assessment Act.

**Note:** The Panel considered the request to delete condition No. 2 and was of a view that the condition should not be deleted as recommended by the reporting officer.

The Section 82A application was subsequently withdrawn on 22 June 2005.

5. REFERRALS

No referrals were required.

ASSESSMENT UNDER SECTION 96

6.1 Section 96 (2) Other modifications

The modification of **Condition 2** has potential implications with the provision of public parking facilities and civic improvements within the Municipality. The application is therefore assessed under Section 96 (2).
6.2 Substantially the same development

The proposed modification does not change any aspect of the approval. Accordingly, the proposal would be substantially the same development to that which was originally approved, thus satisfying the relevant criteria prescribed by the Act.

ENVIRONMENTAL ASSESSMENT UNDER SECTION 79C

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979 as required by Section 96 (3) of the Act are assessed under the following headings:

7. STATE/REGIONAL INSTRUMENTS AND LEGISLATION

None applicable.

8. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

8.1 Aims and objectives of WLEP 1995 and zone

The proposal remains permissible in the Business 3(a) zone. It is, however, inconsistent with Clause 2(2)(c) of Part 1 as the modification of Condition 2 via the deletion of the car parking contribution ($36,698) would have implications on the availability of public car parking within the Double Bay commercial centre.

9. DRAFT AMENDMENTS TO STATUTORY CONTROLS

None applicable.

10. DOUBLE BAY CENTRE DCP 2002

On-site parking

Issues relating to the provision of on-site parking are detailed in Section 11 below.

11. SECTION 94 CONTRIBUTIONS PLAN

The applicant seeks the modification of Condition 2 by deleting $36,698 for public parking in Double Bay. Condition 2 of the development consent states:

"2. Section 94 contributions

Pursuant to Section 94 of the Environmental Planning and Assessment Act 1979, a monetary contribution of –

- $780 towards the provisions of civic improvements in the Double Bay Commercial Centre; and
- $36,698 towards the provision of public car parking in the Double Bay Commercial Centre; and
- $562.17 towards cost for administration of Woollahra Section 94 Contributions Plan 2002"
Total contribution = $38,040.17

must be paid to Council:

(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.

This condition is imposed under the Woollahra Section 94 Contributions Plan 2002.

Indexation of Section 94 contributions
To ensure that the value of monetary contributions is not eroded over time by increases in costs, the contribution rates specified in the Plan will be increased annually on the anniversary of the commencement of the Plan based on the formula specified in Clause 3.13 of the Plan.

If the required contribution is not paid before the next anniversary of the commencement of the Plan following the date of this development consent, the payable contribution will be the increased amount calculated by Council in accordance with the indexation formula set out in clause 3.13 of the Plan.

Deferred periodic payment of Section 94 contributions
Any request for deferred or periodic payment of the Section 94 contribution required by this consent must be made in writing by the applicant and must set out the reasons for the request. Council will consider any such request on the basis of the criteria set out in clause 3.8 of the Plan.

Where Council accepts payment by way of instalments, each instalment will be paid before work commences on the corresponding stage of the development and the amount of each instalment will be calculated on a pro-rata basis in proportion to the cost of the development.

Council may, as a condition of accepting deferred or periodic payment, require the applicant to provide 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 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 this development consent or the carrying out of the development in accordance with this development consent; and
(d) the obligations of the bank are discharged when payment to 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 contribution will be indexed in accordance with clause 3.13 of the Plan. If a deferred or periodic payment is not made before the next anniversary of the Plan, the amount payable will be the increased amount calculated by Council in accordance with clause 3.13 of the Plan. The applicant will 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.

Section 94 of the Environmental Planning and Assessment Act 1979 states the following:

(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:

(a) the dedication of land free of cost, or
(b) the payment of a monetary contribution, or both.

In the original development application the officer stated the following:

Parking requirement

The proposal will result in a net increase of 30m² in office floor space. According to clause 6.7.2 of the Double Bay Centre DCP, 0.6 additional on-site parking space (rounded up to 1 parking space) will be required. As the proposal does not provide any on-site parking, a monetary contribution in accordance with Council’s S94 Contributions Plan 2002 is considered necessary.

Section 94 contribution

According to the Section 94 Contributions Plan 2002, a monetary contribution of $36,698 for 1 space, based on a ratio of $36,698 per parking space, towards the provision of public car parking in the Double Bay Commercial Centre would be required.

Accordingly, the contribution towards the civic improvement and administration are revised as follows:

Civic Improvement: 30m² x $26/m² = $780
Administration: ($36,698 + $780) x 1.5c/$ = $562.17

In view of the above, Condition 2 is recommended accordingly.

The applicant argues that Council’s original assessment did not adequately take into consideration a previous DA 162/1998 which approved a four storey commercial and retail building and the change in the car parking requirements in accordance with the Double Bay Commercial Centre DCP. The applicant has submitted the following history in justification:
Section 94 of the Environmental Planning and Assessment Act 1979 (the Act) contains provisions that allow Council to impose conditions of consent on a development application, to require the dedication of land free of cost, and/or the payment of a monetary contribution, in order to meet demand for public amenities and services which would be generated by the proposed development.

DA262/2004/1 approved alterations to a commercial office space including the addition of 30m² of gross floor area associated with enclosing the terrace that faces New South Head Road. In accordance with Council's Off Street Car Parking DCP, the additional gross floor area (30m² of commercial space) generated the requirement for one additional car space.

Council's Section 94 Contribution at the time required that a shortfall in on-site provision of car parking for retail, commercial and other uses within the Double Bay commercial area generated a fixed contribution to wide recreation and civic improvements. As the application was assessed to be an intensification of the use, the Council imposed an amount of $36,698 that was required to be paid for the shortfall in one (1) car space associated with the non-provision of car parking with DA262/2004/1.

However, Council's assessment of the application did not, in our opinion, adequately consider a previous Development Application (DA98/162) which approved the existing four storey commercial and retail building and the change in car parking requirements in accordance with the Double Bay Commercial Centre DCP 2002. In a memorandum relevant to the site and sent by Council's then Team Leader to Council's Development Control Committee (see Annexure 1) it was stated inter alia:

"The building as it exists therefore has 43 spaces, being the total of the number of spaces paid for by s.94 contributions and number of spaces given as a concession for the previous building (pre DA98/162) which exists on-site."

This memorandum was prepared to the DCC in light of a subsequent Development Application (DA799/2005/1), which sought approval for change of use and fit-out of existing commercial office for a dental practice. The application was recommended for approval by Council staff, with the imposition of a section 94 contribution for a shortfall in car parking for the use. However, the application was approved by the Development Control Committee without the imposition of a section 94 contribution. The memorandum to Council demonstrates that the original staff assessment of the application inclusive of a Section 94 contribution was incorrect as stated inter alia:

"The parking requirement for commercial floor area within the Double Bay Centre has been reduced from 2.5 spaces/100m² to 2.0 spaces/100m² and the requirement for retail floor area increased from 3.3 spaces/100m² to 3.5 spaces/100m² under the Double Bay Centre Development Control Plan 2002."

Accordingly, it established (inclusive of the previous approval of the dental surgery) that, inter alia:

"The parking available to the building (43 spaces) is greater than the parking demand (41 spaces) generated by the development (DA799/2005/1)."

In consideration of the subject modification to 262/2004/1, in our opinion it is reasonable to calculate the number of car spaces required for the site at 41 spaces, plus the additional single space generated by the increase in 30m² of commercial space approved by Council in DA262/2004/1. This generates a total of 42 spaces required for the site, less than the 43 spaces available to the building. It is therefore our position that the Council should modify Condition No. 2 of the consent to remove the imposition of the section 94 contribution for the shortfall in parking.

In summary, the proposed modification is permissible with Council's consent and is consistent with requirements of Council's Section 94 contribution.
In summary, DA162/1998/1 was approved under the previous Double Bay DCP 1995, which applied a different parking generation rate (2.5 spaces/100m²), and resulted in the requirement of 43 car spaces at the time of assessment. Given no on-site car parking spaces were provided, and when taking into account an existing ‘credit’ of 23.1 spaces for the existing building, the s94 contributions calculation was 20 on-site spaces @ $11,186/spaces or $223,620 which was levied upon DA 162/1998 as a monetary contribution in lieu of the car parking shortfall on the site.

The Section 94 contribution has been applied correctly in this instance.

DA262/2004/1 transformed a useable outdoor terrace area to commercial space and increased the gross floor area by 30m². The proposal intensified the buildings use to require an additional 0.6 or one (1) off street car parking space (rounded up). Given that the site does not and can not provide off-street car parking, an additional monetary contribution of $38,040.17 was applied to the DA in lieu of the shortfall in off-street car parking.

The assessment of DA 262/2004 was done under the Double Bay Centre DCP 2002 which has significantly different building envelope controls and car parking requirements. For example, the Double Bay DCP 2002 contains controls for the building envelope, building articulation depth controls and build-to (setback) lines which were not contained in the Double Bay DCP 1995. Furthermore, the Double Bay DCP 2002 has a requirement of 3.5 spaces / 100m² for retail and 2 spaces / 100m² for commercial / office uses. It is acknowledged that this is different from the Double Bay DCP 1995 which had a requirement of 3.3 spaces / 100m² for retail and 2.5 spaces /100m² for commercial / office uses. The application of the different criteria for off-street car parking results in the overall reduction of parking from 43 spaces (under Double Bay DCP 1995 – DA 162/1998) to 41 spaces (under Double Bay DCP 2002 – DA 262/2004).

In this instance, the applicant states that Council did not consider DA 162/1998 (which was assessed under Double Bay DCP 1995) when making the assessment of DA 262/2004 (assessed under Double Bay DCP 2002), especially when considering the reduced car parking generation between the two DCP’s. Given that these are two different development applications and assessed under two different DCP, Council’s Assessment Officer, whilst having regard to the original application (DA 162/1998) is not required to consider the differing requirements and has assessed DA 262/2004 on the merits of the individual application, using the relevant Double Bay DCP 2002.

In summary, the increase in 30m² of floor area will result in increased commercial / office space, thereby increasing the off-street car parking demand by 0.6 spaces (rounded up to one (1) space) and attracting a monetary contribution of $36,698 in lieu of the shortfall in car parking or a total s94 contribution of $38,040.17 including civic improvements and administration fees.

The Section 94 contribution has been applied correctly in this instance.

In essence, the applicant is seeking to gain the benefit of the reduced car parking requirement when comparing the Double Bay DCP 1995 (43 spaces for DA 162/1998) to the Double Bay DCP 2002 (41 spaces for DA 262/2004) without accepting the burdens that the Double Bay DCP 2002 has over the Double Bay DCP 1995, especially in terms of building envelope, building articulation depth controls and build to (setback) lines. The imposition of these controls would more than likely result in significant changes to the form, scale and design of the approved building.
The applicant also refers to a subsequent Development Application (799/2005) for a change of use and fitout of the approved commercial / office space for a dental practice. The proposal did not result in a net increase in the gross floor area but will entail an intensification of use from commercial / office (2.5/100m²) to medical / dental (4.5/100m²) in accordance with tables contained in this Car Parking DCP.

The assessment report for DA 799/2005 stated the following:

However, S1.3 of the DCP states that a variation to the parking requirement may be given where the following matters have also to be taken into account:

- The scale and nature of the development and its traffic generation;
- The availability of other car parking areas in the vicinity of the development;
- The availability of public transport to serve the development;
- Traffic volumes on the road network in the area of the development;
- The probable mode of transport of users to and from the development.

In the circumstances, the scale of the proposal is not significant; there is a Council Car park at the rear of the property; there is adequate public transport adjacent to and within the vicinity of the site; traffic volumes adjacent to the site are such that there is a disincentive to the use private motor vehicles; and, the probable mode of transport of users is likely to be that which is most efficient in terms of cost, time and parking availability ie public transport. Accordingly a variation to the parking requirement is appropriate in this case.

It is considered that the proposal does not warrant the imposition of a S94 contribution as it would be insignificant in terms of the demand for off-street car parking within the vicinity of the site.

The S94 Contributions Plan provides for an exemption in certain circumstances.

The above-mentioned application (DA 799/2005) and assessment is a completely different situation to the subject development application (DA 262/2004). The key differences being; firstly, DA 799/2005 did not require an increase in gross floor area and secondly, the Car Parking DCP contains s1.3 of the DCP, which permits a variation of the car parking requirement under certain circumstances.

Under DA 799/2005, Council’s Assessment Officer concluded that the reasons for the variation (discussed above) are acceptable, thereby not requiring any additional off-street parking or s94 contribution for the proposal. Whereas the subject development application (262/2004) is reliant upon the car parking requirement contained in the Double Bay DCP 2002. The Double Bay DCP 2002 does not contain a clause similar to s1.3 of the Car Parking DCP which permits a variation of the requirement. As such, where any shortfall to the off-street car parking requirement under DA 262/2004 is established a monetary contribution in accordance with the s94 Contributions Plan is to be provided in lieu of the car parking shortfall. This monetary contribution was applied under Condition 2 of DA 262/2004.

In conclusion, the applicant has failed to discharge the burden of s94 contributions for the additional 30m² of floor area under DA 262/2004. For the reasons discussed above, the s94 contribution has been calculated correctly at the time of the assessment and is still applicable given the shortfall of one (1) car parking space for the additional 30m² of gross floor area.
However, given that the applicant has requested a modification of Condition 2 on the s96 form, it is considered to be pertinent to assess the s96 under the current s94 contributions plan, which has reduced the rate of contributions for shortfalls in car parking from $36,698 to $27,325 but increased the civic improvements calculation from $26/m² to $27/m² in Double Bay.

As such, Condition 2 is to be modified to reflect these changes (including the administration fee).

12. APPLICABLE REGULATIONS

None applicable.

13. THE LIKELY IMPACTS OF THE MODIFIED DEVELOPMENT

All likely impacts have been addressed elsewhere in the report.

14. SUBMISSIONS

The proposal was advertised and notified in accordance with Council’s Advertising and Notifications DCP. No submissions were received.

15. CONCLUSION - THE PUBLIC INTEREST

The proposal is acceptable against the relevant considerations under Section 96 and Section 79C and would be in the public interest, subject to the modification of Condition 2.

16. DISCLOSURE STATEMENTS

Under Section 147 of the Environmental Planning and Assessment Act, 1979 there have been no disclosure statements regarding political donations or gifts made to any councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.

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

THAT Council, as the consent authority, modify development consent to Development Application No. 262/2004 part 2 for alterations and additions to the commercial office space on land at 409-411 New South Head Road Double Bay, in the following manner:

The modification of Condition No. 2 as follows:

2. Section 94 contributions

Pursuant to Section 94 of the Environmental Planning and Assessment Act 1979, a monetary contribution of –

- $810 towards the provisions of civic improvements in the Double Bay Commercial Centre; and
- $27,325 towards the provision of public car parking in the Double Bay Commercial Centre; and
• $442.02 towards cost for administration of Woollahra Section 94 Contributions Plan 2002
  \[ \text{Total contribution} = \$28,577.02 \]

must be paid to Council:

(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.

This condition is imposed under the Woollahra Section 94 Contributions Plan 2002.

**Indexation of Section 94 contributions**

To ensure that the value of monetary contributions is not eroded over time by increases in costs, the contribution rates specified in the Plan will be increased annually on the anniversary of the commencement of the Plan based on the formula specified in Clause 3.13 of the Plan.

If the required contribution is not paid before the next anniversary of the commencement of the Plan following the date of this development consent, the payable contribution will be the increased amount calculated by Council in accordance with the indexation formula set out in clause 3.13 of the Plan.

**Deferred periodic payment of Section 94 contributions**

Any request for deferred or periodic payment of the Section 94 contribution required by this consent must be made in writing by the applicant and must set out the reasons for the request. Council will consider any such request on the basis of the criteria set out in clause 3.8 of the Plan.

Where Council accepts payment by way of instalments, each instalment will be paid before work commences on the corresponding stage of the development and the amount of each instalment will be calculated on a pro-rata basis in proportion to the cost of the development.

Council may, as a condition of accepting deferred or periodic payment, require the applicant to provide 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 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 this development consent or the carrying out of the development in accordance with this development consent; and

(d) the obligations of the bank are discharged when payment to 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 contribution will be indexed in accordance with clause 3.13 of the Plan. If a deferred or periodic payment is not made before the next anniversary of the Plan, the amount payable will be the increased amount calculated by Council in accordance with clause 3.13 of the Plan. The applicant will 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."

ANNEXURES

1. DA 262/2004 – Original Assessment Report
DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No. D7
FILE No. DA 829/2008/1

PROPERTY DETAILS

2-8 Elizabeth Street PADDINGTON 2021
Lot & DP No.: LOT: 2 DP: 1071472
Side of Street: West
Site Area (m²): 725m²
Zoning: Neighbourhood Business 3(c)

PROPOSAL
The proposal consists of adaption and re-use of existing buildings and new infill buildings including car parking, amalgamation of 4 lots for commercial/retail use and remediation of the site.

TYPE OF CONSENT: Local Development
APPLICANT: Octavius Consulting Group P/L
OWNER: Ashdel Properties Pty Ltd
DATE LODGED: 16/12/2008
AUTHOR: Ms C Owen

DOES THE APPLICATION INVOLVE A SEPP 1 OBJECTION YES ☒ NO ☐

1. RECOMMENDATION PRECIS

The application is recommended for Approval, subject to conditions as the proposed development:

- is permissible under the zoning,
- complies with the objectives of the relevant planning standards contained in WLEP 1995 and Paddington HCA DCP 2008,
- is an appropriate design for the site, and
- will not have adverse effects on the amenity of adjoining properties such that refusal is justified.

2. PROPOSAL PRECIS

The proposal consists of adaption and re-use of existing buildings and new infill buildings including car parking, amalgamation of 4 lots for commercial/retail use and remediation of the site.
3. LOCALITY PLAN

Subject

Site

Objectors

North

The Paddington Society
Owner of 42 Victoria St
Clover Moore- Member for Sydney

Locality Plan

4. PREAMBLE

DA 360/2007 for alterations and additions and additions including amalgamation of 4 lots for commercial/retail use, was refused under delegated authority on 5/11/2007 for the following reasons:

1. Aims and Objectives of Woollahra LEP 1995

The proposal does not comply with Clause 8(5) of the Woollahra LEP 1995 as it fails to accord with the following objectives:

- Clause 2(2)(b)(iii) in relation to retailing and commerce
- Clause 2(2)(d)(vii) in relation to traffic and transport
- Clause 2(2)(d)(x) in relation to traffic and transport
- Clause 2(2)(g)(ii) in relation to heritage conservation

2. Drainage

The applicant has not provided an adequate drainage system, contrary to Clause 25(2) of the Woollahra Local Environmental Plan 1995 and Part 5.1.10 of the Paddington Development Control Plan, 1999 and the proposal has not provided sufficient flood protection measures.
3. **Heritage**

The demolition of the rear wing to No. 2 Elizabeth Street, the introduction of roof top terraces, the patterned façade treatment and the loss of visual perception of the historic subdivision pattern from Victoria Street will detract from the character and appearance of the Paddington Heritage Conservation Area, contrary to Clause 27 of the Woollahra Local Environmental Plan, 1995 and to Parts 5.1.1, 5.1.2, 5.1.9, 5.2.4, 5.2.8 and 5.4 of the Paddington Development Control Plan, 1999.

4. **Demolition of the rear wing to No. 2 Elizabeth Street**

The proposed demolition of the rear wing to No. 2 Elizabeth Street would allow the new works to dominate the existing building and would constitute the loss of significant original fabric, contrary to Part 5.1.2 of the Paddington Development Control Plan, 1999.

5. **Historic subdivision pattern**

The proposed development to the rear of No. 2 Elizabeth Street will have two separate forms, which does not allow for the historic subdivision pattern to be interpreted, contrary to Part 5.1.9 of the Paddington Development Control Plan, 1999.

6. **Privacy**

The proposed roof terraces fronting Victoria and Elizabeth Streets will create an adverse impact on the visual and acoustic privacy of surrounding residential properties, contrary to Part 5.1.8 and 5.2.4 of the Paddington Development Control Plan, 1999.

7. **Roof Terraces**

The proposed development involves the introduction of trafficable spaces into the roof top zone on the both the Victoria and Elizabeth Street frontages. These roof-top terraces are uncharacteristic and are non traditional uses of the roof space in this location, contrary to O3 of Part 5.2.4 of the Paddington Development Control Plan, 1999.

8. **Materials and Details**

The proposed use of patterned zinc on the face of the Victoria Street and Elizabeth Street elevations is intrusive to character and appearance of the conservation area as zinc has been proposed to be used in a non traditional way and is contrary to Part 5.2.8 of the Paddington Development Control Plan, 1999.

9. **Parking**

The proposed parking arrangements do not meet the needs of the development in that there is no onsite parking for customers, no onsite loading area; the mechanical car stacker is not appropriate for short stay parking and can not accommodate all types of cars. The proposed development is therefore contrary to Clause 2 of the Development Control Plan for Off-Street Car Parking Provision and Servicing Facilities.
10. **Disabled Access**

*The proposed development has not provided any onsite disabled car spaces, which is contrary to Table 1 of the Access Development Control Plan.*

11. **Public Interest**

*The proposal is not considered to be in the public interest.*

A S82A Review was lodged with Council on 27/2/2008 in relation to the refusal of DA 360/2007/1. The S82A Review scheme included several modifications to the previously proposed scheme, aimed at addressing the original reasons for refusal (details of the proposed changes are set out in Section 5 below).

A number of revised plans were submitted during the assessment process of the S82A Review to address non-compliances with the Paddington DCP, 1999 (the S82A was lodged prior to the adoption of the Paddington Heritage Conservation Area DCP on 26th May 2008, and was therefore assessed under the PDCP 1999), and the Off-street parking DCP. In addition, the S82A Review was re-advertised for a period of 30 days from 1/10/2008 to 1/11/2008 because of the proposed remediation of land within a Conservation Area.

Because a S82A Review can not be considered later than 12 months after the original application is determined the expiration of the S82A Review was therefore 5/11/2008. The S82A Review was withdrawn on 6/12/2008.

A new development application was lodged on 16th December 2008. The architectural plans and technical reports submitted with this current DA are the same as the revised plans and reports which were being assessed as part of the S82A Review for DA 360/2007.

5. **DESCRIPTION OF PROPOSAL**

DA 829/2008 seeks consent for new development and alterations and additions to the existing buildings and some demolition to increase the existing retail and commercial floor areas and provide for new onsite car parking. The works proposed involved are:

No. 2 Elizabeth Street, Paddington

- Demolition of part of existing rear wing and construction of two storey extension to provide new building entry and on-site loading bay, extension to the ground floor retail area and a new commercial area to the first floor and second floor;
- Construction of second floor roof terrace.

No. 4 Elizabeth Street, Paddington

- Demolition of existing electricity substation and rear toilet;
- New three storey extension, to provide retail on the ground floor and commercial uses to the first and second floor;
- New glazed awning fronting Elizabeth Street;
- Construction of new roof terrace.
Nos. 6 to 8 Elizabeth Street, Paddington

- Demolition of rear warehouse and former bakery;
- Rear and second floor addition to the existing retail terraces fronting Elizabeth Street with new commercial uses at first and second floor levels;
- Construction of new car parking area including 13 space car stacker to the rear, new bin storage area and car turning area;
- Installation of a replacement electricity substation to the first floor above proposed car stacker;
- Proposed circulation stair and lift;
- Construction of new roof terrace to Elizabeth Street.

Remediation of contaminated land.

This current DA differs from original DA 360/2007 in the following ways:

Ground floor level:
- The majority of the rear elevation of No. 2 Elizabeth Street has been retained
- The floor level of the new development has been raised to take account of the 1:100 flood level
- An on-site loading bay has been provided

Second floor level:
- The area of the terrace facing Victoria Street has been reduced
- The roof terraces will be non-trafficable except

External:
- The previously proposed patterned render treatment to the Elizabeth and Victoria Street facades has been deleted

6. SUMMARY

<table>
<thead>
<tr>
<th>Reasons for report</th>
<th>Issues</th>
<th>Submissions</th>
</tr>
</thead>
</table>
| The DA does not satisfy the criteria for determination under staff delegation | • Non-compliant height  
• Non-compliant FSR  
• Non-compliant on-site car parking provision  
• No on-site disabled parking | Nine (9) submissions were received. |

7. ESTIMATED COST OF WORKS

A Quantity Surveyor’s report was provided with this DA which estimates the cost of the proposed development at $4,676,562.00.
8. DESCRIPTION OF SITE OF LOCALITY

THE SITE AND LOCALITY

Physical features
The subject site is located on the corner of Elizabeth Street and Victoria Street. The existing properties front Elizabeth Street.

The site is rectangular in shape with a battle axe handle towards the rear of the site extending to the rear of No. 10-12 Elizabeth Street. It has an area of 725m² with frontage lengths of 24.5m and 22.6m to Elizabeth and Victoria Streets, respectively.

Topography
The subject site is fairly level although it is lower than the road level of Elizabeth Street.

Existing buildings and structures
The existing building at No. 2 Elizabeth Street is a two storey Federation end of terrace building. The building has a traditional terrace house form. The rear wing is set back from Victoria Street by a side breezeway.

A single storey inter-war electricity sub-station exists at No 4 Elizabeth Street.

Existing at Nos. 6-8 Elizabeth St are two matching 2 storey Edwardian commercial terraces with retail at ground floor and residential accommodation above. They were constructed in 1903 and date from a key period of the Conservation Area and are contributory items. Behind these buildings is a bakery building also constructed in 1903 but which is not visible from the street.

The south-west boundary wall of the subject site, forms the boundary wall between the subject site and the dwellings fronting Victoria Street.

Environment
To the rear (north-west) of the subject site is an infill commercial development (within the 3 (c) neighbourhood business zone), while residential terraces boarder the site to the south-west.

A modern infill mixed use retail and commercial development adjoins the site to the north at 10-18 Elizabeth Street. The development consists of retail units, a café and a gallery at ground floor level, with commercial units at first floor level.

Oxford Street (within a 3(c) neighbourhood business zone) is located to the south, and is a major retail destination in the municipality.

Other surrounding properties fronting Victoria Street and Elizabeth Street are largely characterised by traditional two storey Victorian terrace dwellings.

9. PROPERTY HISTORY

PROPERTY HISTORY

<table>
<thead>
<tr>
<th>Current use</th>
<th>Retail, Commercial, electrical substation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Previous relevant applications</td>
<td>A search of Council’s Authority database identified the following relevant planning history:</td>
</tr>
<tr>
<td></td>
<td>▪ DA 370/2005- Change of use of from residential to retail shop (2 Elizabeth St)- Approved 29/7/2005</td>
</tr>
<tr>
<td>Pre-DA</td>
<td>▪ A pre-DA meeting took place for ‘Retail commercial infill development’ on 28/9/2006</td>
</tr>
<tr>
<td></td>
<td>▪ A pre-DA meeting also took place for ‘new 3 level commercial infill development comprising of a new carpark (car stacker) and replacement of the existing electrical substation’ on 11/01/2004</td>
</tr>
<tr>
<td>Requests for additional information</td>
<td>N/A</td>
</tr>
<tr>
<td>Amended plans/ Replacement Application</td>
<td>N/A</td>
</tr>
<tr>
<td>Land &amp; Environment Court appeal</td>
<td>N/A</td>
</tr>
</tbody>
</table>
10. REFERRALS

10.1 The following table contains particulars of internal referrals

<table>
<thead>
<tr>
<th>Referral Officer</th>
<th>Comment</th>
<th>Annexure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development Engineer</td>
<td>Satisfactory, except for the lack of on-site disabled parking.</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Conditions A.4, C.1, C.7-C.14, D.4-D.7, E.1-E.10, F.1, H.1-H.2 &amp; I.1</td>
<td>2</td>
</tr>
<tr>
<td>Environmental Health Officer</td>
<td>Satisfactory, subject to Conditions C.3, C.4, C.6, C.15 &amp; D.2</td>
<td>3</td>
</tr>
<tr>
<td>Heritage Officer</td>
<td>Satisfactory, subject to Condition C.1</td>
<td>4</td>
</tr>
<tr>
<td>Fire Safety Officer</td>
<td>Satisfactory, subject to Conditions C.1, C.16, D.8 &amp; Advisings K.1 &amp; K.2</td>
<td>5</td>
</tr>
</tbody>
</table>

Note: As plans and supporting information submitted with this DA are the same as the previously submitted S82A Review information for DA 360/2008, the referral comments from the S82A Review have been utilised for this DA.

10.2 The following table contains particulars of external referrals.

<table>
<thead>
<tr>
<th>External Referral Body</th>
<th>Reason for referral</th>
<th>Annexure</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW Fire Brigade</td>
<td>Proposed re-location of electricity sub-station</td>
<td>6</td>
</tr>
</tbody>
</table>

ENVIRONMENTAL ASSESSMENT UNDER S.79C

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

11. STATE/REGIONAL INSTRUMENTS AND LEGISLATION

11.1 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 Stage 1 Preliminary Site Investigation and Stage 2 Detailed Site Investigation provided by the applicant indicates the land contains contamination and requires further consideration under clause 7(1) (b) and (c) of SEPP 55.

Clause 7(1) (b) and (c) requires that where the land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed. If the land requires remediation Council must be satisfied that the land will be remediated before the land is used for that purpose.

The Stage 2 Detailed Site Investigation submitted with the application found the site required remediation to be suitable for the proposed development.

The Remedial Action Plan identifies the actions required to make the site suitable for the proposed use. Validation that remediation has been undertaken in accordance with the Remedial Action Plan is to be submitted prior to the construction certificate being issued (Condition D.2).
11.2 REPs

SREP (Sydney Harbour Catchment) 2005

The proposed alterations and additions would not be visible from the harbour. Accordingly, the proposal is considered to be satisfactory with regard to the provisions of this instrument.

11.3 Section 94 contribution

The Woollahra Section 94A Contributions Plan 2005 is applicable. In accordance with Schedule 1, a 1% levy (of the total cost of works) applies. With a cost of works of $4,676,562.00, a condition has been imposed to require the payment of $46,765.62 which will be used for a variety of works as outlined in Schedule 2 of the Section 94A Contributions Plan.

12. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

12.1 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 Neighbourhood Business 3(c) zone

12.2 Statutory compliance table

<table>
<thead>
<tr>
<th>Site Area (725m²)</th>
<th>Existing</th>
<th>Proposed for DA 360/2007</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall Height (metres)</td>
<td>10.5m</td>
<td>10.7m</td>
<td>10.7m</td>
<td>9.5m</td>
<td>NO*</td>
</tr>
<tr>
<td>Floor Space Ratio (m²)</td>
<td>1.36:1 (982.8m²)</td>
<td>1.54:1 (1,116.5m²)</td>
<td>1.49:1 (1,076.75m²)**</td>
<td>1:1 (725m²)</td>
<td>NO*</td>
</tr>
</tbody>
</table>

* SEPP1 Objection lodged
** Includes the electricity substation

12.3 Height

Clause 12 of the WLEP 1995 stipulates that a building shall not be erected on land to which this plan applies if the height would exceed the height indicated for that land on the height map, which is 9.5m.

The proposed development would have a maximum height of 10.7m, which exceeds the maximum height prescribed for the site, 9.5m.

A SEPP No. 1 Objection has been submitted by the applicant stating that compliance is unreasonable and unnecessary in this instance based on:

‘The proposed development with a maximum height of 10.7m, meets all the objectives of the height standards 12AA;

1. The proposed development has no impact on the existing views of the Harbour, ridgelines or public domain.'
2. The proposed is compatible with surrounding development by presenting lower in height than adjacent buildings and of the same height as existing chimney features on the terraces. The upper storey of the proposal is set back from the facades and the street appearance is uniform with surrounding residential properties.

3. The proposal has no overlooking or privacy impact on adjoining residential properties.

4. There is no additional significant overshadowing or impact on sunlight access to neighbouring residential, retail or commercial properties.

5. The proposed development retains and reinforces the rhythm, scale and massing in the streetscape and provides a sympathetic, contemporary approach to the heritage context of the locality.

The additional height allows for the inclusion of sustainable design features including louvered skylights which promotes natural light and ventilation.’

The following assessment of the SEPP 1 Objection is assessed using the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46 (6 April 2001).

The SEPP 1 Objection submitted is assessed as follows:-

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

The prescribed height limitation pursuant to Clause 12 of the WLEP 1995 is a development standard.

2. What is the underlying purpose of the standard?

The underlying purpose or objectives of the standard, pursuant to Clause 12AA of the LEP are as follows:

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

(b) to provide compatibility with the adjoining residential neighbourhood,

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

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

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

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

The aims of SEPP No.1 state:

3. This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the objects specified in s 5(a) (i) and (ii) of the Act state:

5. The objects of this Act are:
(a) to encourage:
   (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
   (ii) the promotion and co-ordination of the orderly and economic use and development of land.

*Whebe V Pittwater Council* (2007) NSW LEC 827 (21 December 2007) sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states that:

{quote}
An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved not withstanding non-compliance with the standard.
{quote}

It goes on to state that:

_{The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)._}

The Land and Environment Court has established on numerous occasions that it is insufficient merely to point to an absence of environmental harm in order to sustain an Objection under SEPP No.1 *Gergely & Pinter v Woollahra Municipal Council* (1984); *Hooker Corporation Pty Ltd v Hornsby Shire Council* (1986,) *Winten Property Group Ltd v North Sydney Council* (2001) and *Memel Holdings Pty Ltd v Pittwater Council* (2001) and *Wehbe v Pittwater Council* [2007].

Rather it is necessary to demonstrate that the strict application of the development standard in question would actually hinder the attainments of the objectives of the control. It must be demonstrated that there is a positive environmental or community outcome that arises directly out of the non-compliance.

The following considers the proposal against the relevant objectives of the development standard contained under Clause 12AA of WLEP 1995.

Objective (a) aims to minimise impacts of new development on existing views:
- There would be no impacts on existing views as a result of the proposed development.
- Compliance with the Height standard is therefore considered to be unreasonable and unnecessary as the proposal achieves consistency with objective (a).

Objective (b) aims to provide compatibility with the adjoining residential neighbourhood:
- The proposed development would have a maximum height of RL of 73.36, which would relate to the proposed skylight only. The maximum height of the proposed curved roof would have an RL of between RL 73.00 and RL 72.30. A complying development would have a maximum RL of 72.00;
• The ceiling level of the proposed new second floor level would not exceed the maximum permitted height limit of 9.5m;
• The roof of the development has been designed to assist sustainability in providing louvered skylights which would allow for natural light and ventilation into the development. The development incorporates voids which would allow natural light and ventilation to be accessed to all three levels of the development;
• Requiring full compliance with the development standard would be likely to result in a development which did not provide as high quality commercial and retail space;
• The existing height of development fronting Elizabeth Street (RL 72.60) would be maintained at No. 2 and 6-8 Elizabeth Street and would be repeated at the new infill development at No. 6 Elizabeth Street;
• The proposed new second floor would be setback from the Elizabeth Street frontage by 2.3m and setback from the Victoria Street frontage by 5m. The architectural plans (section 01) illustrate that the setback means that the proposed new second storey would not be visible from the opposite side of Elizabeth Street;
• The maximum height of the proposed development would be lower than the height of the adjoining property at No. 10-12 Elizabeth Street (RL 74.15) and would be generally consistent with the maximum heights of surrounding residential development to Elizabeth and Victoria Streets;
• The proposed development would retain its existing appearance to Elizabeth and Victoria Streets with the retention of the existing parapet and chimney feature of the terraces at No. 2 and 6-8 Elizabeth Street. The proposed set back of the new second floor would retain the uniform street appearance with surrounding residential properties;
• The proposed additions would retain and reinforce the rhythm, scale and massing in the streetscape and the design would provide a sympathetic contemporary approach to the heritage context of the locality;
• Compliance with the Height standard is therefore considered to be unreasonable and unnecessary as the proposal achieves consistency with objective (b).

Objective (c) aims to safeguard visual privacy:
• The proposed roof terraces have been conditioned to be non-trafficable, except for essential maintenance (part (a) of Condition C.1). This restriction on the use of the development would ensure that there were no negative impacts on the visual privacy of any surrounding residential development;
• Compliance with the Height standard is therefore considered to be unreasonable and unnecessary as the proposal achieves consistency with objective (c).

Objective (d) aims to minimize overshadowing:
• The majority of the resulting increased overshadowing would be to the Elizabeth and Victoria Streets and there would be only minimal impacts on surrounding dwellings.
• The proposal would remain compliant with Council’s solar access requirements in the PHCA DCP 2008. There would be no detrimental impacts on sunlight access to any surrounding residential properties;
• Compliance with the Height standard is therefore considered to be unreasonable and unnecessary as the proposal achieves consistency with objective (d).
Objective (e) aims to preserve public views of the Harbour and surrounding areas, as well as special streetscape qualities:

- The proposal would not have any impacts on existing public views of the Harbour, ridgelines or public domain;
- Compliance with the Height standard is therefore considered to be unreasonable and unnecessary as the proposal achieves consistency with objective (e).

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

Having regard to the objectives of the development standard contained in Woollahra LEP 1995, it is considered that strict compliance with this standard is unreasonable and unnecessary in this circumstance as the development would be of an appropriate scale and bulk with no resultant impacts on the amenity of adjoining properties or the environment. The proposal will be consistent with the objectives of Council’s Height standard.

5. **Is the objection well founded?**

The objection advanced by the applicant that compliance with the development standard is unreasonable and unnecessary is considered to be well founded. It is considered that the proposed breach of the Height development standard would be consistent with the aims and objectives set out in Clause 3 of SEPP 1.

On the basis of the above comments it is considered that the SEPP1 Objection is well founded and that compliance with the Height standard is unreasonable and unnecessary in the particular circumstances of this case.

12.4 **Floor space ratio**

Clause 11 of WLEP 1995 stipulates that a building shall not be erected on land to which this plan applies if the floor space ratio would exceed the ratio indicated for that land on the density map which is 1:1 (725m²).

The proposed development would have a floor space ratio of 1.49:1 (1,076.75m³), which exceeds the maximum FSR prescribed for the site 1:1 (725m²).

A SEPP No. 1 Objection has been submitted by the applicant stating that compliance is unreasonable and unnecessary in this instance based on:

‘We consider that the relocation of the electricity sub-station is an element of necessary local infrastructure that does not apply to the commercial function of the zone. We therefore believe it should to be include in the calculation of the overall floorspace of the site. Exclusion of the new substation from the calculation of floor space would result in a total floor space of 996m² and an FSR of 1.38:1.

1. The proposed development provides for adaptive reuse and retention of existing buildings and introduces a contemporary infill building to link the existing structures and provide dor viable mixed use commercial development in keeping with the zone objectives and heritage character of the locality. The bulk and scale of the development is similar to existing buildings in the area and other commercial zones.

2. The proposed floor space ratio provides for a development that will have no overshadowing or overlooking impacts on adjoining properties. Further there will be no aural intrusion into
adjoining residential, retail or commercial developments. Car parking needs generated by the proposal can be accommodated on-site and the result in minimal increase in traffic flow that can be accommodated within the capacity of the local road system.

3. The variation in the FSR development standard allows for a new infill development, meets with the requirements of the Paddington DCP and ensures the economic viability of a traditional neighbourhood commercial centre in a heritage conservation area. The proposed development provides an appropriate response to the heritage setting and will have no adverse impact on the heritage context of the locality.

The following assessment of the SEPP 1 Objection is assessed using the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46 (6 April 2001).

The SEPP 1 Objection submitted is assessed as follows:

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

The prescribed maximum floor space ration pursuant to Clause 11 of the WLEP 1995 is a development standard.

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

The underlying purpose or objectives of the standard, pursuant to Clause 11AA of the LEP are as follows:

   (a) to set the maximum density for new development;
   (b) to control building density, bulk and scale in all residential and commercial localities in the area in order to achieve the desired future character objectives of those localities,
   (c) to minimise adverse environmental effect on the use or enjoyment, or both, of adjoining properties, and
   (d) to relate new development to the existing character of the surrounding built and natural environment as viewed from the streetscape, the harbour or any other panoramic viewing point.

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

The aims of SEPP No.1 state:

   3. This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the objects specified in s 5(a) (i) and (ii) of the Act state:

5. The objects of this Act are:

   a) to encourage:
   (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
(ii) the promotion and co-ordination of the orderly and economic use and
development of land.

*Whebe V Pittwater Council* (2007) NSW LEC 827 (21 December 2007) sets out ways of
establishing that compliance with a development standard is unreasonable or unnecessary. It states that:

‘An objection under SEPP 1 may be well founded and be consistent with the aims set out in
clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish
that compliance with the development standard is unreasonable or unnecessary because the
objectives of the development standard are achieved not withstanding non-compliance with
the standard.’

It goes on to state that:

The rationale is that development standards are not ends in themselves but means of
achieving ends. The ends are environmental or planning objectives. Compliance with a
development is fixed as the usual means by which the relevant environmental or planning
objective is able to be achieved. However, if the proposed development proffers an alternative
means of achieving the objective strict compliance with the standard would be unnecessary (it
is achieved anyway) and unreasonable (no purpose would be served).

The Land and Environment Court has established on numerous occasions that it is insufficient
merely to point to an absence of environmental harm in order to sustain an Objection under SEPP
No.1 *Gergely & Pinter v Woollahra Municipal Council* (1984); *Hooker Corporation Pty Ltd v
Hornsby Shire Council* (1986,) *Winten Property Group Ltd v North Sydney Council* (2001) and
*Memel Holdings Pty Ltd v Pittwater Council* (2001) and *Wehbe v Pittwater Council* [2007].

Rather it is necessary to demonstrate that the strict application of the development standard in
question would actually hinder the attainments of the objectives of the control. It must be
demonstrated that there is a positive environmental or community outcome that arises directly out
of the non-compliance.

The following considers the proposal against the relevant objectives of the development standard

Objective (a) aims to set the maximum density for new development:

- The proposed electricity substation has been included within the proposed FSR figures, as it is
  not a use excluded by the definition in the Woollahra LEP 1995. Of the proposed increased
  FSR, approximately 140m² would consist of the relocated electricity substation. This area
  would not be trafficable floorspace and would not generate additional pedestrian or vehicle
  traffic or journeys. The exclusion of the relocated electricity substation from the FSR
  calculations would result in a reduced non-compliant FSR of 1.29:1 (936.8m²). The existing
  FSR of the site is 1.36:1 (982.8m²) and a compliant FSR for the site is 1:1 (725m²);

- Compliance with the FSR standard is therefore considered to be unreasonable and unnecessary
  as the proposal achieves consistency with objective (a).

Objective (b) aims to control building density, bulk and scale in all residential and commercial
localities in the area in order to achieve the desired future character objectives of those localities:

- The subject site is zoned 3(c) Neighbourhood Business Zone and a mixed use scheme, such as
  proposed is permissible within the zoning;
• The proposed 3 new retail units and additional commercial space would assist in achieving the objectives of the zone in establishing a neighbourhood shopping centre, providing development of a scale compatible with surrounding residential development;
• The restrictions of the site, including the need to retain an electricity substation on site, mean that requiring a development which complied with the maximum permitted FSR would hinder the following desired future character objectives of the Paddington Conservation Area:
  • providing attractive and purposeful shopping areas for locals as well as tourists; and
  • catering for varied uses and building types within the residential area.
• The proposed development would retain the existing appearance of height, bulk and scale from the street, and would remain generally consistent with surrounding including existing 3 storey commercial and retail development fronting Victoria and Elizabeth Streets;
• Compliance with the FSR standard is therefore considered to be unreasonable and unnecessary as the proposal achieves consistency with objective (b).

Objective (c) aims to minimise adverse environmental effect on the use or enjoyment, or both, of adjoining properties:

The development would
• The development would assist in providing an active streetscape within the Neighbourhood business zone, which would provide services for surrounding residents and those who work in the area;
• The proposed retail and commercial uses would be compatible with and would not result in any negative impacts, such as visual and acoustic privacy issues, on the use or enjoyment of adjoining residential properties;
• The site is located within an area of good public transport accessibility and people visiting the retail units within the development are likely to do so as part of a shared journey, in conjunction with other retail development along oxford Street;
• Compliance with the FSR standard is therefore considered to be unreasonable and unnecessary as the proposal achieves consistency with objective (c).

Objective (d) aims to relate new development to the existing character of surrounding built and natural environment as viewed from the streetscape, the harbour or any other panoramic viewing point:
• The proposed development would result in the relocation of the existing electricity substation on Elizabeth Street, to the rear of the development, allowing the Elizabeth Street frontage to be utilised for retail uses which is consistent with the site 3(c) Neighbourhood Business zoning of the site. Financial constraints mean that requiring a fully compliant FSR development would be likely to result in a development which would retain the existing substation which is an intrusive element on the Elizabeth Street streetscape;
• The proposed new second floor would be setback from the Elizabeth and Victoria Street frontages, retaining the existing facades of the buildings fronting Elizabeth Street. In addition, traditional subdivision patterns would be retained and the new infill development would be more in keeping with the character of the area than the existing electricity substation;
• Compliance with the FSR standard is therefore considered to be unreasonable and unnecessary as the proposal achieves consistency with objective (d).

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

Having regard to the objectives of the development standard contained in Woollahra LEP 1995, it is considered that strict compliance with this standard is unreasonable and unnecessary in this
circumstance as the development would be of an appropriate scale and bulk with no resultant impacts on the amenity of adjoining properties or the environment. The proposal will be consistent with the objectives of Council’s FSR standard.

5. **Is the objection well founded?**

The objection advanced by the applicant that compliance with the development standard is unreasonable and unnecessary is considered to be well founded. It is considered that the proposed breach of the FSR development standard would be consistent with the aims and objectives set out in Clause 3 of SEPP 1.

On the basis of the above comments it is considered that the SEPP1 Objection is well founded and that compliance with the FSR standard is unreasonable and unnecessary in the particular circumstances of this case.

### 12.5 Other special clauses/development standards

**Clause 18 Excavation:**

The Applicant’s Geotechnical and hydrogeological investigation report (prepared by Douglas Partners, dated January 2008, project 35506A) states that the proposed works would involve excavation up to a depth of 1.6m (RL59.7 mAHD) and within 0.5m to 1m of the site boundaries, to facilitate the proposed car stacker.

The geotech investigation identifies that the proposed excavation for the car stacker would predominantly encounter silty sand and sandy clay with the potential for some sandstone to be encountered towards the base of the excavation. The report addresses and makes recommendations on the following:

- Care in excavation adjacent of adjacent walls
- Vibration
- Underpinning
- Dilapidation reports
- Construction monitoring
- Impacts on water table

On review of the application, Council’s Development Engineer has advised that they have no objections to the proposed works in relation to excavation subject to the imposition of a number of conditions. These include the requirement for dilapidation reports for Nos. 10-12 Elizabeth Street, andNos. 68, 70, 72 and 74 Victoria Street, as well as requiring consideration for the need to underpin adjoining properties on loose foundation material. Compliance with the Geotechnical report and the requirement to support adjoining structures and to control vibration resulting from construction are also required by conditions.

All these requirements have been imposed (see **Conditions D.3, D.4 and E.4-E.6**). Subject to these conditions being imposed, the proposed works are considered acceptable in relation to the stability of adjoining properties.

**Conditions E.3, E.7 and E.11** have also been imposed to the maintenance of environmental controls and dust mitigation to ensure no negative impacts on adjoining properties during the construction process.
Subject to the above mentioned conditions, the proposed excavation is acceptable in terms of Clause 18.

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

The Applicant’s flood study prepared by Erbas & Associates Pty Ltd identifies that an on-site stormwater detention tank is required. An on-site detention tank with a volume of 21.6m³ is proposed in the basement area, north of the proposed car stacker, which will assist in managing on-site stormwater.

**Condition C.13** has been imposed to require the submission and approval of a Stormwater Management Plan for the site prior to the release of the Construction Certificate.

Subject to **Condition C.13**, the proposed works satisfy the provisions of Clause 25(2) of the WLEP 1995.

**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 falls within the Paddington Conservation Area. Council’s Heritage Officer has advised that the proposed development responds well in terms of scale and form to the historic context. Council’s Heritage Officer has advised that retention of the rear façade of No. 2 Elizabeth Street would retain its integrity and the proposed demolition of the existing electricity sub-station at No. 4 Elizabeth Street would not have any adverse impacts on the Conservation Area. Although the development would lead to the amalgamation of the sites, they would be clearly read as individual buildings from the street.

Council’s Heritage Officer has advised that subject to the proposed decks to Elizabeth and Victoria Streets being non-trafficable and the front setback of the building and No. 4 Elizabeth Street being setback to be in alignment with the setback of the first floor front elevation balcony of No. 2 Elizabeth Street, they have no objections to the proposed works. This has been required by parts (a) and (b) of **Condition C.1**.

Subject to **Condition C.1**, the proposed works would be acceptable in heritage terms.

### 13. DEVELOPMENT CONTROL PLANS

#### 13.1 Compliance table Paddington Development Control Plan, 2008

<table>
<thead>
<tr>
<th>Site Area (725m²)</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building Setback to Street Frontage</td>
<td>-</td>
<td>Forward of existing setback</td>
<td>Maintain Existing Setback</td>
<td>NO*</td>
</tr>
<tr>
<td>Height of Existing Building at Street Frontage (metres)</td>
<td>-</td>
<td>Above existing height</td>
<td>Maintain Existing Height</td>
<td>NO</td>
</tr>
<tr>
<td>Height of Rear Addition to Two Storey Building (metres)</td>
<td>-</td>
<td>Above Gutter Line of Main Roof Over Existing Building</td>
<td>Below Gutter Line of Main Roof Over Existing Building</td>
<td>NO</td>
</tr>
<tr>
<td>Solar Access to Private Open Space of adjoining properties (Hours on 21 June)</td>
<td>&gt;3hrs</td>
<td>&gt;3hrs</td>
<td>50% (or 35m² with dimension 2.5m) for 3 hours between 9am and 3pm</td>
<td>YES</td>
</tr>
</tbody>
</table>

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Public land (Part 3)

A steel and glass awning would be constructed to the front façade of No. 4 Elizabeth Street, over the public footpath. Council granted owner’s consent for the awning on 6/6/2008 subject to a positive covenant condition being imposed (see Condition H.2).

Principle building form and street front zone of significant buildings (Part 4.1.1)

The objectives of Part 4.1.1 of the PHCA DCP 2008 seek to retain and conserve principle building forms of significant buildings and promote design that conforms to the existing character of the area.

The front facades of the existing terraces at Nos. 2 and 6-8 Elizabeth Street would be unaltered as part of the proposed works. A new second floor level would be constructed to the existing building at 6-8 Elizabeth Street. However, as the proposed addition would be set back from the front building alignment (by 2.3m), the new addition would not be visible when viewed from the opposite side of Elizabeth Street and the existing character of the building would be maintained.

The set back of the proposed new second floor addition to No. 6-8 Elizabeth Street would also mean that the new addition would remain clearly distinguishable and subordinate to the existing building form when viewed along Elizabeth Street.

The proposed works would not have any negative impacts on the principle building facades of the existing buildings and are therefore acceptable in relation to the objectives and controls of Part 4.1.1 of the PHCA DCP 2008.

Side elevations to streets and lanes (Part 4.1.2)

Objectives O1 and O2 of Part 4.1.2 of the PHCA DCP 2008 seek to retain the architectural character of side elevations of significant buildings and ensure additions are of sympathetic design and construction.

The proposed works would result in the demolition of the existing rear wing of No. 2 Elizabeth Street and the construction of a new side façade following the same building alignment. The new works would retain the breezeway, and the upper windows would use appropriate traditional proportions.

Council’s Heritage Officer has advised that the proposed alterations to the rear of No. 2 Elizabeth Street would not impact upon the architectural form and pattern of openings of the building form and would retain the character of the existing building.

The proposed works are therefore acceptable in relation to the objectives of Part 4.1.2 of the PHCA DCP 2008.

### Site Area (725m²)

<table>
<thead>
<tr>
<th>Site Area (725m²)</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solar Access to North Facing Windows of Habitable Rooms on Adjoining Properties (Hours on 21 June)</td>
<td>&gt;3hrs</td>
<td>&gt;3hrs</td>
<td>3.0 hours</td>
<td>YES</td>
</tr>
</tbody>
</table>

* Refer to Condition C.1 (b)
Rear elevations, rear additions, significant outbuildings and yards *(Part 4.1.3)*

Objective O2 seeks to ensure rear alterations and additions are of sympathetic design and construction. Objective O4 seeks to enable sympathetic design with the use of contemporary materials in appropriate circumstances.

The proposed works would result in rear alterations and additions to Nos. 2 and 4-8 Elizabeth Street, with a new second floor level.

The height of the proposed rear additions to Nos. 2 and 4-8 Elizabeth Street would exceed the height of the existing buildings which would be contrary to Control C2 of Part 4.1.3 of the PHCA DCP 2008. Control C4 also requires the roof of extensions to be of a traditional form.

The front facades of the existing buildings would not be altered and the proposed new rear additions have been designed to be set back from the front building setback of the existing buildings at Nos. 2 and 4-8 Elizabeth Street. As demonstrated in Figure 1 below, the proposed new second floor level would not be visible from the opposite site of Elizabeth Street. In addition, the setback would ensure that when viewed along Elizabeth Street the new rear addition would remain subordinate to the existing buildings.

The contemporary design of the new rear additions would be consistent with the character of the proposed infill building at No. 4 Elizabeth Street which has been designed to retain traditional subdivision patterns and window openings. A curved roof has been proposed to minimize the impacts of the roof of the new second floor level and to maximise natural light to the upper levels.

Because of the setback of the proposed second floor level, the addition would not dominate the existing building forms and although there would be large areas of glazing at the upper level, the impact would be reduced due to its low visibility.

For these reasons the proposed rear additions would not have any negative impacts on the character of the existing buildings and the proposed design would be appropriate within the locality. The proposed works are therefore acceptable in relation to Part 4.1.3 of the PHCA DCP 2008.
Roofs and roof forms (Part 4.1.4)

Objective O1 of Part 4.1.4 of the PHCA DCP 2008 seeks to retain the original roofscape of Paddington, while Objective O3 requires that contemporary roof forms are consistent with the character of the Conservation Area.

The development would retain the existing roof to No. 2 Elizabeth Street as well as the front facades of No. 2 and 6-8 Elizabeth Street. A number of contemporary roof styles would be utilised for the new part of the development. The roofs would include two sloping curved roofs, which would reduce the appearance of the roofs to the streetscape while also maximizing natural light to the upper levels. A raised roof section with glass louvers would join the two curved sections towards the front and rear of the development.

Although the roof forms are not traditional, the setback of the proposed new second floor level from Elizabeth and Victoria Streets mean that they would not be visible when viewed from immediately adjacent to the site. The proposed development would retain a clear differentiation between the original buildings and the proposed new additions while remaining subordinate.

The proposed roof forms are considered acceptable in relation to the objectives of part 4.1.4 of the PHCA DCP 2008.

Site coverage, setbacks and levels (Part 4.1.5)

Objective O3 of Part 4.1.5 of the PHCA DCP 2008 seeks to ensure new development continues established building alignments and setbacks while Objective O4 states that new development should respond appropriately to established levels.

The proposed front setback of the new development at 4 Elizabeth Street (on the site of the existing substation), would match the front setback of No. 6-8 Elizabeth Street, meaning it would be forward of the existing sub-station and the front setback of the adjacent terrace at 2 Elizabeth Street. The proposed new front setback would be contrary to Objective O3 of Part 4.1.5 of the PHCA DCP 2008, which stipulates that new development must continue established alignments and setbacks of established historic development. The proposed setback would also be contrary to Controls C2 and C5 which require established setbacks on street frontages to be maintained and the pattern in commercial areas to be maintained.

Council’s Heritage Officer has advised that the proposed front building alignment of the new building should be set back to be in line with the balustrade of the first floor balcony of No. 2 Elizabeth Street.

The setting back of the new commercial development would reduce the impact of the new southern wall of the infill development when viewed northwards along Elizabeth Street. It would also result in a gradual increase in setbacks southward along Elizabeth Street, reducing the prominence of the new infill development, compared to the existing terrace at No. 2 Elizabeth Street.

Part (b) of Condition C.1 therefore requires the front building alignment of the new infill commercial unit to be set back to align with the first floor balcony of No. 2 Elizabeth Street at ground and first floor levels.

The levels of the new development would be consistent with adjoining development.
Subject to part (b) of Condition C.1, the proposed works are acceptable in relation to Part 4.1.5 of the PHCA DCP 2008.

**Excavation (Part 4.1.6)**

The objectives of Part 4.1.5 of the PHCA DCP 2008, seek to ensure the structural integrity and stability of existing buildings during and after excavation.

Specifically, the Control C1 (f) of Part 4.1.6 of the PHCA DCP states that excavation would not be permitted if the rock substratum is greater than 1.5m below original footings.

The proposed works would involve excavation up to a depth of 1.6m, for an area of approximately 8m x 6m, to facilitate the proposed car stacker. The excavation would be within 0.5m to 1m of the site side and rear boundaries.

The applicant’s Geotechnical Report prepared by Douglas Partners, dated 01/2008, reference 35506A, states that test bores in the location of the proposed car stacker identified that filling and sandy clay were present up to 2.4m below the current floor, with sandstone encountered beneath this. The proposed excavation would occur right up to the north, north-west and south-west site side boundaries.

The existing bakery building at the rear of No. 6-8 Elizabeth Street (the location of the excavation for the proposed car stacker) was constructed in 1903 and has undergone a number of additions and extensions over the years. The development to the north-west of where the excavation is to occur, is a modern commercial development constructed in 1976. To the southeast of the area of the proposed excavation, are the rear yards of residential terraces No. 68, 70, 72 and 74 Victoria Street. Works have recently been completed at Nos. 72 and 74 Victoria Street for alterations and additions to the existing residential terrace and a new residential infill development, respectively.
The existing brick wall of the two storey workshop on the subject site, acts as the rear garden boundary wall to Nos. 68-74 Victoria Street. The side boundary walls and fences of Nos. 68-74 Victoria Street abut the southern elevation of the subject site where the proposed excavation is to occur.

**Figure 3:** Rear garden of No. 70 Victoria St & south-west façade of existing workshop, as viewed from rear yard of No. 70 Victoria St

**Figure 4:** Rear toilet of No. 70 Victoria St, as viewed from rear yard of No. 70 Victoria St
The proposed excavation would occur adjacent to the rear yards of Nos. 68 and 70 Victoria Street. The owners of No. 70 Victoria Street have objected to the proposed excavation in relation to unacceptable noise and vibrations during the construction process.

As the adjoining commercial development to the north-west of the area of proposed excavation and the terrace at No. 74 Victoria Street, are infill developments, the proposed excavation would not have any impact on original footings. The terraces fronting Victoria Street (including Nos. 64-72) are set back approximately 4m from the shared boundary where the proposed excavation is to take place, although the existing outdoor toilet structure at No. 70 Victoria Street is built up to the rear boundary.

Council’s Development Engineers have advised that subject to a number of standard Conditions, they do not have any objections to the proposed excavation.

These conditions include Condition D.3 which requires dilapidation reports to be prepared for Nos. 10-12 Elizabeth Street and Nos. 68, 70, 72 and 74 Victoria Street. Condition D.4 requires the underpinning of adjoining properties, where necessary. In order to ensure adjoining structures are fully supported during construction and to ensure no unacceptable vibrations, Conditions E.4-E.6 have been imposed.

Conditions E.3, E.7 and E.11 have also been imposed to the maintenance of environmental controls and dust mitigation to ensure no negative impacts on adjoining properties during the construction process.

Subject to these conditions being imposed, Council’s Development Engineers advised that they had no objections to the proposed excavation on technical grounds and would not have any negative impacts on the structural stability of existing surrounding development.
The proposed excavation would not comply with Control C1 (f) of Part 4.1.6 of the PHCA DCP 2008 in relation to the depth of the substratum however, the excavation would have a setback of approximately 4m from original footings (with the exception of the external toilet at No. 70 Victoria Street).

Subject to the above mentioned conditions, the proposed works are therefore considered acceptable in relation to the objectives of Part 4.1.6 of the PHCA DCP 2008.

Open space, swimming pools, lightwell courtyards and landscaping (Part 4.1.7)

There are no specific private open space or deep soil landscaping requirements for non-residential development in the PHCA DCP 2008. However, Objectives O3 and O5 seek to secure some areas of planting and permeable areas to assist with on-site drainage.

There is no significant landscaping currently on the site and the proposed development does not include any on-site landscaping. Council’s Tree officer advised that they had no objections to the proposed works. As discussed in Section 12.5 of this report above and in ‘stormwater management’ below, an on-site stormwater detention tank would be provided to assist with on-site stormwater management and a Stormwater Management Plan is required to be submitted to and approved by Council prior to the release of the Construction Certificate (see Condition C.13).

The proposal includes three roof terraces to the second floor level, however in order to protect the historical character of the Conservation Area, part (a) of Condition C.1 requires them to be non-trafficable.

Subject to Condition C.13, the proposed development is considered to be acceptable in relation to Part 4.1.7 of the PHCA DCP 2008.

Building height, bulk, form and scale (Part 4.1.8)

The objectives of Part 4.1.8 of the PHCA DCP 2008 seek to maintain the visual consistency of established heights of historically significant streetscapes and ensure the height of new development conforms to appropriate building heights in the street.

The height of the proposed development (10.7m) would exceed the maximum height set within the WLEP 1995 (9.5m). A SEPP1 Objection was submitted by the applicant and has been assessed in Section 12.3 above. Compliance with the development standard was considered to be unreasonable and unnecessary in this instance.

The height of the proposed new second floor level to Nos. 4-8 Elizabeth Street would be marginally higher than the height of the chimneys and front parapets of the existing buildings to be retained at Nos. 2 and 6-8 Elizabeth Street (10.5m). The proposed development would also be higher than the majority of surrounding development, although not the adjoining development at No. 10-18 Elizabeth Street.

The proposed new second floor level would be set back from both the Elizabeth and Victoria Street frontages so that it would not be visible when viewed from the opposite side of Elizabeth Street and would be subordinate to the existing buildings to be retained when viewed along Elizabeth and Victoria Streets.

The result of the proposed setback of the second floor level would be that the building would appear as a two storey development which would be consistent with heights of surrounding developments.
Control C4 of Part 4.1.8 states that sunlight to private open space and habitable room windows of adjoining properties should not be reduced to less than 3 hours between 9am and 3pm on 22 June. Objections relating specifically to overshadowing have been received from No. 7 Victoria Street and No.70 Victoria Street.

The applicant provided shadow diagrams illustrating existing and proposed overshadowing at 22 June. The shadow diagrams show additional limited overshadowing, as a result of the development. Some additional overshadowing would occur to No. 7 Victoria St & the rear yards of retail properties at Nos. 402 & 404 Oxford St, on the opposite side of Victoria Street at 9am. At 12pm, limited increased overshadowing would occur to the public domain only and would not impact upon any adjoining properties. Overshadowing of properties on the east side of Elizabeth Street would be slightly increased from 3pm onwards on 22 June, but would not impact on private open space to the rear of the properties.

Overshadowing to properties on the north side of Victoria St (including No. 70 Victoria St) would not be impacted on as a result of the proposed development.

The additional overshadowing resulting from the proposed development would be minimal and would be compliant with Control C4 of Part 4.1.8 of the PHCA DCP 2008. The proposed development is therefore acceptable in relation to sunlight access to adjoining properties.

The resulting appearance of the height, bulk and scale of the proposed development would be consistent with the predominant scale of adjoining buildings. In addition there would be no detrimental impacts on overshadowing to adjoining properties. The proposed works are therefore acceptable in relation to the objectives and controls of Part 4.1.8 of the PHCA DCP 2008.

**Views (Part 4.1.9)**

There would be no impact on existing views.

**Acoustic and visual privacy (Part 4.1.10)**

Several objectors have raised concerns in relation to negative impacts on visual and acoustic privacy as a result of the proposed development. Objections related specifically to the proposed car stacker, the relocated electricity substation, air conditioning plant and use of the roof level terraces.

The applicant submitted an Acoustic Assessment (prepared by Wilkinson Murray, dated April 2007). The report has established the NSW EPA Industrial Noise Policy (INP) noise criterion for the site as being 52dBA for the plant and equipment during the daytime and 50dBA for the evening.

**Car Stacker**

The applicant’s Acoustic Assessment report concluded that the as long as the car stacker, is installed in accordance with the manufacturer’s installation instructions (with an ‘acoustic package’, or the new boundary wall is constructed with a clear gap to the neighbour’s walls), the proposed car stacker will comply with the relevant noise criterion.

To ensure the proposed car stacker is installed in accordance with the manufacturer’s instructions and therefore complies with the relevant noise criterion, the Wilkinson Murray Acoustic Assessment report, dated April 2007, has been included as part of the consent (**Condition A.3**).
Air Con and Relocated Electricity Substation

The proposed works include the installation of air conditioning units within the first floor plant room space. The applicant’s Acoustic Assessment Report prepared by Wilkinson Murray, April 2007, states that potential noise from the air conditioning equipment would comply with relevant noise goals.

The Acoustic Assessment also concluded that the proposed relocated sub-station would meet both the day and night-time noise criterion. The Acoustic Assessment report has been included as part of the consent and subject to this, the proposed air conditioning plant and relocated electricity substation are acceptable in relation to acoustic levels.

As discussed above, the roof terraces fronting Elizabeth and Victoria Streets have been conditioned to be non-trafﬁcable to protect the character of the Conservation Area (part (a) of Condition C.1).

In addition to the Wilkinson Murray Acoustic Assessment being included as part of the consent (Condition A.3), Council’s Environmental Health Officer has recommended Council’s standard conditions requiring the acoustic certification of mechanical Plant and equipment (including the car stacker), and that the use of the site does not transmit ‘offensive noise’ as defined in the Protection of the Environment Operations Act 1997 be imposed (Conditions I.2 & I.3).

Subject to the above mentioned conditions, the proposed works would be acceptable in relation to acoustic privacy.

The proposed set back of the second floor level from both Elizabeth and Victoria Street frontages, and the separation from other buildings would ensure that privacy to adjoining properties was maintained from this level. In addition, the openings at ﬁrst and ground floor level would be adequately separated from adjoining properties to avoid any unacceptable impacts on privacy. Subject to part (a) of Condition C.1, restricting the accessibility of the roof level terraces, there would be no negative impacts on visual privacy.

Land subdivisions and site amalgamations (Part 4.1.11)

The proposed development will lead to an amalgamation of 5 adjoining sites. Council’s Heritage Officer has advised that the proposed development would retain the clearly separate building forms to Elizabeth Street and the retention of the majority of the rear wing of No. 2 Elizabeth Street would retain the historic character of the streetscape.

The design of the proposed development would be acceptable in relation to the objectives of part 4.1.11 of the PHCA DCP 2008.

Stormwater management (Part 4.1.12)

Council’s Development Engineer has advised that they have no objections to the stormwater disposal concept plan by Erbas & Associates P/L, dated 07/02/2008, subject to the submission and approval of a Stormwater Management Plan for the site prior to the release of the Construction Certificate (see Condition C.13).
The Flood Study by Erbas & Assoc No. HCS04030 issue A dated 20 Sept 2006 calculated the 1:100 flood level at RL62.92m AHD. Council’s Development Engineer advised that new development on the subject site must provide the required flood protection for habitable rooms. In this case for 1:100 year flood event, an RL62.92m AHD, plus a 0.3m freeboard allowance, would require a floor level of 63.22m AHD.

The proposed new retail units fronting Elizabeth Street and Victoria Street (at No 4 Elizabeth Street) would have ground floor RLs of 63.22m AHD (raised above street level), which complies with the requirements in relation flood protection measures in Clause 25(2) of the WLEP 1995 and Part 4.1.12 of the PHCA DCP 2008.

Subject to Condition C.13, the proposed works satisfy Part 5.1.10 of the PHCA DCP 2008.

**Water conservation (Part 4.1.13)**

No impact.

**Energy efficiency (Part 4.1.14)**

The proposed roof of the new development has been designed to maximize natural light and ventilation to the upper levels of the new development, using the glass louvers and void areas.

The proposed works are considered acceptable in relation to the objectives of Part 4.1.14 of the PHCA DCP 2008.

**Access and mobility (Part 4.1.15)**

See Section 14.3 of this report below.

**Chimneys (Part 4.2.2)**

Objective O1 of Part 4.2.2 of the PHCA DCP 2008 seeks to retain original chimneys. The proposal would result in the demolition of the rear most existing chimney to No. 2 Elizabeth Street.

The existing chimney to the rear addition of No. 2 Elizabeth Street is set back from the Victoria Street boundary and is only partially visible. Council’s Heritage Officer has advised that as the form of the majority of the rear wing to No. 2 Elizabeth Street is to be retained, the part demolition of the existing chimney on the rear wing would be acceptable.

The existing two chimneys to the principle building form of No. 2 Elizabeth Street would be retained.

The proposed works are considered acceptable in relation to Part 4.2.2 of the PHCA DCP 2008.

**Windows, doors and shutters and security (Part 4.2.3)**

Objective O1 of Part 4.2.3 seeks to retain original window and door openings while Objective O3 seeks to retain their visual prominence from the public domain.
All the existing windows and doors to the front facades of the existing buildings to Elizabeth Street would remain unaltered. Replacement window and door openings would be located on the Victoria Street façade of the rear wing of No. 2 Elizabeth Street. New window and door openings would also be located in the new part of the development.

The windows of infill development have been designed with traditional proportions to respond to existing window patterns. The proposed new windows would respond appropriately to the relevant historic context and are acceptable in relation to Part 4.2.3 of the PHCA DCP 2008.

New full height glazed windows and doors would be constructed to the ground floor Elizabeth Street elevation of the new building at No. 4 Elizabeth Street. The new openings would be consistent with the existing retail shopfronts at No. 6-8 Elizabeth Street and would be acceptable against the objectives of Part 4.2.3 of the PHCAD DCP 2008.

**Verandahs and balconies (Part 4.2.4)**

Control C2 of Part 4.2.4 of the PHCA DCP 2008 only permits new balconies to street front elevations where they have been known to have previously existed. Control C8 also requires upper level balconies to be designed to take account of the amenity of adjoining properties.

A number of objectors have raised concerns relating to the use of the proposed roof terraces to the Elizabeth and Victoria Street frontages and their potential impacts on visual and acoustic privacy.

Council’s Heritage Officer has advised that the proposed second floor level roof terraces to Elizabeth and Victoria Streets would introduce trafficable areas at roof level which would be an uncharacteristic element within the Conservation Area.

Therefore to ensure that the proposed roof terraces remain non-trafficable, part (a) of **Condition C.1** has been imposed stipulating that the three terraces must remain non-trafficable except for essential maintenance purposes. Subject to this condition, the proposed works are acceptable in relation to Part 4.2.4 of the PHCA DCP 2008.

**On-site vehicle parking, garages, driveway access and servicing facilities (Part 4.2.6)**

Objective O2 seeks to ensure parking structures are not the dominant element on the streetscape while Objective O4 seeks to ensure the designs of garages are sympathetic to the historical context.

The proposed development would utilise the existing garage entrance on Victoria Street to facilitate vehicular entry to the proposed 13 space car stacker.

The new vehicle entrance would have an automatic garage panel lift door with a width of 3.4m and a height of 3.6m. The garage door would exceed the maximum permitted door width by 200mm and would exceed the maximum permitted door height of 2.2m by 1.4m. However, the vehicle entry has been designed to be incorporated into the new development with commercial space above. The new vehicle entrance would be consistent with the character and design of the proposed new development and the non-compliances in relation to door height and width are therefore acceptable.

The issues of parking provision, disabled parking and loading bays are discussed in detail in section 14.2 of this report below.
Materials, finishes and details (Part 4.2.8)

Objective O2 of Part 4.2.8 of the PHCA DCP 2008 seeks to promote high quality design, materials and finishes. Specifically, Control C6 requires infill development to use appropriate materials and finishes which are similar to, but do not copy, traditional materials and finishes on the streetscape.

The Paddington Society have specifically raised objections to the use of exposed steel structure at upper level and the proposed glazed awning over Elizabeth Street.

The architectural plans note that the proposed new windows to the Elizabeth Street façade of the new infill development at No. 4 Elizabeth Street and the new windows to the Victoria Street elevation would have contemporary detailing, while the applicant’s SEE identifies the window frame material as ‘black or bronze anodized aluminum’. The frame of the proposed new roof to the new second floor level would be dark painted steel, while the proposed awning over the pavement to the Elizabeth Street façade of No. 4 Elizabeth Street would be glazed.

Table 1 of Part 4.2.8 of the PHCA DCP 2008 permits fine metal frames in neutral tones to infill buildings. Council’s Heritage Officer has advised that the proposed use of contemporary materials to the new development fronting the Elizabeth and Victoria Street façades would be acceptable in this case.

The PHCA DCP 2008 does not specify suitable materials for awnings however, Control C8 of Part 4.3.7 ‘Commercial, retail and industrial buildings’, states that materials for new retail buildings must be consistent with the historic streetscape context. The proposed use of glazing for the awning would be consistent with the existing awning at No. 6-8 Elizabeth Street which reflects traditional shop fronts in a contemporary manner. The proposed use of the glazing would not have any negative impacts on the character of the Conservation Area and is therefore acceptable.

Exterior colours (Part 4.2.9)

No details have been provided in relation to the proposed exterior colours. Condition C.2 has therefore been imposed to require the external colour scheme to have an appropriate hue and tonal relationship with traditional colour schemes, as is required by Part 4.2.9 of the PHCA DCP 2008.

Advertising signs on buildings (Part 4.2.10)

No details have been given in relation to proposed advertising signs. Condition A.5 has been imposed stipulating that this consent does not give any consent for advertising signs and a separate DA may be required for any signs.

Building types (Part 4.3)

Corner terrace houses (4.3.3)

The objectives of Part 4.3.3 of the PHCA DPC 2008 seek to retain the architectural detail and character of corner terraces and that side additions are of sympathetic design and construction.

The proposed works would retain the majority of the existing side elevation of the existing No 2 Elizabeth Street corner terrace. The existing form and development pattern of the rear wing would be retained and the side façade would retain traditional window and door opening patterns. The proposed works would retain the character of the existing corner terrace building and are therefore acceptable against the objectives of Part 4.3.3 of the PHCA DCP 2008.
Infill development (Part 4.4)

Objective O1 of Part 4.4 of the PHCA DCP 2008 seeks to ensure infill development reflects contemporary values and design which responds to the historical context of Paddington. Objectives O2 and O2 seek to ensure infill development is designed to have a cohesive relationship with the existing urban fabric and that it respects the scale and setting of adjacent contributory buildings.

The proposed works would result in the existing electricity substation at No. 4 Elizabeth Street being demolished and a new infill building being constructed in its place.

The proposed second floor level (to the infill development and No. 6-8 Elizabeth Street) would be set back from the Elizabeth Street front setback of the new and existing buildings. This would ensure that the development would appear as a two storey development from street, which is consistent with surrounding development.

The new development has been designed to reflect traditional subdivision patterns, appearing as two lots from Elizabeth Street as well as traditional opening patterns.

Council’s Heritage Officer has advised that the front setback of the infill development at No 4 Elizabeth Street should be increased to be in alignment with the first floor level front balcony at No. 2 Elizabeth Street. This would ensure that the infill development respected traditional front setbacks patterns and the prominence of the original adjoining terrace on the streetscape was retained (see part (b) of Condition C.1).

Subject to Condition C.1, the proposed infill development would be of an acceptable height, bulk and scale, design and materials, within the context of the Paddington Conservation Area.

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

On-site Parking Generation

The proposed development would result in a total provision of 266.2m² of retail floorspace, which would generate a parking demand of 7.0 spaces (based on Council’s Parking Code rate of 3.3 spaces per 100m² of retail floor space and a multiplier of 0.8). In addition, 585m² of commercial floor space would be provided which would generate a parking demand of 7.3 spaces (based on Council’s Parking Code rate of 2.5 spaces per 100m² of commercial floor space and a multiplier of 0.5).

<table>
<thead>
<tr>
<th></th>
<th>Retail store (m²) (req. parking)</th>
<th>Commercial (m²) (req. parking)</th>
<th>Warehouse (m²) (req. parking)</th>
<th>Residential</th>
<th>Total required parking spaces</th>
<th>Parking Shortfall (spaces)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Existing Development</strong></td>
<td>127m² @ 3.3 Spaces per 100m² &amp; 0.8 multiplier = 3.4 spaces</td>
<td>214m² @ 2.5 Spaces per 100m² &amp; 0.5 multiplier = 2.7 spaces</td>
<td>280m² @ 0.5 Spaces per 100m² &amp; 1.0 multiplier = 1.4 spaces</td>
<td>1 Dwelling @ 2 Spaces per dwelling = 2 spaces</td>
<td>9.5</td>
<td>7.5</td>
</tr>
<tr>
<td><strong>Proposed Development</strong></td>
<td>266.2m² @ 3.3 Spaces per 100m² &amp; 0.8 multiplier = 7.0 spaces</td>
<td>585m² @ 2.5 Spaces per 100m² &amp; 0.5 multiplier = 7.3 spaces</td>
<td>N/A</td>
<td>N/A</td>
<td>14.3</td>
<td>1.3</td>
</tr>
</tbody>
</table>
Therefore the total parking demand that is generated by the revised development would be 15 spaces. This would mean a shortfall of 1.3 on-site car parking spaces for the proposed development, compared to the existing shortfall of 7.5 car parking spaces.

The objective of the Off-street car parking provision and servicing facilities DCP is to:

‘To ensure that development generating vehicular traffic make adequate provision off the public street for the car parking and servicing needs of its occupants and users, including visitors, employees and deliveries’

It has been long established that on-street parking in Paddington is at a premium, especially in the evenings and afternoons and particularly when major sporting events occur. It is because of this that it is expected that people travelling to and from the site will walk or use regular and convenient public transportation, which is within reasonable walking distance from the site. Numerous bus services operate along Oxford Street, including services 380, 378, 352, and the express 333 service. Oxford Street is also well served by taxis, being a main road linking the City with the Eastern Suburbs. Also it is reasonable to expect that retail trips will be ‘multi-purpose’ and shared with other shops in the surrounding areas.

Moreover, Control C1 of Part 4.2.6 of the PHCA DCP 2008, states that the provision of parking spaces is not a mandatory requirement in Paddington, where it would result in detrimental impacts on adjoining properties, the architectural character of the building or the streetscape. The restrictions of the site in terms of size, mean that to require the full parking provision would most likely result in negative impacts on the street-scene and the character of the conservation area.

The proposed works with the provision of the car stacker would result in a shortfall of only 1.3 car parking spaces which is substantially less than the existing shortfall of 7.5 spaces. In addition, the proposed development would not result in the loss of any existing on-street car parking spaces.

Due to the above mentioned reasons, Council’s Traffic Engineer has advised that the proposed shortfall of car parking spaces and the manner of provision is considered acceptable in this instance.

Car Stacker
All onsite car parking is provided by way of a car stacker, with the exception of the on-site loading bay. The car stacker would only be accessible to customers of the retail and commercial uses for short stay parking and would require prior arrangement. The car stacker parking would be utilised for long term parking with short stay parking accommodated on street in the existing time limited spaces and metered parking spaces.

Section 6.4 of the Woollahra off-street parking DCP permits the use of stacked parking to satisfy long stay parking demand requirements for commercial and retail premises where it is not physically possible to provide the total required number of spaced on site, in accordance with section 4 of the DCP.

Council’s Traffic Engineer has advised that as the Woollahra off-street DCP does not differentiate between the requirements for staff and customer parking, the proposed stacker would be acceptable.

The introductory text of Part 4.2.6 of the PHCA DCP 2008 highlights potential negative impacts from the use of car stackers as: cars queuing on the street while cars enter/exit the stacker, out of scale structures and excessive excavation. These issues have been addressed below:
The proposed single vehicle entry off Victoria Street would widen to a double width space within the car parking area, allowing vehicles to wait and pass each other when in the car parking area. In addition, the use of the proposed car stacker would result in less negative impacts on traffic and on-street parking pressure, than if less on-site car parking was proposed.

- The car stacker would be enclosed and located at the rear of the development and would not be visible from the public domain.
- The amount of excavation required for the car stacker would be up to a depth of 1.6m (RL59.7 mAHD) and within 0.5m to 1m of the site boundaries.

The limitations of the subject site mean that the provision of off-street car parking, without the use of a car stacker, would not be able to meet the Woollahra off-street parking DCP requirements for the proposed development.

Council’s Development Engineers and Environmental Health Officer have both advised that the installation and operation of the car stacker would comply with relevant environmental controls in relation to noise, vibration and pollution.

The proposed use of the vehicle car stacker is therefore considered acceptable in this instance against the objectives of the Off-street car parking DCP.

**Loading Area**

Section 5 of the Off-street car parking DCP requires on-site loading bays to be provided for all uses where regular deliveries of goods are to be made. An on-site loading bay has been proposed within the basement parking area off Victoria Street.

Council’s Development Engineer has advised that the eastern wall adjacent to the loading bay must be moved 200mm to the east to ensure compliance with AS 2890.1-2004 section 4.10(a). They have also stipulated that the bay must be marked with signposting and pavement marking to ensure vehicle are aware of the bay. Parts (e), (f) and (g) of **Condition C.1** have been imposed to require this and also to stipulate that the loading bay is to be used for all the loading and unloading of goods relating to the ground floor retail units.

The provision on-site loading bay would ensure that there is no disruption to traffic and parking on surrounding streets as a result of deliveries to the proposed development.

**Disabled parking**

The proposed development does not make any provision for on-site disabled parking.

AS 2890.1-2004 requires that 1 to 2% of parking spaces for the development are required to be for disabled parking users. This represents a requirement for between 0.13 and 0.26 disabled parking spaces for the proposed scheme. Rounded up, this would require the provision of 1 off-street disabled parking space.

The site space limitations and the use of space to provide 13 off-street car parking spaces in the proposed mechanical car stacker as well as the off-street loading bay have resulted in no provision for off-street disabled parking. Council’s Traffic Engineer advised that the applicant should explore the possibility of reconfiguring retail space 1.01 in order to allow 1 disabled parking space in the eastern corner of the enclosed car park.
The applicant has advised that the reconfiguration of retail space 1.01 to allow for disabled parking would hinder the turning circle of cars entering and exiting the car stacker. The provision of the on-site disabled parking space would therefore jeopardize the provision of 13 off-street car parking spaces. In this case, the provision of 13 on-site car parking spaces is considered more beneficial to the overall development than providing a single disabled space on site. The lack of the provision of an on-site disabled car parking space is therefore considered acceptable in this instance.

**Condition A.5** has been imposed to clarify that this consent does not grant any approval for on-street disabled parking spaces as shown on the submitted plans.

### 13.3 Woollahra Access DCP

The proposed additions and alterations are for a mixed use Class 5, 6 and 7 building. Table 1 of the Woollahra Access DCP requires new Class 5, 6 and 7 buildings to be fully accessible. Alterations and additions to existing buildings are required to be fully accessible, subject to the provisions of Clause 94 of the Environmental Planning & Assessment Regulation 2000.

Clause 94(1)(a) and (2) of the EP&A Regs., allows consideration to be given to the appropriateness of requiring existing buildings to be brought into total or partial conformity with the BCA access requirements.

The finished ground floor level of the new retail units would be at No. 4 Elizabeth Street would have an RL of 63.22 AHD, to address the 1:100 flood level applicable to the site (see ‘Stormwater management’ above.).

The ground floor levels of the new retail units would mean that access to the units from Elizabeth Street would require 3 raised steps. However, these two units, the new unit fronting Victoria Street and the unit within No. 2 Elizabeth Street, would be fully accessible via the new pedestrian access door off Victoria Street.

As the ground floor levels of existing retail units would remain the same, accessibility to these units would remain. The upper level commercial units would be fully accessible by stairs or the internal lift.

As discussed above, disabled parking is required to be provided in accordance with AS 2890.1-2004. Although no on-site disabled parking space is proposed, the proposed development would secure a total of 13 off-street parking spaces by way of the proposed mechanical car stacker. The parking would be made available for employees and by prior arrangement by visitors. The limitations of the site in relation to size and the need to retain its heritage character within the Conservation Area, mean that this non-compliance is considered acceptable.

The considerations above in terms of heritage and flooding mean that the accessibility of the proposed development would be acceptable in relation to the aims of the Woollahra Access DCP.

### 14. APPLICABLE REGULATIONS

N/A

### 15. THE LIKELY IMPACTS OF THE PROPOSAL

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Fire Safety

The application was referred to the New South Wales Fire Brigade who advised that they had no objections to the proposed works (specifically the proposed 13 vehicle car stacker and the relocation of the electricity substation), subject to conditions which:

- require a suitable automatic fire sprinkler system to be installed in the car stacker; and
- require the new electrical substation to comply with Energy Australia’s Network Standards and other relevant Australian Standards.

These conditions have been imposed as parts (c) and (d) of recommended Condition C.1.

Condition I.4 has been imposed to restrict the trading hours of the ground floor retail units to be compatible with retail units within the surrounding area. Trading hours have been limited to the following:

- a. Monday to Wednesday & Friday 9am- 6pm
- b. Thursday 9am-8pm
- c. Saturday 9am—6pm
- d. Sunday and Public Holiday 10am- 5pm

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 works within 500m of adjacent Class 1, 2, 3 or 4 land which are likely to lower the watertable below 1 metre AHD on adjacent Class 1, 2, 3 or 4 land require preliminary testing 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 Planning.

The proposed works would not result in the water table being lowered below 1m AHD and are therefore acceptable in relation to Acid Sulphates.

17. SUBMISSIONS

Site Notification

In accordance with clause 4.5 of Woollahra Municipal Council’s Development Control Plan for Advertising and Notification of Development Applications and Applications to Modify Development Consents, the applicant has completed the statutory declaration [see correspondence on file dated 24th February 2009] declaring that the site notice for DA 829/2008 at 2-8 Elizabeth Street, PADDINGTON was erected and maintained during the notification period in accordance with the requirements of the DCP.

The proposal was advertised and notified in accordance with Council’s Advertising and Notifications DCP. Nine (9) submissions were received from:

The Paddington Society (2 submissions received)
Mr D Bernado- 17 Elizabeth Street, Paddington
Ms S Lee-Joe- 66 Victoria Street, Paddington
Ms R Wilson- owner of No. 70 Victoria Street, Paddington
Mr M Michael- 64 Victoria Street, Paddington
Mr & Mrs L Meilak- 7 Victoria Road, Paddington
Mr B Thompson & Ms R Lauchlan- 21 Elizabeth Street, Paddington
Ms P Su- owner of 42 Victoria Street, Paddington
Ms C Moore- Member for Sydney

The objectors raised the following issues:

**Objection-** Non-complaint height of development, which would be disproportional to adjoining properties (excluding No. 10 Elizabeth Street which is inappropriate).

**Response-** See Section 12.3 of this report above.

**Objection-** Non-complaint FSR.

**Response-** See Section 12.4 of this report above.

**Objection-** Development would result in unacceptable noise impacts from the relocated substation, air conditioning plant and proposed roof terraces.

**Response-** See ‘Acoustic and visual privacy’ above.

**Objection-** Proposed development would result in unacceptable overshadowing to adjoining properties (specifically Nos. 7 and 70 Victoria St).

**Response-** See ‘Building height, bulk, form and scale’ above.

**Objection-** Object to the proposed car stacker in relation to potential noise and vibrations and pollution.

**Response-** The applicant’s Acoustic Assessment report concluded that the Woehr Combilift 543 car stacker, constructed with a clear gap of at least 20mm from the walls of neighbouring premises, no vibrations would be transmitted to neighbouring structures.

As the ground floor car stacker would be enclosed by a fire rated load bearing concrete block wall, there would be no negative impacts in regards to pollution to No. 70 Victoria Street. Council’s Environmental Health Officer has requested **Condition C.4** be imposed to require the car parking area to be satisfactorily ventilated in accordance with Australian Standard 1668.2-1991. Details must be submitted and approved prior to the issuing of the Construction Certificate. Subject to this condition, the proposed car stacker would be acceptable in relation to pollution.

For comments relating to noise see ‘Acoustic and visual privacy’ above.

**Objection-** Object to the proposed levels of excavation and potential damage to existing heritage building fabric.

**Response-** See section 12.5 of this report.

**Objection-** The design of the proposed development specifically the exposed steel upper level, the large curved roof and glazed awning over Elizabeth Street, would be inappropriate within the Paddington Conservation Area.
Response- Council’s Heritage Officer has advised that:

‘the development proposal in general responds well to the scale and physical delineation of the urban forms of its context’

The general form, scale, and pattern of development within the surrounding area has been replicated in the proposed new development while the ground floor shopfront reflects the existing shopfront at Nos. 6-8 Elizabeth Street. The proposed new works comply with the objectives and requirements of Part 4.4 ‘Infill Development’ of the Paddington HCA DCP 2008, and are therefore acceptable in heritage terms.

Objection- There is no soft landscaping or deep soil planting to assist with surface water absorption. A water re-use system should be incorporated given the on-site storage tanks.

Response- See ‘Open space, swimming pools, lightwell courtyards and landscaping’ above.

Objection- The proposed parking and loading arrangement would result in increased traffic congestion.

Response- The Applicant’s traffic report has concluded that the proposed development would result in an additional 9 vehicle movements at AM and PM peak times (8:30-9:30am & 4:15-5:15pm). The table below shows the resulting increase in vehicle movements at AM and PM peak hours:

<table>
<thead>
<tr>
<th></th>
<th>AM peak time vehicle movements</th>
<th>PM peak time vehicle movements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Existing</td>
<td>Resulting</td>
</tr>
<tr>
<td>Elizabeth Street</td>
<td>103</td>
<td>112</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(increase of 8%)</td>
</tr>
<tr>
<td>Victoria Street</td>
<td>31</td>
<td>40</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(increase of 22.5%)</td>
</tr>
</tbody>
</table>

The table illustrates that the resulting increase in 9 movements to Elizabeth Street would represent a minimal increase. The resulting impact to Victoria Street would represent a greater percentage increase however, the impacts on the additional vehicle movements on Victoria Street are considered to be acceptable by Council’s Traffic Engineer.

Objection- No customer or disabled parking would be provided on site.

Response- See Section 13.2 above.

Objection- Concern regarding the proposed relocation of the existing electricity sub-station adjacent to properties fronting Victoria Street in relation to safety.

Response- The application was referred to Council’s Fire Safety Officer and the NSW Fire Brigade for comments in relation to fire safety. NSW Fire Brigade advised that subject to the imposing of parts (c) and (d) of Condition C.1, the proposed works are acceptable in relation to fire safety. Council’s Fire Safety Officer also recommended Conditions C.16 and D.8 and Advisings K.1 and K.2, which have been imposed.
Objection - Object to the noise and pollution during the construction process.

Response - Council’s Development Engineer has required the submission of a Construction Management Plan which will detail construction practices (including numbers of deliveries, location of construction machinery etc.) and methods to minimise the impact of construction on surrounding development (Condition D.5).

Conditions E.7 and E.11 have also been imposed to the maintenance of environmental controls and dust mitigation to ensure no negative impacts on adjoining properties during the construction process.

18. CONCLUSION - THE PUBLIC INTEREST

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

19. DISCLOSURE STATEMENTS

Under S.147 of the Environmental Planning and Assessment Act, 1979 there have been no disclosure statements regarding political donations or gifts made to any councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.

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

THAT the Council, as the consent authority, is of the opinion that the objections under State Environmental Planning Policy No. 1- Development Standards to Clause 11 ‘Floor Space Ratios’ and Clause 12 ‘Height of Buildings’ development standards under the Woollahra LEP 1995, are well founded. The Council is also of the opinion that strict compliance with the development standards is unreasonable and unnecessary in the circumstances of this case as the development would not result in any negative impacts in terms of achieving compatibility with the height, bulk and scale of surrounding development or on the amenity of neighbouring properties.

AND

THAT the Council, as the consent authority, being satisfied that the objection under SEPP No. 1 is well founded and also being of the opinion that the granting of consent to Development Application No. 829/2008 is consistent with the aims of the Policy, grant development consent to DA No. 829/2008 for Office on land at 2-8 Elizabeth 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, piering, 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.

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Author/Drawn</th>
<th>Date(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>110, 120, 130, 140, 200, 201, 300, 301, 302 All Issue A</td>
<td>Architectural Plans</td>
<td>Ashdel Properties P/L</td>
<td>10/12/08</td>
</tr>
<tr>
<td>Dwgs No. SW01 to SW04, issue P2</td>
<td>Stormwater disposal concept plan</td>
<td>Erbas &amp; Associates P/L</td>
<td>07/02/08</td>
</tr>
<tr>
<td></td>
<td>Letter – support of stormwater concept plan</td>
<td>Erbas &amp; Associates P/L</td>
<td>07/02/08</td>
</tr>
<tr>
<td>35506A</td>
<td>Geotechnical Report</td>
<td>Douglas Partners</td>
<td>01/08</td>
</tr>
</tbody>
</table>

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 Development Consent is not granted in relation to these matters

This approval does not give consent for any advertising signs or on-street disabled parking spaces on Elizabeth or Victoria, or surrounding Streets. A separate Development Consent or Complying Development Certificate and Part 4A Certificates, as appropriate, will need to be obtained prior to the such development work commencing.

Standard Condition: A9

A.6 Prescribed Conditions

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

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

Standard Condition: A30

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 second floor level terraces fronting Elizabeth Street and Victoria Street must remain non-trafficable.

b. The front building alignment of the new commercial building, in the location of the existing electricity sub-station must be set back to have the same alignment as the first floor front elevation balcony of the building at No. 2 Elizabeth Street at ground and first floor levels.

c. A suitable automatic fire sprinkler system complying with Australian Standards (AS) 2118 must be installed in the car stacker area in accordance with the Building Code of Australia clause E1.10 ‘Provision for Special Hazards’.

d. The installation of the new electrical substation must comply with Energy Australia’s Network Standards and any other relevant Australian Standards.

e. The eastern wall adjacent to the proposed loading bay is to be moved 200mm to the east to ensure compliance with AS 2890.1-2004 section 4.10(a).

f. The loading bay must be marked appropriately with signposting and pavement making, to ensure vehicles are aware of the use of this area.

g. The loading bay must be used for the loading and unloading of all goods relating to the ground floor retail use.

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 Exterior Colours

Exterior colour schemes are to accord with the requirements of Control C4 of Part 4.2.9 of the Paddington Heritage Conservation Area DCP in having an appropriate hue and tonal relationship with traditional colour schemes.

C.3 Light & Ventilation

The Construction Certificate plans and specifications, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail all a lighting, mechanical ventilation or air-conditioning systems complying with Part F.4 of the BCA or clause 3.8.4 and 3.8.5 of the BC4 Housing Provisions, inclusive of AS 1668.1, AS 1668.2 and AS/NZS 3666.1. If an alternate solution is proposed then the Construction Certificate application must include a statement as to how the performance requirements of the BCA are to be complied with and support the performance based solution by expert evidence of suitability. This condition does not set aside the mandatory requirements of the Public Health (Microbial Control) Regulation2000 in relation to regulated systems. This condition does not set aside the effect of the Protection of the Environment Operations Act 1997 in relation to offensive noise or odour.
**Note:** Clause 98 of the Regulation requires compliance with the BCA. Clause 145 of the Regulation prevents the issue of a Construction Certificate unless the Accredited Certifier/Council is satisfied that compliance has been achieved. Schedule 1, Part 3 of the Regulation details what information must be submitted with any Construction Certificate. It is the Applicant's responsibility to demonstrate compliance through the Construction Certificate application process. Applicants must also consider possible noise and odour nuisances that may arise. The provisions of the Protection of the Environment Operations Act 1997 have overriding effect if offensive noise or odour arises from the use. Applicants must pay attention to the location of air intakes and air exhausts relative to sources of potentially contaminated air and neighbouring windows and air intakes respectively, see section 2 and 3 of AS 1668.2.

**C.4 Carpark and General Ventilation**

1. All enclosures in which vehicles powered by internal combustion engines are parked are required to comply with Section 4 ‘Ventilation Of Enclosures Used By Vehicles With Internal Combustion Engines’ of Australian Standard 1668.2-1991. In general air distribution must achieve uniform dilution of contaminants in the car park and maintain contaminant concentrations below recommended exposure standards.

2. The ground floor car park may be naturally ventilated or provided with a combination of both supply and exhaust mechanical ventilation. The applicant is to determine the method of ventilation of the ground floor car park and provide details to the Certifying Authority accordingly. Except as varied in accordance with Clause 4.4.1 (a), (b) or (c), the vehicle ground floor car park shall be mechanically ventilated by a combination of general exhaust with flow rates in accordance with Clause 4.4.2, and supply with flow rates specified in Clause 4.8 of Australian Standard 1668.2-1991.

3. All proposed mechanical ventilation system(s) must be installed and commissioned in accordance with Australian Standard 1668 Parts 1 & 2. The applicant shall provide detailed mechanical ventilation system(s) plans and specifications prepared by a professional engineer, as defined by the Building Code of Australia, and must be submitted to Council or an Accredited Certifier with the application for a Construction Certificate certifying compliance with Australian Standard 1668 Parts 1 & 2.

**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.
<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Indexed</th>
<th>Council Fee Code</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LONG SERVICE LEVY</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>under Building and Construction Industry Long Service Payments Act 1986</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long Service Levy</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contact LSL Corporation or use their online calculator</td>
<td></td>
<td>No</td>
<td></td>
</tr>
<tr>
<td><strong>SECURITY</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>under section 80A(6) of the Environmental Planning and Assessment Act 1979</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property Damage Security Deposit - Making good any damage caused to any</td>
<td>$46,765.62</td>
<td>No</td>
<td>T115</td>
</tr>
<tr>
<td>property of the Council as a consequence of the doing of anything to which</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>the consent relates.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>DEVELOPMENT LEVY</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>under Woollahra Section 94A Development Contributions Plan 2005</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>This plan may be inspected at Woollahra Council or downloaded from our</td>
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<td></td>
<td></td>
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<tr>
<td>Development Levy ($94A)</td>
<td>$95,400.00 + Index Amount</td>
<td>Yes, quarterly</td>
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<tr>
<td><strong>INSPECTION FEES</strong></td>
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<tr>
<td>under section 608 of the Local Government Act 1993</td>
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<tr>
<td>Security Administration Fee</td>
<td>$175</td>
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<td><strong>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</strong></td>
<td>$142,340.62</td>
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</tr>
<tr>
<td>Plus any relevant indexed amounts and long service levy</td>
<td></td>
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</tbody>
</table>

### 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](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

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

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

d. the bank’s obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.
How will the section 94A levy be indexed?

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

Do you need HELP indexing the levy?

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

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

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

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

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

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

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

Standard Condition: C5

C.6 Acoustic Certification of Mechanical Plant & Equipment

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

Where sound attenuation is required this must be detailed.

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

2. **Association of Australian Acoustical Consultants**—professional society of noise related professionals ([www.aaac.org.au](http://www.aaac.org.au)).

Standard Condition: C62

C.7 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.8 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

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 downloaded 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.

C.9 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.

C.10 Professional Engineering Details

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

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

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

C.11 Geotechnical and Hydrogeological Design, Certification & Monitoring

The Construction Certificate plans and specification required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation must be accompanied by a Geotechnical / Hydrogeological Monitoring Program together with civil and structural engineering details for foundation retaining walls, footings, basement tanking, and subsoil drainage systems, as applicable, prepared by a professional engineer, who is suitably qualified and experienced in geotechnical and hydrogeological engineering. These details must be certified by the professional engineer to:
a. Provide appropriate support and retention to ensure there will be no ground settlement or movement, during excavation or after construction, sufficient to cause an adverse impact on adjoining property or public infrastructure.

b. Provide appropriate support and retention to ensure there will be no adverse impact on surrounding property or infrastructure as a result of changes in local hydrogeology (behaviour of groundwater).

c. Provide foundation tanking prior to excavation such that any temporary changes to the groundwater level, during construction, will be kept within the historical range of natural groundwater fluctuations. Where the historical range of natural groundwater fluctuations is unknown, the design must demonstrate that changes in the level of the natural water table, due to construction, will not exceed 0.3m at any time.

d. Provide tanking of all below ground structures to prevent the entry of all ground water such that they are fully tanked and no on-going dewatering of the site is required.

e. Provide a Geotechnical and Hydrogeological Monitoring Program that:
   
i. Will detect any settlement associated with temporary and permanent works and structures;
   
ii. Will detect deflection or movement of temporary and permanent retaining structures (foundation walls, shoring bracing or the like);
   
iii. Will detect vibration in accordance with AS 2187.2-1993 Appendix J including acceptable velocity of vibration (peak particle velocity);
   
iv. Will detect groundwater changes calibrated against natural groundwater variations;

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

C.12 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. The driveway levels on Victoria Street are to be amended as follows:

- The existing footpath level and grade at the street alignment of the property must be maintained.
- The internal garage floor slab is to be adjusted on private property to match the existing street alignment levels.
- Any adjustments required between the garage slab and the street levels are to be carried
out internally on private property. The driveway levels are to comply with AS2890.1 and Council’s Standard Drawing RF2.

- The eastern wall adjacent to the proposed loading bay is to be moved 200mm to the east
- A disability parking bay is to be included in the garage envelope

Access levels and grades must comply with access levels and grade required by Council under the Roads Act 1993. The existing footpath crossing grades and footpath levels at the road boundary must be maintained unless varied by an approval under the Roads Act 1993.

Revised plans are to be submitted and approved by Council with driveway application. An “Application to carry out works in a public road” available from Council's website http://www.woollahra.nsw.gov.au, must be completed with plans/sections complying with the above and submitted to Council’s Customer Service Centre and approved by Council prior to the issue of a Construction Certificate. For any technical enquiries regarding alteration to existing footpath levels, alignments or inspections, please contact Council’s Works Supervisor on 9391 7982.

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.13 Stormwater management plan (Clause 25(2) WLEP 1995)

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

The Stormwater Management Plan must detail:

a. general design in accordance with Stormwater disposal concept plan prepared by Erbas & Associates P/L, dated 07/02/2008, Dwgs No. SW01 to SW04, issue P2 other than amended by this and other conditions;
b. the discharge of stormwater, by direct connection, to K&G;
c. compliance the objectives and performance requirements of the BCA;
d. any rainwater tank required by BASIX commitments including their overflow connection to the Stormwater Drainage System;
e. general compliance with the Council’s draft Development Control Plan Stormwater Drainage Management (draft version 1.1 public exhibition copy dated 14/12/2006), and
f. on-site stormwater detention (‘OSD’).

The Stormwater Management Plan must include the following specific requirements:

Layout plan

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

It must include:

- All pipe layouts, dimensions, grades, lengths and material specification,
- All invert levels reduced to Australian Height Datum (AHD),
• Location and dimensions of all drainage pits,
• Point and method of connection to Councils drainage infrastructure.

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

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

C.14 Flood protection

The Construction Certificate plans and specifications, required by clause 139 of the Regulation, must include a Flood Risk Management Plan on the basis of a 1:100 year flood at RL 62.92m AHD (the flood level), detailing:

a. Habitable floor levels not less than 300mm above the flood level.
b. Non-habitable floor levels not less than 150mm above flood level.
c. Driveway crest not less than 150mm above flood level before descending into the site (as applicable).

Note: The revised driveway profile, gradients and transitions must be in accordance with Australian Standard 2890.1 – 2004, Part 1 (Off-street car parking). The driveway profile submitted to Council must contain all relevant details: reduced levels, proposed grades and distances. Council will not allow alteration to existing reduced levels within the road or any other public place to achieve flood protection.

Standard Condition: C54

C.15 Waste Storage – Mixed Developments

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

a. the storage of waste and recycling bins behind the building line,
b. a centralised waste and recycling rooms or area. Must be self-contained and have key or locking system.
c. the path for wheeling bins between the waste and recycling storage area and the collection point must be free of steps and kerbs and having a maximum grade of 1:8. The waste storage area must be as close as possible to the service road collection point.
d. bins to be stored with lids down to prevent vermin from entering the waste containers.
e. smooth impervious floor graded to a floor waste and provided with a tap and hose to facilitate regular cleaning of the bins. A waste storage area that is located internal to the building must be fitted with both a hot and cold water supply and hose cocks. Wastewater must be discharged to the sewer in accordance with the requirements of Sydney Water.
f. walls and ceilings of the waste storage area must be constructed of an impervious material with a smooth finish. The junction between the walls and the floor must be covered with a minimum radius of 25mm to prevent the accumulation of waste matter.
g. the garbage storage area must be well lit to enable use at night. A timer switch must be fitted to the light fitting to ensure the light is turned off after use.
h. Odour problems must be minimised by exhaust ventilation.
i. Both putrescible and recycling bins/crates must be stored together. Recycling bins must never stand alone. They must always be located beside putrescible waste bins. Putrescible bins must be located closest to the entrance to the waste storage room.
j. Signage on the correct use of the waste management system and what materials may be recycled must be posted in the communal waste storage cupboard/room or bin bay.

Standard Condition: C18

C.16 Building upgrade (cl. 94 of the Regulation)

Pursuant to clause 94 of the Environmental Planning and Assessment Regulation 2000 Council as the consent authority requires the building to be brought into Total conformity with the Building Code of Australia as the proposed building work, together with any other building work completed or authorised within the previous 3 years, represents more than half the total volume of the building, as it was before any such work was commenced, measured over its roof and external walls

The Construction Certificate plans and specification required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation must detail building upgrade works required by this condition.

The Certifying Authority must be satisfied that such work, to be implemented as part of the development, will upgrade the building to bring it into compliance with the following provisions of the BCA as in force at the date of the Construction Certificate application.

Note: The Certifying Authority issuing the Construction Certificate has no power to remove the requirement to upgrade the existing building as required by this condition. Where this conditions specifies compliance with performance requirements of the BCA the Certifying Authority, subject to their level of accreditation, may be satisfied as to such matters. Where this condition specifies compliance with prescriptive (deemed to satisfied) provisions of the BCA these prescriptive requirements must be satisfied and cannot be varied unless this condition is reviewed under section 82A or amended under section 96 of the Act.

Note: This condition does not set aside the Certifying Authorities responsibility to ensure compliance with clause 143 of the Regulation in relation to Fire Protection and Structural Adequacy.

Note: AS 4655 Guidelines for fire safety audits for buildings (or any succeeding AS) should form the basis of any fire upgrade report.

Standard Condition: C10

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 Remediation

1. The site is to be remediated and validated in accordance with the Douglas Partners Remedial Action Plan Project No 35506A dated August 2005. Prior to the execution of works associated with the built form of the development (excluding building work directly related to remediation). A Site Audit Statement is to be submitted to Council clearly indicating that the site is suitable for the proposed use. Conditions on the Site Audit Statement shall form part of the consent.

2. Any variations to the proposed Remediation Action Plan shall be approved in writing by the Accredited Site Auditor and Council prior to commencement of such work.

3. Prior to the exportation of waste (including fill or soil) from the site the material should be classified in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the NSW EPA Environmental Guidelines Assessment, Classification and Management of Liquid and Non Liquid Wastes 1998. The classification of the material is essential to determine where the waste may be legally taken. The Protection of the Environment Operations Act 1997 provides for the commission of an offence for both the waste owner and the waste transporter if the waste is taken to a place that cannot lawfully be used as a waste facility for the particular class of waste. For the transport and disposal of industrial, hazardous or group (A) liquid waste, advice should be sought from the EPA.

D.3 Dilapidation Reports for existing buildings

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

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

a) 10-12 Elizabeth Street,
b) 68 Victoria Street,
c) 70 Victoria Street,
d) 72 Victoria Street,
e) 74 Victoria Street.

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

Standard Condition: D4

D.4 Adjoining buildings founded on loose foundation materials

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

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

Standard Condition: D6

D.5 Construction Management Plan

As a result of the site constraints, limited space and access a Construction Management Plan is to be submitted to Council. Due to the lack of on-street parking availability a Work Zone may be required from Council during construction.

A construction management plan must be submitted and approved by Council’s Development Engineer. The plan must:-

a. describe the anticipated impact of the construction works on:
   • local traffic routes
   • pedestrian circulation adjacent to the building site
   • and on-street parking in the local area, and;

b. describe the means proposed to:
   • manage construction works to minimise such impacts,
   • provide for the standing of vehicles during construction,
   • provide for the movement of trucks to and from the site, and deliveries to the site, and;

c. show the location of:
   • any site sheds and any anticipated use of cranes and concrete pumps,
   • any areas of Council property on which it is proposed to install a Works Zone (Construction Zone),
   • structures to be erected such as hoardings, scaffolding or shoring,
   • any excavation.

d. describe the excavation impact on the area including
   • Number and types of trucks to be used
   • Time frame
   • Streets to be used
   • Routes to be taken
   • Directions of travel
• Truck storage areas
• It is recommended that vehicle routes be shared
• Excavation is to only be carried out outside peak and school hours between 9.30am to 2.30pm week days
• The CMP is to include both demolition and excavation works.
  e. **show the location** of all Tree Protection (Exclusion) Zones as required within the conditions of this development consent.

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. Standing of cranes and concrete pumps on Council property will need approval on each occasion.

**Note:** A minimum of eight weeks will be required for assessment. Work must not commence until the Construction Management Plan is approved. Failure to comply with this condition may result in fines and proceedings to stop work.

**Standard Condition: D9**

**D.6 Work (Construction) Zone – Approval & Implementation**

A work zone is required for this development. The *principal contractor* or *owner* must apply for, obtained approval for, pay all fees for and implemented the required work zone before commencement of any work.

The *principal contractor* must pay all fees associated with the application and occupation and use of the road as a work zone. All Work Zone signs must have been erected by Council to permit enforcement of the work zone by Rangers and Police before commencement of any work. Signs are not erected until full payment of work zone fees.

**Note:** The *principal contractor* or *owner* must allow not less than four weeks (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under the Clause 22 of the *Transport Administration (General) Regulation 2000* to exercise those functions delegated by the Roads and Traffic Authority under Section 50 of the *Transport Administration Act 1988*.

**Note:** The enforcement of the work zone is at the discretion of Council’s Rangers and the NSW Police Service. The principal contractor must report any breach of the work zone to either Council or the NSW Police Service.

**Standard Condition: D10**

**D.7 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


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 downloaded 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.8 Fire Safety Schedule

A copy of the fire safety schedule shall be submitted to the Council with the notice of commencement of building works.

D.9 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.10 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.

D.11 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.12 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.

E. Conditions which must be satisfied during any development work

E.1 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.

E.2 Maintenance of Vehicular and Pedestrian Safety and Access

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

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

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

a. Australian Standard AS 1742 (Set) Manual of uniform traffic control devices and all relevant parts of this set of standards.
b. Australian Road Rules to the extent they are adopted under the Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999.
**Note:** Section 73 of the *Road Transport (Safety and Traffic Management) Act* 1999 allows the Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose. Any road closure requires Police approval.

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

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

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

Part C Management of Waste:

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

Part E Public roads:

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

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

Standard Condition: E7

**E.3 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;


Standard Condition: E11

**E.4 Compliance with Geotechnical/Hydrogeological Monitoring Program**

Excavation must be undertaken in accordance with the recommendations of the *Geotechnical / Hydrogeological Monitoring Program* and any oral or written direction of the supervising professional engineer.

The *principal contractor* and any sub-contractor must strictly follow the *Geotechnical / Hydrogeological Monitoring Program* for the development including, but not limited to,

- a) the location and type of monitoring systems to be utilised;  
- b) recommended hold points to allow for inspection and certification of geotechnical and hydrogeological measures by the professional engineer; and
c) the contingency plan.

Note: The consent authority cannot require that the author of the geotechnical/hydrogeological report submitted with the Development Application to be appointed as the professional engineer supervising the work however, it is the Council’s recommendation that the author of the report be retained during the construction stage.

Standard Condition: E12

E.5 Support of adjoining land and buildings

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

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

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

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

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

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

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

Standard Condition: E13

E.6 Vibration Monitoring

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

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity an audible alarm must activate such that the principal contractor and any sub-contractor are easily alerted to the event.
Where any such alarm triggers all excavation works must cease immediately. Prior to the vibration monitoring equipment being reset by the professional engineer and any further work recommencing the event must be recorded and the cause of the event identified and documented by the professional engineer.

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

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

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

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

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

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

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

Standard Condition: E14

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

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 Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum

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

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

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

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

Standard Condition: E20

E.10 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.11 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 downloaded free of charge from Council’s web site www.woollahra.nsw.gov.au or obtained from Council’s office.

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

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

Standard Condition: E23
E.12 Compliance with Australian Standard for Demolition


Standard Condition: E2

E.13 Requirement to notify about new evidence

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

Standard Condition: E4

E.14 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.15 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, piering, 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.


Standard Condition: E6

E.16 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.17 Prohibition of burning

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

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

Standard Condition: E22

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

F.1 Commissioning and Certification of Systems and Works

The principal contractor or owner builder must submit to the satisfaction of the PCA works-as-executed (“WAE”) plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA confirming that the works, as executed and as detailed, comply with the requirement of this consent, the Act, the Regulations, any relevant construction certificate, the BCA and relevant Australian Standards.
Works-as-executed (“WAE”) plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA must including but may not be limited to:

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

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

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

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

**F.2 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.

**F.3 Street Numbering**

The development must be provided with street and sole occupancy unit numbers determined by Council. This condition has been imposed to ensure that emergency services, utility services, and the general public are able to clearly and readily locate any property. Further, this condition has been imposed to protect the integrity of street numbering and land information.

**Note:** Applications for the allocation of street and sole occupancy unit numbers should be made together with any application for a strata certificate or Torrens or community title subdivision certificate. Council will determine at its discretion in accordance with its policy street numbers and street addresses that best suit the public interest.

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F.4 Letter Box(es)

All letter boxes must be constructed and located in accordance with AS/NZS 4253:1994 Mailboxes and to Australia Post’s satisfaction.

Note: This condition has been imposed to ensure that mail can be delivered to occupiers of the site.

Standard Condition: F12

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 Positive Covenant & Works-As-Executed certification of stormwater systems

On completion of construction work, stormwater drainage works are to be certified by a professional engineer with Works-As-Executed drawings supplied to the PCA detailing:

a. compliance with conditions of development consent relating to stormwater;
b. the structural adequacy of the On-Site Detention system (OSD);
c. that the works have been constructed in accordance with the approved design and will provide the detention storage volume and attenuation in accordance with the submitted calculations;
d. Pipe invert levels and surface levels to Australian Height Datum; and

e. Contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

f. A positive covenant pursuant to Section 88E of the Conveyancing Act 1919 must be created on the title of the subject property, providing for the indemnification of Council from any claims or actions and for the on-going maintenance of the on-site-detention system and/or absorption trenches, including any pumps and sumps incorporated in the development. The wording of the Instrument must be in accordance with Council’s standard format and the Instrument must be registered at the Land Titles Office.

Note: The required wording of the Instrument can be downloaded from Council’s web site www.woollahra.nsw.gov.au. The PCA must supply a copy of the WAE Plans to Council together with the Final Occupation Certificate. The Final Occupation Certificate must not be issued until this condition has been satisfied.

Standard Condition: H20

H.2 Covenant for Private Works on Council Property

A positive covenant, pursuant to Section 88E of the Conveyancing Act, must be created on the title of the subject property, providing for the indemnification of Council from any claims or actions, and the on-going maintenance of any private structures on Council property for which consent has been given, such as steps, retaining walls, access ways.

The wording of the Instrument must be in accordance with Council’s standard format and the Instrument must be registered at the Land Property Information Office prior to the issuance of any Occupation Certificate.
Note: The required wording of the Instrument can be downloaded from Council’s web site www.woollahra.nsw.gov.au. The PCA must supply a copy of the WAE Plans to Council together with the Occupation Certificate. No Occupation Certificate must be issued until this condition has been satisfied. This condition has been satisfied.

Standard Condition: (Autotext HH19)

H.3 Removal of Ancillary Works and Structures

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

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

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

Standard Condition: H12

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

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

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

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

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

Standard Condition: 112

1.2 Noise Control

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

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


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


Standard Condition: 150

1.3 Noise from mechanical plant and equipment

Noise from the operation of mechanical plant and equipment must not exceed background noise when measured at the nearest lot boundary of the site. Where noise sensitive receivers are located within the site, noise from the operation of mechanical plant and equipment (including the mechanical car stacker, electrical sub-station, air conditioning plant and lift) must not exceed background noise when measured at the nearest strata, stratum or community title boundary.

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

Note: Words in this condition have the same meaning as in the:
ISBN 0 7313 2715 2, dated January 2000, and

Standard Condition: 153
I.4 Trading hours

Trading hours of the ground floor retail units are limited to:

a. Monday to Wednesday & Friday 9am- 6pm
b. Thursday 9am-8pm
c. Saturday 9am—6pm
d. Sunday and Public Holiday 10am- 5pm

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

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

Standard Condition: I2

J. Miscellaneous Conditions

No relevant conditions.

K. Advisings

K.1 Fire Safety

a) The building shall comply with the requirements of the Building Code of Australia.
b) The Principal Certifying Authority shall submit to Woollahra Municipal Council a fire safety schedule indicating fire safety measures to be installed within the building. The fire safety schedule shall be submitted with the notice of proposed commencement required by (s) 81A of the Environmental Planning and Assessment Act 1979 no later than 2 days prior the beginning of any work.
c) A copy of the final fire safety certificate shall be submitted to the Council with the occupation certificate and then also to the Commissioner of the New South Wales Fire Brigades and displayed within the building as soon as practical after the completion of the works.
d) Within 12 months after the final fire safety certificate is issued an annual fire safety statement dealing with each essential fire safety measure in the building shall be submitted to Woollahra Municipal Council, the Commissioner of the New South Wales Fire Brigades and displayed in the building in accordance with the requirements of Clause 177 of the Environmental Planning and Assessment Regulation 2000.

K.2 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:

a. The opening at the North West side of the electricity sub station will require protection in accordance with CP2, C3.2.
b. The opening at the North West side of the electricity sub station will require protection in accordance with CP2, C3.2.
c. Openings located within 3 metres of the adjoining property boundary require protection in accordance with CP2, C3.2.

d. The discharge point from the fire isolate passage serving the car park and electricity sub station passes within 6 m of the opening at the North West side of the electricity sub station, compliance with DP5 D1.7(c) will be required.

e. Plans do not indicate the point of discharge from the fire isolated passage leads to a road or open space.

**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)

**K.3 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](http://www.theshopfront.org/documents/ConvictionsCriminalRecords.pdf) and the Attorney General’s [www.agd.nsw.gov.au](http://www.agd.nsw.gov.au).

Standard Advising: K1
K.4 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.5 Commonwealth Disability Discrimination Act 1992 (“DDA”)

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

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

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


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

Standard Advising: K3

K.6 Builders Licences and Owner Builders Permits

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

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

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

Standard Condition: K5
K.7 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:

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

Standard Condition: K6

K.8 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.9 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 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.10 Lead Paint


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.11 Appeal

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

Ms C Owen, Assessment Officer on (02) 9391 7150

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

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

Standard Condition: K14

K.12 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 80A of the Act.
The securities will not be released until a *Final Occupation Certificate* has lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council’s requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council’s requirements.

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

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

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


**K.13 Recycling of Demolition and Building Material**

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

**K.14 Owner Builders**

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

**ANNEXURES**

1. Plans and elevations
2. Development Engineer’s comments
3. Environmental Health Officer’s comments
4. Heritage Officer’s comments
5. Fire Officer’s comments
6. Comments from NSW Fire Brigades
7. Photos of site
DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.  D8
FILE No.  DA 678/2008/1
PROPERTY DETAILS  27 and 29 Wilberforce Avenue, Rose Bay

Lot & DP No.:  LOTS: 42 & 43 SEC: B DP: 4567
Side of Street:  South western
Site Area (m²):  1170.4m²
Zoning:  Residential 2(b)

PROPOSAL:  Demolition of two existing dwelling-houses and ancillary structures; consolidation of two lots into one and the construction of a new three storey residential flat building consisting of six (6) units, basement level carparking for fourteen (14) vehicles, a new swimming pool, strata subdivision and landscaping works.

TYPE OF CONSENT:  Local Development
APPLICANT:  Xpace Design Group Pty Ltd
OWNER:  Mr V Gelski
DATE LODGED:  20/10/2008 (original submission)
              05/12/2008 (amended plans)
AUTHOR:  Ms E Smith

DOES THE APPLICATION INVOLVE A SEPP 1 OBJECTION  YES ☒ NO

1.  RECOMMENDATION PRECIS

The application is recommended for condition approval because it: -

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

2.  PROPOSAL PRECIS

The proposal is for the demolition of two existing dwelling-houses and ancillary structures; consolidation of two lots into one and the construction of a new three storey residential flat building consisting of six (6) units, basement level carparking for fourteen (14) vehicles, a new swimming pool, strata subdivision and landscaping works.
3. LOCALITY PLAN

- A further letter of objection was received from the Rose Bay Residents’ Association.
- A letter of support was received from the owner of 3/52-54 Wilberforce Avenue.

4. DESCRIPTION OF PROPOSAL

Amended plans were received on 05 December 2008, which detailed the following revisions:
- The south western rear setback at level 2 was increased by 2m; a total setback of 12.7m from the rear boundary.
- Alterations to the fenestration.
- Alterations to the internal layout.

The amended application proposes the demolition of two existing dwelling-houses and ancillary structures; consolidation of two lots into one and the construction of a new three storey residential flat building consisting of six (6) units, basement level carparking for fourteen (14) vehicles, a new swimming pool, strata subdivision and landscaping works. Specifically the works proposed involve the following:

**External Works**
- The removal of the two (2) existing vehicular accesses to the subject site and the construction of a new vehicular access.
- A new sandstone front boundary wall.
- New side and rear boundary fences.
- A recessed pedestrian entry with intercom.
- New landscaping works.
- A new swimming pool located within the rear setback.
Basement Level
- The excavation of a basement level, which would comprise of; an access driveway, fourteen (14) car parking spaces, access stairways and a lift providing internal access from the basement to the upper levels, a bin storage area and a bicycle storage area.

Ground Floor Level
- Unit 1: the provision of a foyer, kitchen, pantry, laundry, living area, dining area, bathroom, three (3) bedrooms, en suite and a covered front terrace.
- Unit 2: the provision of a foyer, kitchen, laundry, living area, dining area, bathroom, three (3) bedrooms, en suite and a covered rear terrace.

Level One (1)
- Unit 3: the provision of a foyer, kitchen, pantry, laundry, living area, dining area, bathroom, three (3) bedrooms, en suite and a covered front balcony.
- Unit 4: the provision of a foyer, kitchen, laundry, living area, dining area, bathroom, three (3) bedrooms, en suite and a covered rear balcony.

Level Two (2)
- Unit 5: the provision of a foyer, kitchen, laundry, living area, dining area, bathroom, three (3) bedrooms, en suite and a covered front balcony.
- Unit 6: the provision of a foyer, kitchen, laundry, living area, dining area, bathroom, three (3) bedrooms, en suite and a covered rear balcony.

5. SUMMARY

<table>
<thead>
<tr>
<th>Reasons for report</th>
<th>Issues</th>
<th>Submissions</th>
</tr>
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<tbody>
<tr>
<td>The DA is for a new RFB</td>
<td>FSR – SEPP 1 Objection. Number of storeys. Setback from significant trees Driveway gradients. Visual and acoustic privacy. Objector’s concerns.</td>
<td>The following submissions were received: One letter of support. Objections from eleven neighbouring properties and the Rose Bay Residents’ Association.</td>
</tr>
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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.

A Quantity Surveyor’s report was provided with the DA which estimates the cost of the proposed works to be $2,654,575.00. This has been checked using the Council’s adopted practice and is considered to be accurate.
7. DESCRIPTION OF SITE OF LOCALITY

**Physical features**
The site is located on the south western side of Wilberforce Avenue and is rectangular in shape. The north eastern (front) and south western (rear) boundaries of the site are 27.43m in length and the north western and south eastern (side) boundaries of the site are 42.67m in length. This equates to a site area of 1,170.4m².

**Topography**
The site is relatively flat, with a minor cross fall from north-west to south-east of approximately 0.2m.

**Existing buildings and structures**
The subject site comprises of two allotments. The southern allotment (29 Wilberforce Avenue) is comprised of a single storey dwelling-house with a single brick garage located to the rear of the dwelling on the north western side boundary. The northern allotment (27 Wilberforce Avenue) is comprised of a single storey dwelling-house with a single brick garage located within the north western side setback.

**Environment**
The site is located within the Rose Bay precinct under WRDCP 2003 and is zoned Residential 2(b). Adjoining the site to the north-west (25 Wilberforce Avenue) is a two storey dwelling-house. Adjoining the site to the south-east (31 and 33 Wilberforce Avenue) is a pair of single storey semi-detached dwellings. Adjoining the site to the south west (16 and 18 Albemarle Avenue) are two single storey dwellings. The locality is characterised by a mix of dwelling-houses and residential flat buildings of various architectural styles.

Photos of the subject site and Wilberforce Avenue streetscape are located in annexure 2.
8. PROPERTY HISTORY

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<tr>
<th>PROPERTY HISTORY</th>
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<tr>
<td>Current use</td>
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<td>Previous relevant applications</td>
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<tr>
<td>Pre-DA</td>
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<tr>
<td>Requests for additional information</td>
</tr>
</tbody>
</table>
| Amended plans/ Replacement Application | On 05 December 2008, amended plans were received which detailed the following amendments:  
  - The southern western rear setback at level 2 was increased by 2m; a total setback of 12.7m from the rear boundary.  
  - Alterations to the fenestration.  
  - Alterations to the internal layout. |
| Land & Environment Court appeal | None. |

9. REFERRALS

9.1 The following table contains particulars of internal referrals.

<table>
<thead>
<tr>
<th>INTERNAL REFERRALS</th>
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</thead>
<tbody>
<tr>
<td>Referral Officer</td>
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<tr>
<td>Development Engineer</td>
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<tr>
<td>Landscaping Officer</td>
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<tr>
<td>Heritage Officer</td>
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</tbody>
</table>

9.2 The following table contains particulars of external referrals.

No external referrals required.

ENVIRONMENTAL ASSESSMENT UNDER S.79C

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

10. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

10.1 SEPPs

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The development application was accompanied by BASIX Certificate 219356M committing to environmental sustainability measures.

These requirements are imposed by standard condition prescribed by clause 97A of the Environmental Planning & Assessment Regulation 2000. Conditions C3, H1 and H2 have been included as part of the recommendation.
SEPP 55–Remediation of Land

Under clause 7 (1) (a) of State Environmental Planning Policy No. 55 – Remediation of Land, consideration has been given as to whether the land is contaminated. An assessment of the current and previous uses of the site indicates that the land is unlikely to be contaminated and as such further consideration under clause 7 (1) (b) and (c) of SEPP 55 is not required.

SEPP 65–Design Quality of Residential Flat Development

SEPP 65 applies to new buildings which comprise three or more storeys and four or more self contained dwellings. The proposal will be a three (3) storey residential flat building containing six (6) residential units.

The instrument requires the proposal to be referred to a Design Review Panel. This panel has not yet been established for the Woollahra area. The instrument also requires the assessment of the subject development application against the ten design quality principles contained in Clause 9-18 and against the considerations contained in the publication “Residential Flat Design Code.”

Furthermore, SEPP 65 requires any development application that is lodged 12 months or more after the commencement of the SEPP must be accompanied by a design verification statement from a qualified designer. In this instance, Goran Stojanovic of X.PACE design group has approved the design of the proposal and considers the design quality principles set out in Part 2 of SEPP 65 to have been achieved for the reasons contained in the design verification statement (see Annexure 6).

The proposal is assessed against the ten principles as follows:

Context

“Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area. Responding to context involves identifying the desirable elements of a location’s current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.”

The site is zoned residential 2(b) as set out under part 2 of the Woollahra Local Environmental plan. The description of the zone states that:

‘The Residential “B” Zone applies to areas characterised by existing medium density residential flat buildings and areas where potential has been identified for increased medium density residential development.’

The site is located within the Rose Bay Precinct, as set out under section 4.9 of the Woollahra Residential Control Development Control Plan 2003. The description of the area states that:

‘Recent development, particularly in Spencer Street and Carlisle Streets has seen the subdivision pattern altered to create large allotments for residential flat buildings, and which has seen a change in local character. This character change is to be maintained in this location.’

The adjoining site to the north-west (25 Wilberforce Avenue) is occupied by a two storey dwelling. The adjoining sites to the south-east (31 and 33 Wilberforce Avenue) are occupied by a pair of single storey semi-detached dwellings. The adjoining properties to the south-west (16 and 18 Albemarle Avenue) are one storey dwelling-houses.
The subject site is located within a densely developed urban area, which contains a mix of large residential flat buildings and dwellings. The locality is undergoing a progressive upgrade of the existing housing stock to reflect the increased density of the Residential 2(b) zoning. There are a number of large residential flat buildings constructed within Wilberforce Avenue, which like the subject application, have involved the consolidation of allotments. Such developments have taken place at No.’s 39-41, 40-42, 44-46 Wilberforce Avenue, with further residential flat buildings at No. 9, 15, 23, 56 Wilberforce Avenue. The proposed development is comparable with the height, bulk and scale of these existing residential flat buildings and upholds the desired future character objectives for the Rose Bay precinct.

The proposed development will have a maximum roof height of RL 20.8, which complies with Council’s statutory height requirement of 9.5m. The proposal upholds the objectives of Council’s FSR standard set out under Clause 11AA of the WLEP 1995 and complies with the WRDCP 2003 front, side and rear setback controls. The proposal will present as a three storey building to Wilberforce Avenue, which is consistent with the three storey appearance of a number of residential flat buildings within the immediate streetscape. As such, the proposal will be comparable with the context of the surrounding development.

Scale

“Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings. Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.”

As discussed above, the proposed development is considered to be: satisfactory in terms of context, an appropriate scale in relation to the character of the residential 2(b) zone and a comparable scale to the residential flat buildings and dwellings within the immediate locality of the site.

The proposal has been designed to present as a contemporary three storey residential flat building to Wilberforce Avenue. In terms of bulk and scale the proposal will be comparable with the other residential flat buildings in Wilberforce Avenue. The proposal relates to the context, bulk and scale of development in Wilberforce Avenue and is consistent with Council's statutory height requirement and the future desired character objectives for the locality expressed in Part 4.9 of WRDCP 2003.

Built form

“Good design achieves an appropriate built form for a site and the building’s purpose, in terms of building alignments, proportions, building type and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.”

The built form of the proposal is considered to be satisfactory in terms of building alignment, proportions, scale and bulk. The proposal will appear as a three storey development when viewed from Wilberforce Avenue, which is consistent with the numerous examples of three storey residential flat buildings within the immediate streetscape. The south western side of Wilberforce Avenue is characterised by a relatively uniform front building line. The proposed front building alignment reinforces this building line by not projecting forward of the adjoining properties. The proposed building accords with the 9.5m maximum height development standard and the side setback controls, ensuring that the proposed built form is within the prescribed building envelope. As a result the proposed built form is consistent with the adjoining two-storey dwelling-houses. As discussed above, the proposed residential flat building is comparable to the height, bulk and scale of
the three storey residential flat buildings within Wilberforce Avenue and is adequately setback from the street and adjoining properties. This minimises the amenity impacts on adjoining dwelling-houses.

The proposed residential flat building will relate to the context of the locality through its setbacks, use of varied materials, location of balconies and articulated elevations. The design and built form of the proposal is considered to be appropriate for a residential flat building within the Residential 2(b) zone. The setbacks of the proposal will ensure the units are adequately separated from adjoining properties while maximising the internal amenity for the occupants. Accordingly, the built form of the proposal is considered to be satisfactory in terms of streetscape presentation and urban design.

**Density**

“Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents). Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.”

The proposed development involves the construction of a residential flat building comprising of six (6) x three (3) bedroom units and basement level car parking for fourteen (14) vehicles. The development proposes an FSR of 0.935:1 (1094.705m²), where a maximum FSR control of 0.75:1 (877.8m²) applies; this equates to an excess gross floor area of 216.9m². The proposed FSR non-compliance would not adversely impact upon the streetscape or the residential amenity of the neighbouring properties and the proposal fully accords with the FSR objectives set out under clause 11A of the WLEP 1995. For these reasons, the density of the proposal is considered to be appropriate given the Residential 2(b) zoning, the proximity of the site to the existing infrastructure, the desired future density objectives for the site and the density of surrounding development within Rose Bay.

The proposed number of residential units (six) can be accommodated by local services including public transport, health services, retail and professional services. The local traffic network is considered capable of accommodating the increase in traffic flows. Accordingly, the density of the proposal is considered to be satisfactory in this regard.

**Resource, energy and water efficiency**

“Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction. Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.”

A BASIX Certificate (219356M) demonstrates compliance with BASIX targets for Water, Energy and Thermal Comfort for the residential development. Furthermore a ABSA Certificate (45350743) has been provided showing compliance with Thermal Performance Specifications. The proposal is considered to be satisfactory with regard to energy efficiency, each unit enjoys triple aspects to maximise solar access to the living areas with cross ventilation. This minimises the requirement for artificial heating, cooling and lighting.
The proposal has a north east – south west orientation and fully accords with the side and rear boundary setback controls. This ensures that the proposal will not have any unreasonable impact upon solar access provision to any north facing windows of adjoining properties (see Solar Access below). Accordingly, the proposal is considered to be satisfactory in this regard.

**Landscape**

“Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain. Landscape design builds on the existing site’s natural and cultural features in responsible and creative ways. It enhances the development’s natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character.

The proposal will provide approximately 505m² of deep soil landscaped area on the site which exceeds Council’s deep soil landscaped area requirements as set out in the WRDCP 2003. The proposal reduces the existing level of hard surfaces within the front setback and incorporates significant deep soil landscaping, which far exceeds Council’s requirements. The proposal also provides for the retention of the established street tree which contributes positively to the landscape character of the area. The development’s landscape design will enhance the landscape character of the locality.

Council’s Trees Officer has assessed the landscape plan for the proposal and has determined that subject to **conditions: A3, B2, C2, C10, C11, D4, E8, E9, E10, E11, E12, F2 and H2**, the development is satisfactory in terms of tree preservation and landscaping. The conditions include protection measures and a bond for the Council *Lophostemon confertus* (Brushbox) tree located within the nature strip to the front of the site. Accordingly, the proposal is considered to be satisfactory in this regard.

**Amenity**

“Good design provides amenity through the physical, spatial and environmental quality of a development. Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.”

The amenity of the adjoining properties is considered to be maintained for the following reasons:

- The proposal maintains the privacy of adjoining properties in accordance with the provisions of WRDCP 2003 (see Visual and Acoustic Privacy below).
- The proposal fully accords with Council’s controls pertaining to the provision of sunlight access to adjoining properties as set out in the WRDCP 2003 (see Solar Access below).
- The proposal will promote view sharing in accordance with the requirements contained in WRDCP 2003 (see Views below).

In terms of internal amenity, the proposal is considered to be satisfactory for the following reasons:

- The proposed units are adequately dimensioned and contain north or east facing living rooms with direct access to adequately sized areas of private open space in the form of terraces, with additional access to a communal swimming pool.
- The north, east and west facing primary living areas will permit adequate access to light and cross ventilation.
As such, the amenity of the proposed units and adjoining properties is considered to be adequately maintained in this instance.

Safety and Security

“Good design optimises safety and security, both internal to the development and for the public domain. This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.”

The proposal achieves adequate safety and security for residents through the provision of a secure intercom system. In terms of the pedestrians using the public footpath, the north eastern orientation of the three (3) front units will permit adequate casual surveillance of Wilberforce Avenue with minimal concealment opportunities. Furthermore, the design of the basement level carpark allows vehicles to enter and leave in a forward direction, ensuring vehicular and pedestrian safety on Wilberforce Avenue. Accordingly, the proposal is considered to be satisfactory in this instance.

Social Dimensions

“Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities. New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.”

The proposed residential flat building is a form of urban consolidation, by replacing the two existing dwelling-houses with six (6) residential units in an established urban environment, thereby utilising existing infrastructure, supporting local service providers and reducing demand for land and infrastructure. The site has adequate access to public transport in the form of buses and ferries in Rose Bay thereby potentially reducing the reliance upon cars.

Aesthetics

“Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.”

The proposal involves a quality architectural form and utilises quality external finishes which are appropriate for the locality. The proposal is for a contemporary building that is well modulated at all levels through the provision of balconies, setbacks and varied materials. The proposed building is comparable with surrounding contemporary development, whilst being an appropriate design response to the site. Accordingly, the proposal is considered to be satisfactory in this instance.

Clause 30A Standards that cannot be used as grounds to refuse development consent for residential flat buildings

(1) A consent authority must not refuse consent to a development application for the carrying out of residential flat development on any of the following grounds:
(a) Ceiling height: if the proposed ceiling heights for the building are equal to, or greater than, the recommended ceiling heights set out in Part 3 of the Residential Flat Design Code.

The proposed ceiling heights throughout the development comply with the 2.7 m ceiling height requirement for habitable rooms.

(b) Apartment area: if the proposed area for each apartment is equal to, or greater than, the recommended internal area and external area for the relevant apartment type set out in Part 3 of the Residential Flat Design Code.

The Residential Flat Design Code recommends internal and external areas for three (3) bedroom units, which are 124m² and 24m² respectively. The internal areas of the proposed units fully accord with the requirements of the Residential Flat Design Code. With regards to the external area requirements; units one (1) and two (2) exceed the requirement of 24m² for external areas, units three (3), four (4) and five (5) represent a shortfall of approximately 4-5m² and unit six (6) represents a shortfall of approximately 12m². However, the proposal incorporates a communal swimming pool area within the rear setback which ensures that an adequate external area is afforded to all of the units.

The considerations contained in the Residential Flat Design Code are as follows:

Local context

As discussed in Context above, the proposal is comparable with the height, bulk and scale of the residential flat buildings within the immediate vicinity of the site. The proposed three storey development would not appear out of context with the adjoining properties (No.'s 25 and 31 Wilberforce Avenue) and satisfies the desired future character requirements of the Rose Bay precinct under WRDCP 2003.

For the reasons discussed in the body of this report, the proposal is considered to be satisfactory with the local context requirements of this Code.

Site design

A site analysis plan of adequate detail was submitted with the development application indicating how the proposal addresses the local context. The proposal provides adequate private open space and deep soil landscaped areas. The orientation and configuration of the building ensures adequate separation between the subject site and the adjoining developments, thereby ensuring adequate solar access whilst minimising adverse amenity impacts such as loss of privacy and visual impact.

For the reasons discussed in the body of this report, the proposal is considered to be satisfactory with the site design requirements of this Code.

Building design

As discussed in the body of the report, subject to conditions, the design of the proposal is considered to have a positive visual impact upon the local urban and natural environment, complementing the character of surrounding development, minimising adverse amenity impacts upon adjoining development and providing satisfactory internal amenity.
10.2 REPs

SREP (Sydney Harbour Catchment) 2005

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

10.3 Section 94 contribution

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

Levy = 1% (levy rate) x $2,654,575.00 (proposed cost of development)

= $26,545.75

The total contribution = $26,545.75

This requirement is outlined in condition C2.

10.4 Other relevant legislation

None relevant.

11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

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

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

A zone interface occurs between the subject site (zoned 2(b)) and the properties to the south west which front Albemarle Avenue (zoned 2(a)). Consideration has been given to the planning principle set out in the Seaside Property Developments Pty Ltd v Wyong Shire Council [2004] NSW LEC 117 (30 March 2004). This states that:

‘As a matter of principle, at a zone interface as exists here, any development proposal in one zone needs to recognise and take into account the form of existing development and/or development likely to occur in an adjoining different zone. In this case residents living in the 2(b) zone must accept that a higher density and larger scale residential development can happen in the adjoining 2(c) or 2(d) zones and whilst impacts must be within reason they can nevertheless occur. Such impacts may well be greater than might be the case if adjacent development were in and complied with the requirements of the same zone. Conversely any development of this site must take into account its relationship to the 2(b) zoned lands to the east, south-east, south and south-west and the likely future character of those lands must be taken into account. Also in considering the likely future character of development on the other side of the interface it may be that the development of sites such as this may not be able to achieve the full potential otherwise indicated by applicable development standards and the like.'
The proposed development is satisfactory with regards to the zone interface for the following reasons:

- The proposal fully accords with the 9.5m maximum height development standard.
- The proposal upholds the objectives of the FSR development standard. This is discussed in greater detail within section 11.5.
- The proposal fully accords with the building envelope controls. This is discussed in greater detail within the ‘building size and location performance criteria’ section of the report.
- The proposal fully accords with the Council’s building footprint, side setback, front setback and rear setback controls. There is a sufficient separation distance between the subject building and the properties located to the south west of the site to ensure that the proposal would not result in any unreasonable impacts in terms of enclosure. This is discussed in greater detail within the ‘building size and location performance criteria’ section of the report.
- The proposal would not unreasonably impact upon any public or private views. This is discussed in greater detail within the ‘views performance criteria’ section of the report.
- The proposal fully accords with Council’s sunlight access controls. This is discussed in greater detail within the ‘building size and location performance criteria’ section of the report.
- Subject to condition C1, parts b-d, the proposal maintains an adequate level of visual and acoustic privacy. This is discussed in greater detail within the ‘visual and acoustic privacy performance criteria’ section of the report.
- The proposed development recognises the single storey form of the existing development to the south west and provides a sufficient rear setback to ensure an acceptable relationship between the subject building and these properties.
- It is important to consider the development which is likely to occur in the adjoining 2(a) zone. The planning controls which are applicable to the south western sites include:

  - A 9.5m maximum height development standard. This is identical to the maximum height permissible at the subject site.
  - A building footprint control of approximately 43% (dependent on site area). This is a greater than the 40% building footprint control which is applicable to the subject site and greater than the proposed building footprint, which is 35.5%.
  - A side setback control which requires 1.5m side setbacks increasing on a pro rata basis of 0.5m for each metre or part thereof the building height adjacent to the boundary exceeds 3.0m. This is significantly less than the 3.5m-9.6m side setbacks provided at the subject site.
  - A minimum rear setback of 25% of the average site length. This is identical to that permissible at the subject site. Given that the subject site and the properties to the south west are a similar length the separation distance would be approximately 21m if the south western properties were to be redeveloped. The separation distance would be divided equally between the subject site and the properties to the south west.
  - A control which restricts development to a maximum of two storeys. However, in accordance with the RDCP 2003 ‘storey’ definition; a two storey dwelling could be provided within the 2(a) zone with an additional level of accommodation incorporated within the attic space. Such a development would have a similar presentation as a three storey building and would result in comparable impacts upon the residential amenity of neighbouring properties. It is noted that the upper level of the subject building is setback from the rear boundary a further 2m, than that which is required by the rear setback control. This reduces the visual impact of the upper level and increases the level of privacy afforded to the adjoining properties, thus providing a transition between the 2(a) and 2(b) zones.
- A 0.55:1 maximum FSR control applies to the properties directly to the south west. The lower FSR within this 2(a) zone reflects the objective of providing a lower density of housing. Although a lower FSR control applies, in terms of building scale and mass, the building envelope controls are similar and in some cases greater than the controls which are applicable to the subject site. In effect the proposal will not appear out of character with the built form of future development within the 2(a) zone. This ensures that the proposed development would successfully relate with the zone interface to the south west of the subject site.

11.2 Statutory compliance table

<table>
<thead>
<tr>
<th>Site Area: 1170.4m²</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Area and Lot Frontage</td>
<td>1170.4m² 27.43m</td>
<td>930m² 21m</td>
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<tr>
<td>Overall Height</td>
<td>9.5m</td>
<td>9.5m</td>
<td>YES</td>
</tr>
<tr>
<td>Floor Space Ratio</td>
<td>0.935:1 (1094.705m²)</td>
<td>0.75:1 (877.8m²)</td>
<td>NO</td>
</tr>
</tbody>
</table>

11.3 Site area requirements

The proposal has a total site area of 1,170.4m² and a frontage width of 27.43m which complies with the requirements of Clause 10B(2) of WLEP 1995. Furthermore, the proposal is considered to satisfy the objectives of the site area and frontage requirements under Clause 10A of WLEP 1995.

11.4 Height

The proposed residential flat building is a maximum height of 9.5m. This complies with the maximum height control of 9.5m which applies to the site. Furthermore, the proposal is considered to uphold the objectives underlying the height standard contained in Clause 12AA of the WLEP 1995.

An objector has raised concerns regarding whether the subject building can be constructed within the 9.5m maximum height standard specifically relating to the allowance of a 300mm zone for the roof being inadequate to accommodate the floor finish, ceiling construction, roof slab, membrane etc, and that the lift does not include an overrun.

Firstly, detailed construction specifications will be required at the construction certificate stage. Any amendment to the height of the building if approved would require consent and would be considered on its own merits. Notwithstanding this it is noted that lower ceiling heights could be provided whilst still achieving compliance with the BCA requirements. Secondly, the architect has provided details of the proposed lift which does not require the incorporation of a lift overrun.

For the reasons set out above it is considered that the proposal could be accommodated without breaching the 9.5m height control.

11.5 Floor space ratio

Clause 11 of WLEP 1995 stipulates that a building shall not be erected on land to which this plan applies if the floor space ratio would exceed the ratio indicated for that land on the density map which is 0.75:1 (877.8m²).
The proposed development as amended has a floor space ratio of 0.935:1 or 1094.705m², which would breach the maximum FSR standard by 216.9m².

A SEPP 1 objection is required and has been prepared by the applicant (see Annexure 7) which is paraphrased as follows:

- The proposed development exceeds the FSR control that applies to the subject site. Notwithstanding this, the proposal generally complies with the other development standards under LEP 1995 and requirements under Council’s RDCP, including building footprint, deep soil landscaped area, front and side setbacks and car parking.

- In addition, it is considered that despite the numerical non-compliance, the proposal meets the objectives of the FSR development standard for the reasons outlined below. The following subsections will address the proposal's compliance with each of the identified objectives of the FSR standard.

- **Objective (a): To set the maximum density for new development**
  - A reduction in the FSR of the proposed building to achieve technical compliance would not necessarily result in a reduced density in terms of the number of dwellings. A development strictly complying with the FSR control would still achieve an average floor space of approximately 146m², which can easily accommodate the type of apartments proposed. The consequence of strict compliance is therefore more likely to be simply smaller apartments with consequent reduced internal amenity for future occupants but no reduction in population density.
  - In regard to population density, the subject site is well serviced by public transport and utilities and is in close proximity to a variety of community services and facilities in Rose Bay. The proposed development is considered unlikely to adversely impact on the capacity of these services and is also unlikely to adversely impact on the level of service, capacity or function of the surrounding road network.
  - Accordingly, the proposed development is considered to be consistent with objective (a) of the FSR development standard.

- **Objective (b): To control building density, bulk and scale in all residential and commercial areas in the Municipality in order to achieve the desired future character objectives of those areas**
  - The character of Rose Bay Precinct is increasingly one of contemporary style residential flat buildings of similar height, bulk and scale, although differing in architectural treatment and detail. The proposed building has been designed to respond to and complement this emerging character of the locality.
  - The relevant desired future character objectives for Rose Bay Precinct and our comments on the proposal's compliance with them are detailed in the Statement of Environmental Effects submitted with the Development Application.
  - Despite the FSR non-compliance the bulk of the proposed building is similar to that of other recent multi-unit housing in the locality. The table below illustrates existing development in Wilberforce Avenue and provides a comparison of the permitted FSR under the current LEP density maps, as well as the approved FSR.
The current LEP density map groups the above four properties and the subject site under the same numerical density control of 0.75:1. This illustrates Council’s intent to achieve a consistent scale of development within the area, as shaded in purple on the LEP density map. This area incorporates the majority of Wilberforce Avenue, with higher densities to the south-eastern end fronting Old South Head Road and the northwestern end fronting New South Head Road.

The average density of the developments indicated in the above table, as approved, is 0.92:1. The proposed development results in an FSR of 0.92:1, and is therefore consistent with the average scale of existing built form, of which three out of four were approved by Council despite their non-compliance.

Furthermore, the proposal generally complies with the maximum permitted height as expressed in metres and the fundamental envelope controls of the DCP and LEP.

Accordingly, the proposal is considered to be compatible with the scale and character of development in the vicinity of the site and therefore is considered to be consistent with objective (b) of the FSR development standard.

- Objective (c): To minimise adverse environmental effect on the use and/or enjoyment of adjoining properties

  As detailed in the Statement of Environmental Effects submitted with the Development Application, the variation of the FSR control has little if any impact on the use or enjoyment of adjoining properties in terms of privacy, overshadowing or other amenity impacts.

  In regard to privacy, the proposed development has been carefully designed to ensure a high degree of visual and acoustic privacy for both future occupants and existing neighbours. The proposal has been designed to orient all apartments to the street or to overlook the rear open space of the site. This orientation results in primary window openings and balconies being oriented away from side boundaries. In addition, the proposal provides large setbacks to each side boundary in accordance with the RDCP requirements and these areas will be available to deep soil landscaping that will further assist with mitigating any potential privacy impacts.

  In regard to overshadowing, it is considered that despite the FSR non-compliance, the shadows cast by the proposed development are acceptable and easily satisfy the requirements of Council’s DCP. Given the orientation of the allotment, a large part of shadow of the proposed development falls within its own site. Nevertheless, the north-east to south-west lot alignment inevitably leads to some shadow impact, particularly on the property immediately to the south-east at No. 31 Wilberforce Avenue in the winter. The extent of additional shadows are illustrated in the shadow diagrams and explained and assessed in detail in the Statement of Environmental Effects submitted with the Development Application.
It is noted that the proposal fully complies with the WLEP 1995 height limit and the setback requirements under the RDCP. As such, it is to be reasonably expected that development in accordance with the applicable planning controls will result in some shadow impact on adjoining properties. In terms of solar access, the RDCP states that sunlight is to be 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 and north-facing windows to habitable rooms of neighbouring dwellings must not have sunlight reduced to less than 3 hours to a portion of their surface between 9am and 3pm on June 21.

Based on the shadow impact as illustrated in the shadow diagrams and detailed in the Statement of Environmental Effects, the proposal will easily comply with the solar access requirements as they apply to private open space. The proposal will similarly comply with respect to solar access to the south-eastern dwelling as it is not a north facing building as defined by the RDCP. It is also noted that the owner of No.31 has provided a letter to indicate that no objection is raised to the proposal (see Annexure D to the Statement of Environmental Effects).

Accordingly, the proposal is considered to be consistent with objective (c) of the FSR development standard.

- Objective (d): To relate new development to the existing character of the surrounding built and natural environment as viewed from the streetscape, the harbour or any other panoramic viewing point

- The subject site is not visible from the harbour or any panoramic viewing point. It is also considered that the proposed development will not significantly impact upon views from the habitable rooms of adjacent premises as detailed in the Statement of Environmental Effects submitted with the Development Application.

- As indicated above, the proposal is considered to relate well to the existing built environment, the scale of development in the immediate context of the site and the emerging character of the locality.

- Accordingly, the proposal is considered to be consistent with objective (d) of the FSR development standard.

- In the circumstances of the particular case, the SEPP No. 1 Objection for the non-compliance with the FSR control is considered well founded. Further, despite the numerical non-compliance, it is considered that the proposal will achieve the objectives of that development standard.

- Under the LEP the subject property is within the Residential 2(b) zone, the specific objectives of which are identified in the LEP as follows:
  a) to provide for areas of medium and high density residential development in appropriate locations;
  b) to encourage a diversity of dwelling types and tenure;
  c) to enable non-residential development of low intensity which is compatible with the residential character and amenity of the locality;
  d) to improve access to and along the Sydney Harbour foreshore where opportunities arise; and
  e) to protect the environmental attributes of the foreshore lands.

- The proposed development is considered to be consistent with the relevant general and specific aims and objectives of the LEP and the Residential 2(b) zone.
In particular, the proposed development provides medium density residential development in an area zoned for that purpose and will increase the total housing stock and diversity of dwelling types in the Woollahra Municipality.

- In the circumstances of the proposal, would strict compliance with the development standard:
  (i) be unnecessary or unreasonable?
  (ii) tend to hinder the attainment of the objectives under Section 5(a)(1) and (i1) of the Environmental Planning and Assessment Act, 1979?

(i) Yes. In the circumstances of the case, to limit any redevelopment of the site to an FSR of 0.75:1 is considered to be unnecessary and unreasonable given the scale of existing development within close proximity to the site. Furthermore, the proposal complies with the fundamental building envelope controls and will not detrimentally impact on the amenity of adjoining development.

(ii) Yes. The non-compliance with the FSR standard is not considered likely to have any significant adverse effects on adjoining or surrounding properties. The proposed scale would be read as consistent with the scale of other medium density built form within the street. Therefore, it is considered that insistence upon strict compliance would unnecessarily complicate orderly and economic development of an ideal site for the development type proposed, in accordance with the intentions of the zoning, Council's LEP and the objectives of the Act.

The following assessment of the SEPP 1 Objection is assessed using the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46 (6 April 2001).

The SEPP 1 Objection submitted is assessed as follows:-

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

The maximum floor space ratio is a development standard under Clause 11 of WLEP 1995.

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

The underlying purpose of the standard is to control the bulk and scale of development and protect local amenity from overdevelopment of sites. The objectives of the maximum floor space ratio development standard in Clause 11AA of WLEP 1995 are as follows:

   a) To set the maximum density for new development,
   b) To control building density, bulk and scale in all residential and commercial localities in the area in order to achieve the desired future character objectives of those localities,
   c) To minimise adverse environmental effect on the use of enjoyment, or both, of adjoining properties, and
   d) To relate new development to the existing character of surrounding built and natural environment as viewed from the streetscape, the harbour or any other panoramic viewing point.
3. **Is compliance with the development standard consistent with the aims of the Policy, and in particular, would strict compliance with the development standard tend to hinder the attainment of the objectives specified in s.5(a)(i) and (ii) of the EPA Act?**

Under the EPA Act, 1979, Section 5(a)(i) & (ii) the following is required:

(i) *The proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*

(ii) *The promotion and co-ordination of the orderly and economic use and development of land,*

The proposed development will increase the density of the site by four units, thereby increasing urban densities and consolidation within the medium density residential 2(b) zone. Reducing the FSR by 216.9m² would require a substantial reduction to the floor area of each apartment, which would compromise the internal layout of the proposal and would hinder the provision of six (6) three (3) bedroom apartments. The proposal represents the orderly and economic use and development of the land as six (6) three (3) bedroom apartments can be provided whilst upholding the objectives of the FSR development standard. This is discussed in greater detail below. Requiring the proposed FSR to be reduced when the proposal achieves the objectives of the FSR development standard would hinder the orderly and economic use and development of the subject land.

*Whebe V Pittwater Council (2007) NSW LEC 827 (21 December 2007)* sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states that:

>An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved not withstanding non-compliance with the standard.

It goes on to state that:

>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

The following considers the proposal against the relevant objectives of the development standard contained under Clause 11AA of WLEP 1995.

Objective (a) aims to set the maximum density for new development:

- The proposed number of residential units (six) can be accommodated by local services including public transport, health services, retail and professional services. The local traffic network is considered capable of accommodating the increase in traffic flows. Accordingly, the density of the proposal is considered to be satisfactory in this regard.
• Compliance with the FSR standard is therefore considered to be unreasonable and unnecessary as the proposal achieves consistency with objective (a).

Objective (b) aims to control building density, bulk and scale in all residential and commercial localities in the area in order to achieve the desired future character objectives of those localities:

• A SEPP 1 objection does not permit precedence to be given to other planning controls over the development standard (*Whebe V Pittwater Council* (2007) NSW LEC 827 (21 December 2007)). However, in order to establish whether building density, bulk and scale achieve consistency with the desired future character objectives of the locality, regard must be given to the applicable building envelope controls.
• The proposal is fully compliant with all of the building envelope controls. This ensures that the bulk and scale is consistent with the form of development contemplated by the density provisions put in place to achieve the desired future character objectives.
• The proposal is fully compliant with the 9.5m maximum height development standard.
• The proposal is fully compliant with the building footprint control.
• The proposal is fully compliant with the side setback, front setback and rear setback controls.
• It is noted that a two-storey residential flat building with greater ceiling heights and a basement garage which projects 1.1m above existing ground level could be provided at the subject site. Such a proposal would fully accord with the FSR development standard, but would still represent a similar bulk and scale to the bulk and scale of the proposal. The provision of a two-storey residential flat building would involve a reduction to the either the number or size of the proposed units. This would hinder the orderly and economic use and development of the subject land, which is contrary to the objectives specified in s.5(a) (ii) of the EPA Act.
• The proposal involves the construction of a contemporary residential flat building which is comparable with the architectural style and form of surrounding development within Wilberforce Avenue. The density, bulk and scale of the proposal are consistent with the density, bulk and scale of the existing residential flat buildings within the immediate locality of the subject site. Notably at No.’s 39-41, 40-42, 44-46 Wilberforce Avenue.
• The articulated and stepped building form as well as full compliance with all landscape provisions ensures that the development would sit comfortably in the streetscape.
• Compliance with the FSR standard is therefore considered to be unreasonable and unnecessary as the proposal achieves consistency with objective (b).

Objective (c) aims to minimise adverse environmental effect on the use or enjoyment, or both, of adjoining properties:

• As set out above a SEPP 1 objection does not permit precedence to be given to other planning controls over the development standard. However, in order to establish whether a proposal results in any adverse environmental effects on the use of enjoyment of adjoining properties, regard must be given to the applicable controls put in place to protect the residential amenity of adjoining properties.
• The proposal fully accords with the Council’s sunlight access requirements. This is discussed within greater detail within the ‘building size and location performance criteria’ section of the report.
• The proposal would not unreasonably impact upon any private views. This is discussed within greater detail within the ‘views performance criteria’ section of the report.
• The proposal fully accords with Councils building envelope controls and does not result in any unreasonable impacts in terms of enclosure. This is discussed within greater detail within the ‘building size and location performance criteria’ section of the report.
• The proposal fully accords with Council’s side and rear setback controls and subject to condition C1, parts b-d, the proposal would not result in any adverse impacts in terms of loss of visual and acoustic privacy. This is discussed within greater detail within the ‘acoustic and visual privacy performance criteria’ section of the report.
• Compliance with the FSR standard is therefore considered to be unreasonable and unnecessary as the proposal achieves consistency with objective (c).

Objective (d) aims to relate new development to the existing character of surrounding built and natural environment as viewed from the streetscape, the harbour or any other panoramic viewing point:

• The proposal is comparable to the architectural style, scale and form of the existing residential flat building developments along both sides of Wilberforce Avenue. These are characterised by contemporary three storey residential flat buildings.
• The proposal fully accords with the front setback and side setback controls. This ensures that the building scale is consistent with the surrounding built form.
• The proposal fully accords with Council’s requirements for deep soil landscaping within the front setback and subject to conditions A3, B2, C2, C10, C11, D4, E8, E9, E10, E11, E12, F2 and H2 the proposal will retain the existing street tree and provide sufficient landscaping. This ensures that the new development would relate successfully to the existing natural environment.
• Compliance with the FSR standard is therefore considered to be unreasonable and unnecessary as the proposal achieves consistency with objective (d).

Insisting on full compliance with the FSR standard is unreasonable and unnecessary as the proposal is consistent with the objectives of the development standard contained under Clause 11AA of WLEP 1995.

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

A strict compliance with the FSR standard is unreasonable and unnecessary as a strict compliance with the FSR development standard would hinder the attainment of the objectives specified in s.5(a)(i) and (ii) of the EPA Act. Furthermore the proposal is consistent with the objectives of the development standard contained under Clause 11AA of WLEP 1995.

5. Is the objection well founded?

The objection advanced by the applicant that compliance with the development standard is unreasonable and unnecessary is considered to be well founded. It is considered that the proposed breach of the FSR development standard would be consistent with the aims and objectives set out in Clause 3 of SEPP 1.

On the basis of the above comments it is considered that the SEPP1 Objection is well founded and that compliance with the FSR standard is unreasonable and unnecessary in the particular circumstances of this case.

11.6 Other special clauses/development standards

Clause 18 Excavation: The provisions of Clause 18 require Council, when considering a development application involving excavation, to have regard to how that excavation may temporarily or permanently affect:
(a) the amenity of the neighbourhood by way of noise, vibration, dust or other similar circumstances related to the excavation process

(b) public safety

(c) vehicle and pedestrian movements

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

(e) natural landforms and vegetation and

(f) natural water run-off patterns

The extent of excavation associated with the proposal includes the following:

- Bulk excavation for the basement level car park and driveway to a maximum depth of 3m over an area of approximately 504.3m²; a total volume of approximately 1512.9m³.
- Bulk excavation for the proposed swimming pool to a maximum depth of 2.1m over an area of approximately 32m²; a total volume of approximately 67.2m³.
- Excavations for the footings of the proposed residential flat building and boundary fences.

C5.2.16 of WRDCP 2003 stipulates that excavation is required to be setback a minimum of 1.5m from all boundaries. The proposed bulk excavation associated with the basement level exceeds this requirement by providing a minimum setback of 3.5m. The proposed bulk excavation associated with the swimming pool provides a minimum setback of 3m.

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

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

The maintenance of the amenity of the neighbourhood in terms of minimising noise, vibration and dust is addressed by Conditions C14, C9, C13, D2, D3, D10, E13, E14, E15, E16, E17 and E22, requiring ground anchors, an erosion and sediment management plan, geotechnical and hydrogeological design certification & monitoring, dilapidation reports for adjoining properties, protection for adjoining structures on loose foundations, erosion and sediment control installation, the maintenance of environmental controls, compliance with the geotechnical and hydrogeological monitoring program, support of adjoining land owners, vibration monitoring, maintenance of erosion and sediment controls and dust mitigation. Subject to the above-mentioned conditions, the amenity of the adjoining residential properties will be maintained.

(b) public safety

(c) vehicle and pedestrian movements

Issues relating to public safety and pedestrian movements during the excavation phase are inter-related and are addressed by Conditions C5, D5, D6, D7, E7 and E3, requiring Council approval for road and public domain works, a Construction Management Plan, creation of a work construction zone, site fencing, maintenance of vehicular and pedestrian access and compliance with the Construction Management Plan.

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

Any heritage items in the vicinity of the site are located beyond the zone of influence associated with the proposed excavation and will not be adversely affected in this instance.
(e) natural landforms and vegetation

The proposed excavation predominantly occurs below the footprint of the proposed residential flat building. This ensures that the site’s topography is adequately maintained.

Subject to Conditions: A3, B2, C2, C10, C11, D4, E8, E9, E10, E11, E12, F2 and H2, Council's Trees and Landscape Officer considers the proposal to be satisfactory in preserving vegetation.

(f) natural water run-off patterns

Council's Development Engineer has assessed the proposal and considers the stormwater and runoff to be satisfactory, subject to Conditions A3, C16, C17, E23, F3, H5 and I3, requiring a stormwater management plan, flood protection plan, compliance with council’s specification for drainage, commissioning and certification of systems and works, positive covenant & Work as Executed certification of stormwater systems, and on-going maintenance of on-site detention systems.

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

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

The proposal has been assessed against the provisions of Clause 25 and is considered to be satisfactory, subject to Conditions A3, C16, C17, E23, F3, H5 and I3.

Clause 25D Acid Sulfate Soils: The subject site is identified to be within a Class 5 Acid Sulfate Soil area within the Woollahra Council Acid Sulfate Soil Map. However, the subject works are not likely to lower the water table beyond 1m AHD below the existing ground level on any land within 500m of Class 1, 2, 3 or 4 land classification and therefore, there is no issue of acid sulfate affectation.

Clauses 26-33 Heritage and conservation area provisions: The subject site is not a heritage item, or in the immediate vicinity of any heritage items or located within a heritage conservation area. The proposal is therefore acceptable in terms of Clause 26-33 of the WLEP.

12. DRAFT AMENDMENTS TO STATUTORY CONTROLS

None relevant.

13. DEVELOPMENT CONTROL PLANS
### 13.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

<table>
<thead>
<tr>
<th>Site Area (1170.4m²)</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
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<td>Maximum Number of Storeys – RFB</td>
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<td>Building Boundary Setbacks</td>
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<tr>
<td>Front (north east)</td>
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<td>Ground Floor</td>
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<tr>
<td>Side Setback (South)</td>
<td>N/A</td>
<td>&gt;1.5m</td>
<td>1.5m</td>
<td>YES</td>
</tr>
<tr>
<td>Setback from Significant Mature Trees</td>
<td>&lt;3.0m</td>
<td>&lt;3.0m</td>
<td>3.0m</td>
<td>NO</td>
</tr>
<tr>
<td>Building Footprint</td>
<td>&gt;40% (468m²)</td>
<td>35.5% (415.18m²)</td>
<td>40% (468m²)</td>
<td>YES</td>
</tr>
<tr>
<td>Floor to Ceiling Height – Habitable Rooms</td>
<td>N/A</td>
<td>2.7m</td>
<td>2.7m</td>
<td>YES</td>
</tr>
<tr>
<td>Maximum Unarticulated Length to Street</td>
<td>N/A</td>
<td>&lt;6.0m</td>
<td>6.0m</td>
<td>YES</td>
</tr>
<tr>
<td>Solar Access to Open Space of Adjacent Properties (Hrs on 21 June)</td>
<td>50% (or 35m²) for 2 hours</td>
<td>50% (or 35m²) for 2 hours</td>
<td>50% (or 35m²) for 2 hours</td>
<td>YES</td>
</tr>
<tr>
<td>Solar Access to Nth Facing Living Areas of Adjacent Properties (Hrs on 21 June)</td>
<td>3.0 hours</td>
<td>3.0 hours</td>
<td>3.0 hours</td>
<td>YES</td>
</tr>
<tr>
<td>Excavation Piling and Subsurface Wall Setback</td>
<td>N/A</td>
<td>&gt;1.5m</td>
<td>1.5m</td>
<td>YES</td>
</tr>
<tr>
<td>Deep Soil Landscaping – RFB</td>
<td>&gt;43% (505.37m²)</td>
<td>43% (505.37m²)</td>
<td>40% (468.16m²)</td>
<td>YES</td>
</tr>
<tr>
<td>Deep Soil Landscaping – Front Setback</td>
<td>&lt;77% (150.17m²)</td>
<td>77% (150.17m²)</td>
<td>40% (77.9m²)</td>
<td>YES</td>
</tr>
<tr>
<td>Deep Soil Landscaping – Front Setback (Consolidated Area)</td>
<td>&gt;20m²</td>
<td>&gt;20m²</td>
<td>20m²</td>
<td>YES</td>
</tr>
<tr>
<td>Private Open Space at Ground Level – Total</td>
<td>&gt;35m² Min dimension 3m</td>
<td>&gt;35m² Min dimension 3m</td>
<td>35m² Min dimension 3m</td>
<td>YES</td>
</tr>
<tr>
<td>Private Open Space at Ground Level – Principal Area</td>
<td>&gt;16m² Min dimension 4m</td>
<td>&gt;16m² Min dimension 4m</td>
<td>16m² Min dimension 4m</td>
<td>YES</td>
</tr>
<tr>
<td>Private Open Space at Ground Level – Maximum Gradient</td>
<td>&lt;1:10</td>
<td>&lt;1:10</td>
<td>1:10</td>
<td>YES</td>
</tr>
<tr>
<td>Private Open Space – Upper Floor Units in RFBs</td>
<td>N/A</td>
<td>&gt;8m² Min dimension 2m</td>
<td>8m² Min dimension 2m</td>
<td>YES</td>
</tr>
<tr>
<td>Location of Swimming Pool</td>
<td>N/A</td>
<td>Rear Setback</td>
<td>Rear Setback</td>
<td>YES</td>
</tr>
</tbody>
</table>
### Site Area (1170.4m²)

<table>
<thead>
<tr>
<th>Site Analysis Provision</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Swimming Pool Setback from Significant Mature Trees</td>
<td>N/A</td>
<td>3.0m</td>
<td>3.0m</td>
<td>YES</td>
</tr>
<tr>
<td>Swimming Pool Excavation, Piling and Subsurface Wall Setback</td>
<td>N/A</td>
<td>&gt;1.5m</td>
<td>1.5m</td>
<td>YES</td>
</tr>
<tr>
<td>Swimming Pool Height Above Ground Level Adjacent to Adjoining Property</td>
<td>N/A</td>
<td>&lt;0.3m</td>
<td>0.3m</td>
<td>YES</td>
</tr>
<tr>
<td>Front Fence Height</td>
<td>N/A</td>
<td>1.2m</td>
<td>1.2m</td>
<td>YES</td>
</tr>
<tr>
<td>Side and Rear Fence Height</td>
<td>N/A</td>
<td>1.8m</td>
<td>1.8m</td>
<td>YES</td>
</tr>
<tr>
<td>BASIX – Water</td>
<td>N/A</td>
<td>40%</td>
<td>40%</td>
<td>YES</td>
</tr>
<tr>
<td>BASIX – Energy</td>
<td>N/A</td>
<td>Pass</td>
<td>Pass</td>
<td>YES</td>
</tr>
<tr>
<td>Solar Access to North-Facing Living Areas of Development (Hrs on 21 June)</td>
<td>N/A</td>
<td>3.0 hours</td>
<td>3.0 hours</td>
<td>YES</td>
</tr>
<tr>
<td>Minimum Number of North Facing Habitable Rooms</td>
<td>N/A</td>
<td>&gt;1</td>
<td>1</td>
<td>YES</td>
</tr>
<tr>
<td>Setback of Bedroom Windows from Streets/Parking Areas of Other Dwellings</td>
<td>N/A</td>
<td>&gt;3.0m</td>
<td>3.0m</td>
<td>YES</td>
</tr>
<tr>
<td>Car Parking Excavation</td>
<td>N/A</td>
<td>Within Building Footprint</td>
<td>Within Building Footprint</td>
<td>YES</td>
</tr>
<tr>
<td>Location of Garages and Car Parking Structures</td>
<td>N/A</td>
<td>Behind Front Setback</td>
<td>Behind Front Setback</td>
<td>YES</td>
</tr>
<tr>
<td>Garage Frontage Width</td>
<td>N/A</td>
<td>11.7% (3.2m²)</td>
<td>30% (8.2m)</td>
<td>YES</td>
</tr>
<tr>
<td>Car Parking Spaces – RFB</td>
<td>2</td>
<td>14</td>
<td>2.0 (3+ bed) 0.25 (visitor) Total 14</td>
<td>YES</td>
</tr>
<tr>
<td>Minimum Access Driveway Width</td>
<td>N/A</td>
<td>3.5m*</td>
<td>3.5m – 6.0m</td>
<td>YES</td>
</tr>
<tr>
<td>Access Driveway Grades – Overall</td>
<td>N/A</td>
<td>20%</td>
<td>15%</td>
<td>NO</td>
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<tr>
<td>Access Driveway Grades – Transitional</td>
<td>N/A</td>
<td>16.5%</td>
<td>12%</td>
<td>NO</td>
</tr>
</tbody>
</table>

* Subject to condition C1

### Site analysis performance criteria (Part 3)

Part 3 of Council’s WRDCP 2003 requires adequate site analysis documentation for development applications. The submitted documentation is consistent with the site analysis objectives and the relevant performance criteria.

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

The locality is characterised by a mix of dwelling-houses and residential flat buildings of various scales and architectural styles. The subject building is comparable with the height, bulk and scale of surrounding residential flat buildings and satisfactorily responds to the streetscape character and urban context of the locality. The proposed residential flat building is considered to be of a high quality and exhibits good design. For the reasons discussed under Part 10.1 – SEPP 65 the proposal is considered to be a satisfactory response to the character, architectural style, scale and form of Wilberforce Avenue. Accordingly, the proposal is considered to be satisfactory in this instance.
Desired future precinct character objectives and performance criteria (*Part 4*)

The objectives of the Rose Bay precinct relate to the mitigation of adverse impacts upon the local public domain, maintaining the existing landscape character of the locality and ensuring that development responds to the existing built forms in the streetscape.

The proposed residential flat building will be comparable with the architectural style, scale and form of development within Wilberforce Avenue and will uphold the desired future precinct character objectives for the Rose Bay precinct. The proposal exceeds Council’s deep soil landscaping requirements for the site as a whole and for the site frontage, thereby contributing positively to the landscape character of locality.

**Building footprint**
Compliance achieved.

**Side boundary setbacks**
Compliance achieved.

**Location of garages**
Compliance achieved.

**Front fence height**
Compliance achieved.

**Deep soil landscape at frontage**
Compliance achieved.

**Building Articulation**
Compliance achieved.

**Roof form.**
Control C4.9.6.6 requires roof forms to be designed having consideration for neighbouring amenity, overlooking, streetscape suitability and to maintain views across precincts. The proposed flat roof form is satisfactory for the following reasons:

- The proposal would not unreasonably impact upon the residential amenity of neighbouring properties. This is discussed in greater detail below.
- There are a number of examples of similar flat roofed buildings within the immediate vicinity of the subject site (see streetscape photographs within *annexure 2*). The contemporary design accords with objective O4.9.4 and results in a satisfactory streetscape outcome.
- The proposal would not unreasonably impact upon any public or private views.

The proposal involves the following non-compliances with the relevant performance criteria stipulated under Part 4.9 of WRDCP 2003:

**Building Height – Storeys**
C 4.9.7.7 stipulates that development is to have a maximum height of two (2) storeys. The proposed residential flat building will present as a three (3) storey development to Wilberforce Avenue.

Not withstanding this, the non-compliance is considered to be satisfactory for the following reasons:

- The proposal complies with Council’s 9.5m statutory height requirement stipulated under Clause 12 of WLEP 1995.
The compliance with the maximum height standard, front setback and side setback controls ensures that the proposed development would not appear excessive when compared to the adjoining buildings.

The height of the subject building is comparable with the height of the existing residential flat buildings within the immediate vicinity of the site.

The upper level is set back a further 2m from the rear boundary than is required by the rear setback control. This ensures that a transition occurs between the 2(b) zoning of the subject site and the 2(a) zoning of the sites to the south west. The greater separation distance also reduces the visual impact of the upper level and provides greater privacy to adjoining properties.

Subject to Condition C.1, parts b-d, the proposal would not unreasonably impact upon the amenity of the neighbouring properties including visual and acoustic privacy, views and sunlight access. This is discussed in greater detail below.

The proposed residential flat building will be comparable with the height, density, bulk and scale of the residential flat buildings within the immediate locality of the subject site and will positively contribute to the landscape and streetscape character of the locality.

The proposal is considered to adequately relate to the local context of the Rose Bay precinct by providing articulation and visual interest through setbacks, balconies and varying materials.

The proposal will present as a three (3) storey building when viewed from Wilberforce Avenue. This is consistent with the built form of the residential flat buildings within Wilberforce Avenue, which predominantly read as three storey buildings, notably No.’s 9, 39-41, 40-42, 44-46, and 56 (see streetscape photographs within annexure 2).

It is acknowledged that these examples were approved prior to the adoption of the Woollahra Residential Development Control Plan, which introduced control C4.9.7.7. Notwithstanding this the proposal still upholds the wider objectives behind the storey control.

Objective O4.9.1 encourages a development scale which relates to the function and role of the streets they address. The proposal fully accords with the 9.5m maximum height standard, the building footprint control, the front and rear setback controls and exceeds Council’s side setback and deep soil landscaping requirements, ensuring that the subject building is an appropriate scale for Wilberforce Avenue.

Objective O4.9.2 requires development to reinforce a consistent building scale across both sides of the street. The proposal fully accords with the building envelope controls, and is a comparable scale to the existing residential flat buildings on both the north-eastern and south-western sides of Wilberforce Avenue.

Objective O4.9.3 requires new development to reinforce the precinct’s topography. With the exception of the rear swimming pool the bulk excavation associated with the development occurs within the building footprint. This ensures that the proposal would not unreasonably impact upon the precinct’s topography.

The proposal maintains an evolution of residential building styles though the introduction of a well designed contemporary building in accordance with Objective O4.9.4.

Objective O4.9.5 requires development to differentiate between the development pattern of the Rose Bay commercial centre and the density of adjacent residential areas. The proposal’s compliance with the 9.5m maximum height standard and building envelope controls ensures that development can be clearly differentiated from the development pattern of the Rose Bay commercial area where a 12m height control applies.

The proposal addresses the street in accordance with Objective O4.9.6.

The proposal would not adversely impact upon views from public spaces to the Harbour or surrounding districts in accordance with Objective O4.9.7.

The proposal generally accords with the aims and objectives of section 4.9.
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, contribute to a cohesive streetscape and promote desirable pedestrian movements, provide a safe environment and recognize predominant streetscape qualities.

Objective O5.1.1 requires housing forms to be of a scale and character in keeping with the desired future character objectives for the locality. The proposal involves the construction of a contemporary residential flat building which is considered to be comparable with the architectural style, scale and form of surrounding development within Wilberforce Avenue and is consistent with the permissibility of development in Residential 2(b) zones.

The proposal would not unreasonably impact upon any items or areas of special architectural, social, cultural or historic interest in accordance with Objective O5.1.2.

Objective O5.1.3 requires development to contribute to cohesive streetscapes and desirable pedestrian outcomes. The proposal incorporates the construction of a high quality contemporary residential flat building and, the site frontage to Wilberforce Avenue incorporates significant deep soil landscaping. This ensures that the proposal results in a satisfactory streetscape outcome.

Objective O5.1.4 requires development to be designed with adequate crime prevention measures. The proposal is considered to be acceptable in this regard as the subject building incorporates a number of habitable room windows, two balconies and a verandah to the north eastern front elevation. These will provide opportunities for the casual surveillance of Wilberforce Avenue. The proposal will have a positive visual impact on the streetscape and will relate successfully to the urban context and built form of the locality.

The proposal generally accords with the relevant aims and objectives of section 5.1 of the WRDCP 2003.

Building size and location performance criteria (Section 5.2)

Front setback
Compliance achieved.

Rear setback
Compliance achieved.

Ancillary development – Swimming Pool
Compliance achieved.

Building footprint
Compliance achieved.

Ceiling height
Compliance achieved.

Sunlight to neighbouring properties.
Compliance achieved.

A number of adjoining properties have raised concerns with regards to loss of sunlight access.
The proposal fully accords with control C5.2.13, which requires development to retain sunlight to at least 35m² of the main ground level private open space of the neighbouring properties for a minimum of two hours between 9am and 3pm on June 21.

Impact to the properties to the south west
- Between midday and 3pm on June 21 the proposal will not result in any additional overshadowing to the areas of private open space, achieving full compliance with control C5.2.13.

Impact to No. 31 Wilberforce Avenue:
- At 9.00am the proposal will not result in any additional overshadowing to the private open space of No. 31.
- At midday the proposal will retain sunlight access to an area of approximately 51m² to the private open space of No. 31.
- At 3pm the proposal will retain sunlight access to an area of approximately 68m² to the private open space of No. 31.
- The proposal fully accords with control C5.2.13.

Control C5.2.12 requires building bulk to be distributed to minimise overshadowing to neighbouring properties. The south eastern elevation of the subject building has been stepped significantly to reduce the bulk presented to No. 31 Wilberforce Avenue. Council’s side setback requirement for the south eastern elevation is 3.0m - 4.75m. The proposal significantly exceeds this requirement by providing a 3.5m – 9.6m side setback.

Control C5.2.14 states that development should not reduce the sunlight to the north facing habitable room windows of neighbouring properties to less than 3 hours between 9am and 3pm on June 21. In accordance with the definition set out in the WRDCP 2003 ‘north facing’ means the orientation range within 20 degrees west and 30 degrees east of true solar north. The north western windows to No. 31 are orientated 40 degrees to the west of true solar north and as such the windows do not constitute north facing windows. The proposal fully accords with control C5.2.14.

**Site excavation**
With the exception of the rear swimming pool the bulk excavation associated with the development occurs within the building footprint. This ensures that the proposal would not unreasonably impact upon the precinct’s topography. As such, the proposal is satisfactory with regards to control C5.2.15.

Control C5.2.16 specifies that the outer edge of excavation shall not be less than 1.5m from a front, side or rear boundary. The proposed bulk excavation complies with this requirement.

**Lot amalgamation**
C 5.2.18 stipulates that where a group of allotments is proposed to be amalgamated, those allotments should share a common road frontage. The proposed amalgamation of 27 and 29 Wilberforce Avenue (see **Condition A.6**) will share a common frontage to Wilberforce Avenue and is considered to be satisfactory in this instance.

The proposal generally upholds the objectives of section 5.2.

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

The proposal satisfies the numerical requirements for open space and landscaping. Furthermore, subject to **Conditions: A3, B2, C2, C10, C11, D4, E8, E9, E10, E11, E12, F2 and H2**, the proposal will retain the *Lophostemon confertus* Brush Box tree which is located within the Council verge and provides adequate landscaping to enhance the landscaped character of the locality. The proposal is considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under Part 5.3 of WRDCP 2003.

Concern has been raised by the owners of No. 18 and No. 20 regarding the proximity of the proposed swimming pool to the Flame Tree located in the rear backyard of No. 20 and the Bush Cherry tree located in the rear backyard of No. 18. The proposed swimming pool is located a minimum of 3.4m from the south western rear boundary. This is a sufficient separation distance to ensure that little to no impact should occur to either of these trees. Notwithstanding this condition **E8** has been included as part of the recommendation, which requires tree preservation measures.

**Swimming pool**

Compliance achieved.

The proposed swimming pool accords with the performance criteria and objectives of section 5.3 for the reasons set out below:

- The swimming pool is located within the rear setback in accordance with control C5.3.16.
- The swimming pool is located at least 3m from the base of significant mature trees in accordance with control C5.3.18.
- The outer edge of excavation for the proposed pool is more than 1.5m from the rear and side boundaries in accordance with control C5.3.19.
- The proposed swimming pool would not project greater than 300mm above existing ground level in accordance with control C5.3.21.
- Subject to **conditions C20 and 16**, requiring the pool equipment to include sound attenuation measures to ensure that noise from the pool equipment does not exceed background noise levels at any boundary, the associated plant and equipment satisfies council’s requirements.

The proposal generally accords with the aims and objectives of section 5.3.

**Fences and walls performance criteria (Section 5.4)**

At a height of 1.2m the front fence accords with the maximum front fence height set out under the desired future precinct character performance criteria C4.9.7.2.

The proposed new side and rear boundary fences are to be a maximum height of 1.8m measured from the neighbours level. This is considered to be satisfactory with the relevant objectives and performance criteria stipulated under Part 5.4 of WRDCP 2003. The only exception being the section of new lightweight fence to the south eastern side boundary, and the block rendered wall to the north western side boundary, which project forward of the front building alignment. These sections of wall and fence would appear unduly prominent within the streetscape.

Condition **C1, part a**, has been included as part of the recommendation. This states that: the section of fence to the south eastern side boundary and the section of wall to the north western boundary, which project forward of the front building alignment shall be stepped from a height of 1.8m at the building alignment to a maximum height of 1.2m at the front boundary to adjoin the proposed 1.2m front boundary fence.
Subject to condition, the proposal generally accords with the aims and objectives of section 5.4.

**Views performance criteria (Section 5.5)**

The proposal would not unreasonably impact upon either public or private views in accordance with the aims and objectives of section 5.5.

**Energy efficiency performance criteria (Section 5.6)**

The development application was accompanied by **BASIX Certificate 219356M** committing to environmental sustainability measures. Subject to **Conditions C3, H1 and I1**, the proposal demonstrates compliance with the relevant objectives and performance criteria stipulated under Part 5.6 of WRDCP 2003.

**Stormwater management performance criteria (Section 5.7)**

Subject to **Conditions A3, C16, C17, E23, F3, H5 and I3**, the proposal is considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under Part 5.7 of WRDCP 2003.

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

Impacts to No. 25 Wilberforce Avenue:
The proposed development would retain a reasonable level of visual and acoustic privacy to the occupiers of No. 25 Wilberforce Avenue for the reasons set out below:

- The views from the ground floor side windows would be screened by the proposed 1.8m high side boundary fence.
- **Condition C1, part b** has been included as part of the recommendation which requires the level one (1) and level two (2) windows to the north western elevation (excluding the high level windows) to be fixed and glazed with translucent glass to a height of 1.7m and the Juliet balconies being deleted.
- The proposed balconies are screened to the north western side ensuring that an adequate level of visual and acoustic privacy is retained.
- No balustrading has been provided to the roof to ensure that this area is not trafficable.
- The location and size of the proposed swimming pool would not result in any unreasonable impacts in terms of loss of acoustic or visual privacy to the adjoining residents.
- Given that no details have been submitted in relation to the location of the pool equipment room, **Conditions C.20 and I6** have been included as part of the recommendation. These require the pool equipment to include sound attenuation measures to ensure that noise from the pool equipment does not exceed background noise levels at any boundary.

Impacts to No. 31 Wilberforce Avenue:
The proposed development would retain a reasonable level of visual and acoustic privacy to the occupiers of No. 31 Wilberforce Avenue for the reasons set out below:

- The views from the ground floor side windows would be screened by the proposed 1.8m high side boundary fence.
• **Condition C1, part c** has been included as part of the recommendation which requires the level one (1) and level two (2) bedroom windows to the south eastern elevation of unit four (4) and unit six (6) to be fixed and glazed with translucent glass to a height of 1.7m and the Juliet balconies being deleted.

• **Condition C1, part d** has been included as part of the recommendation which requires the level one (1) and level two (2) foyer windows to the south eastern elevation to be fixed and glazed with translucent glass to a height of 1.7m.

• The proposed balconies are screened to the south eastern side ensuring that an adequate level of visual and acoustic privacy is retained.

• The proposed driveway is set in a minimum of 3.5m from the south eastern side boundary to ensure that an adequate level of acoustic privacy is maintained to No. 31.

• No balustrading has been provided to the roof ensuring that this area is not trafficable.

• The proposed swimming pool would not result in any unreasonable impacts in terms of loss of acoustic or visual privacy to the adjoining residents. The swimming pool and surrounds are maintained at the existing ground level and will not present any additional overlooking. Furthermore, the acoustic levels emanating from the swimming pool and its usage is not unreasonable in a residential context.

• **Conditions C20 and I6** will ensure the proposal will ensure the pool equipment does not unreasonably impact upon the acoustic privacy afforded to the neighbouring property.

Impacts to the properties to the south west of the subject site:

The proposal is considered to maintain a reasonable level of visual and acoustic privacy to the properties to the south west of the subject site for the reasons set out below:

• The proposal accords with the rear setback requirements at ground floor level and level one (1) and exceeds the rear setback requirements at level two (2).

• C 5.8.5 stipulates that habitable room windows with a direct sightline to a habitable room window in an adjacent dwelling within 9 metres, shall be offset, contain obscure glazing or have a sill height of more than 1.7 metres. The separation distance between the proposed windows to the rear (eastern) elevation far exceeds the 9m separation requirement. The habitable room windows in the subject site and the habitable windows in the properties to the west are separated by over 20m. This is a sufficient distance to ensure that an adequate level of visual privacy is maintained.

• C. 5.8.6 stipulates that balconies, terraces, decks and other like areas within a development are suitably screened to prevent direct views into habitable rooms or private open space areas of adjacent dwellings. The proposed rear balconies are separated from the rear boundary by over 10m, which is considered to be a sufficient distance to ensure that an adequate level of visual and acoustic privacy is maintained.

• No balustrading has been provided to the roof ensuring that this area is not trafficable.

• The location and size of the proposed swimming pool would not result in any unreasonable impacts in terms of loss of acoustic or visual privacy to the adjoining residents. The swimming pool and surrounds are maintained at the existing ground level and will not present any additional overlooking. Furthermore, the acoustic levels emanating from the swimming pool and its usage is not unreasonable in a residential context.

• **Conditions C20 and I6** will ensure the proposal will ensure the pool equipment does not unreasonably impact upon the acoustic privacy afforded to the neighbouring property.

Subject to **Conditions: C1, parts b-d, C20 and I6**, the proposed dwelling would maintain an adequate level of acoustic and visual privacy for both occupants and neighbours in accordance with objective 05.8.1.
Car parking and driveways performance criteria (Section 5.9)

The expected traffic generation from the proposed development is typical for the zoning of the site. The proposal provides 12 resident car parking spaces and 2 visitor spaces in accordance with Council’s numerical requirements. Subject to Conditions: A3, C1, C5, C15, E23, and H4 which have been included as part of the recommendation, the proposal satisfies Council’s requirements for car parking and driveways.

A number of the neighbouring properties have raised concerns that the proposed basement floor plan does not indicate structural supporting columns and that the introduction of such columns could potentially conflict with car parking bay sizes and vehicle movements. Condition C15 has been included as part of the recommendation which requires the parking to accord with AS/NZS 2890.1:2004 Parking Facilities - Off-Street Car Parking. This includes provisions for the location of supporting columns to ensure that conflict does not occur.

Accordingly, the proposal is considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under Part 5.9 of WRDCP 2003.

Site facilities performance criteria (Section 5.10)

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

Access and mobility performance criteria (Section 5.13)

The proposal is considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under Part 5.13 of WRDCP 2003. Refer to Access DCP below.

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

The proposal is considered to be satisfactory with regard to the provisions of this DCP.

13.3 Woollahra Access

The proposal is for a Class 2 building containing six (6) units. The Access DCP requires, one visitor accessible dwelling. The proposal will provide a continuous path of access for elderly people or people with disabilities from the street to the building foyer with a lift providing access to the basement and the two upper levels. These measures exceed the requirements of the Access DCP by providing access to all six (6) units and four disabled car parking spaces.

13.4 Other DCPs, codes and policies

None relevant.

14. APPLICABLE REGULATIONS

Clause 92 of the EPA Regulation 2000 requires that Council take into consideration Australian Standard AS 2601-1991: The demolition of structures. This requirement is addressed via Condition E2.
15. **THE LIKELY IMPACTS OF THE PROPOSAL**

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

16. **THE SUITABILITY OF THE SITE**

The site is suitable for the proposed development.

17. **SUBMISSIONS**

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

One letter of support was received from:

Igor Pogrebinsky,
3/52-54 Wilberforce Avenue,
Rose Bay

The submission raised the following points of support:

- *Street aesthetics – attractive architecture, thoughtful design.*
- *Additional landscaping.*
- *Retention of the street tree.*
- *Modest density.*

Objections were received from:

William and Tim McNickle,
14 Albemarle Avenue,
Rose Bay

Trish Montiford,
64 Wilberforce Avenue,
Rose Bay

S. and C.M. Vitaris,
62 Wilberforce Avenue,
Rose Bay

Robert and Louise Falk,
24 Albemarle Avenue,
Rose Bay

Dennis and Nicole Hoenig,
16 Albemarle Avenue,
Rose Bay

Victoria McJannet (on behalf of Mrs O.R. McJannet),
18 Albemarle Avenue,
Rose Bay
Mark and Cassandra McGann,
31 Wilberforce Avenue,
Rose Bay

C.G. and S.A Staff,
25 Wilberforce Avenue,
Rose Bay

Mr Adam Vaughan,
20 Albemarle Avenue,
Rose Bay

Dukes Architects,
Suite 9,
No. 402 New South Head Road,
Double Bay
(on behalf of the owners of No. 33 Wilberforce Avenue)

Jon Adgemis,
33 Wilberforce Avenue,
Rose Bay

Ann Previtera,
6/39-41 Wilberforce Avenue,
Rose Bay

Rose Bay Residents’ Association,
P.O. Box 156,
Rose Bay

The objectors raised the following issues:

- **Number of storeys**
  - This is addressed within the ‘desired future precinct character objectives and performance criteria’ section of the report.

- **Sunlight access**
  - This is addressed within the ‘building size and location performance criteria’ section of the report.

- **Building footprint**
  - This is addressed within the ‘building size and location performance criteria’ section of the report.

- **Parking**
  - This is addressed within the ‘car parking and driveways performance criteria’ section of the report.
- **Landscaping**
  - This is addressed within the ‘open space and landscaping performance criteria’ section of the report.

- **Impact upon street tree**
  - This is addressed within the ‘open space and landscaping performance criteria’ section of the report.

- **Height**
  - This is addressed within section 11.4 of the report.

- **FSR**
  - This is addressed within section 11.5 of the report.

- **Transition between the 2(a) and 2(b) zone**
  - This is addressed within section 11.1 of the report.

- **Scale bulk and density**
  - This is addressed within sections 10.1, 11.5 and the ‘building size and location performance criteria’ section of the report.

- **Roof form**
  - This is addressed within the ‘desired future precinct character objectives and performance criteria’ section of the report.

- **Acoustic and visual privacy**
  - This is addressed within the ‘acoustic and visual privacy performance criteria’ section of the report.

- **Streetscape**
  - This is addressed within the ‘streetscape performance criteria’ section of the report.

- **Impact of excavation and demolition on neighbouring properties**
  - This is addressed within section 11.6 of the report, and by a number of conditions which have been included as part of the recommendation.

- **Stormwater and flooding**
  - This is addressed within section 11.6, and the ‘stormwater management performance criteria’ section of the report, and by a number of conditions which have been included as part of the recommendation.
The replacement application (as defined by Clause 90 of the Environmental Planning and Assessment Regulation 2000) was not renotified under clause 5.1 of the DCP because, having considered clause 9 of the DCP, the replacement application is substantially the same development as the original proposal and considered to have no greater environmental impact upon neighbours.

18. CONCLUSION - THE PUBLIC INTEREST

The proposal is acceptable against the relevant considerations under s79C.

19. DISCLOSURE STATEMENTS

Under S.147 of the Environmental Planning and Assessment Act, 1979 there have been no disclosure statements regarding political donations or gifts made to any councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.

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

THAT the Council, as the consent authority, is of the opinion that the objection under State Environmental Planning Policy No. 1 – Development Standards to Clause 11, floor space ratio – development standard, under Woollahra Local Environmental Plan 1995 is well founded. The Council is also of the opinion that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of this case as the proposal will achieve the objectives of the floor space ratio standard.

THAT the Council, as the consent authority, grant development consent to Development Application No. 678/2008 for the demolition of the two existing dwelling-houses and ancillary structures; consolidation of the two lots into one and the construction of a new three storey residential flat building consisting of six units, basement level carparking for fourteen (14) vehicles, a new swimming pool strata subdivision and landscaping works, on land at 27 Wilberforce Avenue, Rose Bay, subject to the following conditions:

A. General Conditions

A.1 Conditions

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

Standard Condition: A1

A.2 Definitions

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

Applicant means the applicant for this Consent.

Approved Plans mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.
AS or AS/NZS means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

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

Council means Woollahra Municipal Council

Court means the Land and Environment Court

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

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

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

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

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

PCA means the Principal Certifying Authority under the Act.

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

Professional Engineer has the same meaning as in the BCA.

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

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

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

Site means the land being developed subject to this consent.

WLEP 1995 means Woollahra Local Environmental Plan 1995

Work for the purposes of this consent means:

a. the use of land in connection with development,
b. the subdivision of land,
c. the erection of a building,
d. the carrying out of any work,
e. the use of any site crane, machine, article, material, or thing,

f. the storage of waste, materials, site crane, machine, article, material, or thing,

g. the demolition of a building,

h. the piling, piering, 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.

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Author/Drawn</th>
<th>Date(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.01 A</td>
<td>Architectural Plans</td>
<td>X.PACE</td>
<td>10.10.08, 03.12.08, 03.12.08, 03.12.08, 03.12.08, 03.12.08, 03.12.08, 03.12.08, 03.12.08, 03.12.08</td>
</tr>
<tr>
<td>1.02 B</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.03 B</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.04 B</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.05 B</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.01 B</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.01 B</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.02 B</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>219356M</td>
<td>BASIX Certificate</td>
<td>Department of Planning</td>
<td>16.10.08</td>
</tr>
<tr>
<td>27-29 Wilberforce Avenue</td>
<td>Arborist Report</td>
<td>George Palmer</td>
<td>Dated Sept 08 Received 27 Nov 08</td>
</tr>
<tr>
<td>Dwg No. DA 2.01, 3.01, 3.02</td>
<td>Driveway Profiles</td>
<td>CN/XPace Design Group Pty Ltd</td>
<td>Revision a 10/10/08</td>
</tr>
<tr>
<td>Ref – 08147/GK/1</td>
<td>Geotechnical Report</td>
<td>GDK Keighran Geotechnics</td>
<td>30/09/08</td>
</tr>
<tr>
<td>Dwg No SW01-2 to SW04-2</td>
<td>Stormwater Drainage Management Plan</td>
<td>AJK Design Consulting</td>
<td>18/09/08</td>
</tr>
</tbody>
</table>

**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

H:\Development Control Committee\AGENDAS\2009\working agenda\D8.doc 39
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.law.nsw.gov.au](http://www.law.nsw.gov.au). Standard Condition: A30

A.6 **Allotments**

The survey plan has identified that the development site is comprised of separate allotments. These are to be consolidated into one lot and a new plan of subdivision prepared. Prior to the release of the Final Building Certificate a final Plan of Survey prepared and certified by a Registered Surveyor must be submitted and approved by the Accredited Certifier.

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

B.2 **Establishment of Tree Protection Zones**

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

<table>
<thead>
<tr>
<th>Council Reference No:</th>
<th>Species</th>
<th>Location</th>
<th>Radius from Trunk (Metres)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><em>Lophostemon confertus</em> Brush Box</td>
<td>Council verge</td>
<td>2.3</td>
</tr>
<tr>
<td>7</td>
<td><em>Plumeria acutifolia</em> Frangipani</td>
<td>Rear north western boundary of 27 Wilberforce Avenue</td>
<td>2</td>
</tr>
</tbody>
</table>

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

### b) Tree Protection Zones

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

### c) Trunk protection

Trunk protection, to a maximum height permitted by the first branches, is to be installed around the trunks of the trees listed in the table below:

<table>
<thead>
<tr>
<th>Council Reference No:</th>
<th>Species</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><em>Lophostemon confertus</em> Brush Box</td>
<td>Council verge</td>
</tr>
</tbody>
</table>

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

### d) Signage

A sign must be erected on each side of the fence indicating the existence of a Tree Protection Zone and providing the contact details of the site Arborist.

### e) Soil levels

Existing soil levels must be maintained within Tree Protection Zones. Where excavation is undertaken adjacent such an area, the edge of the excavation must be stabilised, until such time as permanent measures are installed (eg. retaining wall etc) to prevent erosion within the Tree Protection Zone.

### f) Sediment control

Sediment control measures are to be installed around all Tree Protection Zones to protect the existing soil levels.

### g) Storage

The storage of materials, stockpiling, siting of works sheds, preparation of mixes, cleaning of tools or equipment is not permitted within Tree Protection Zones.

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

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**Standard Condition: B5**

### 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. To ensure a satisfactory streetscape outcome, the section of fence to the south eastern side boundary and the section of wall to the north western side boundary, which project forward of the front building alignment shall be stepped from a maximum height of 1.8m at the building alignment to a maximum height of 1.2m at the front boundary to adjoin the proposed 1.2m front boundary fence.

b. To ensure an adequate level of privacy is maintained to the adjoining properties, the level one (1) and level two (2) windows to the north western elevation (excluding the high level windows) shall be fixed and glazed with translucent glass to a height of 1.7m and the Juliet balconies be deleted.

c. To ensure an adequate level of privacy is maintained to the adjoining properties, the level one (1) and level two (2) foyer windows to the south eastern elevation of unit four (4) and unit six (6) shall be fixed and glazed with translucent glass to a height of 1.7m and the Juliet balconies be deleted.

d. To ensure an adequate level of privacy is maintained to the adjoining properties, the level one (1) and level two (2) foyer windows to the south eastern elevation shall be fixed and glazed with translucent glass to a height of 1.7m.

e. A traffic light control to the single lane driveway.

f. The vehicle crossing to be 3.5m wide.

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

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

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

Standard Condition: C4

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

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

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

a. prior to the issue of a construction certificate, where a construction certificate is required; or

b. prior to the issue of a subdivision certificate, where only a subdivision certificate is required; or

c. prior to the issue of an occupation certificate in any other instance.
### Description | Amount | Indexed | Council Fee Code
--- | --- | --- | ---
**LONG SERVICE LEVY**

under Building and Construction Industry Long Service Payments Act 1986

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Indexed</th>
<th>Council Fee Code</th>
</tr>
</thead>
</table>

**SECURITY**

under section 80A(6) of the Environmental Planning and Assessment Act 1979

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Indexed</th>
<th>Council Fee Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property Damage Security Deposit - Making good any damage caused to any property of the Council as a consequence of the doing of anything to which the consent relates.</td>
<td>$55,092.00</td>
<td>No</td>
<td>T600</td>
</tr>
<tr>
<td>Tree Damage Security Deposit – Making good any damage caused to any public tree as a consequence of the doing of anything to which the consent relates.</td>
<td>$11,249.00</td>
<td>No</td>
<td>T600</td>
</tr>
</tbody>
</table>

**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](http://www.woollahra.nsw.gov.au).

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Indexed</th>
<th>Council Fee Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development Levy</td>
<td>$26,545.75 + Index</td>
<td>Yes, quarterly</td>
<td>T94</td>
</tr>
</tbody>
</table>

**INSPECTION FEES**

under section 608 of the Local Government Act 1993

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Indexed</th>
<th>Council Fee Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Tree Management Inspection Fee</td>
<td>$160.00</td>
<td>No</td>
<td>T95</td>
</tr>
<tr>
<td>Public Road and Footpath Infrastructure Inspection Fee</td>
<td>$375.00</td>
<td>No</td>
<td>T99</td>
</tr>
<tr>
<td>Security Administration Fee</td>
<td>$175.00</td>
<td>No</td>
<td>T16</td>
</tr>
</tbody>
</table>

**TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Indexed</th>
<th>Council Fee Code</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$93,596.75</td>
<td>Plus any relevant indexed amounts and long service levy</td>
<td></td>
</tr>
</tbody>
</table>

### 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](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:

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

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

- the guarantee is by an Australian bank for the amount of the total outstanding contribution;
- 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 development levy will delay the issue of any Part 4A Certificate and could void any Part 4A Certificate (construction certificate, subdivision certificate, or occupation certificate).

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

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

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

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

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

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

Standard Condition: C5

C.3 BASIX commitments

The applicant must submit to the Certifying Authority BASIX Certificate No. 219356M with any application for a Construction Certificate.

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

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

Standard Condition: C7

**C.4 State Environmental Planning Policy 65 – Design Verification Statement**

Pursuant to clause 143A of the *Regulation* a *Certifying Authority* must not issue a **Construction Certificate** for residential flat development unless the certifying authority has received a **design verification statement** from a **qualified designer**, being a statement in which the **qualified designer** verifies that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out in Part 2 of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*.

**Note:** Although a certifying authority may pursuant to clause 161(2) of the Regulation be satisfied to any matter that relates to the external finish of a building the specific provisions of clause 143A of the Regulation overrides the Certifying Authority’s powers under clause 161(2). No certifying authority can set aside this requirement.

**Note:** **Qualified designer** means a person **registered** as an **architect** in accordance with the Architects Act 2003. There are several methods of verifying the status of an individual or corporation or firm offering architectural services.

- ask the individual for their four digit NSW Architects Registration Number,
- ask a corporation or firm for the name and registration number of their “nominated architect”,
- check to see whether an individual is listed on the NSW Register of Architects or the corporation or firm is listed on the List of architect corporations and firms on the Board’s website [www.architects.nsw.gov.au](http://www.architects.nsw.gov.au), contact the Architects Board's staff to check the status of an individual or corporation or firm.

Standard Condition: C11

**C.5 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 3.5m in accordance with Council’s standard driveway drawing.

b. A design longitudinal surface profile for the proposed driveway must be submitted for assessment. The driveway profile is to start from the road centreline and be along the worst case edge of the proposed driveway. Gradients and transitions must be in accordance with Clause 2.5.3, 2.6 of AS 2890.1 – 2004, Part 1 – Off-street car parking. The driveway profile submitted to Council must be to (1:25) scale (for template checking purposes) and contain all relevant details: reduced levels, proposed grades and distances.
c. Removal and replacement of the existing footpath for the full width of the property in accordance with Council’s standard drawing RF3.
d. Removal of all driveway crossings and kerb laybacks which will be no longer required.
e. Reinstatement of footpath, kerb and gutter to match existing.
f. Where a grass verge exists, the balance of the area between the footpath and the kerb 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 Couch turf.

The existing footpath level and grade at the street alignment of the property must be maintained. Your driveway levels are to comply with AS2890.1 and Council’s Standard Drawings. There may be occasions where these requirements conflict with your development and you are required to carefully check the driveway/garage slab and footpath levels for any variations.

Note: any adjustments required from the garage slab and the street levels are to be carried out internally on private property.

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: When a large RoadsAct is required, then four (4) weeks is to be allowed for assessment.

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.

C.6 Waste Storage - Residential Units (more than 4 units)

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

a. the storage of waste and recycling bins behind the building line or within non-habitable areas of the building as close as possible to the service road collection point,
b. a path for wheeling bins between the waste and recycling storage area and the collection point free of steps and kerbs and having a maximum grade of 1:8.

Standard Condition: C17

C.7 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.8  Water and waste water - Section 73 Developers Certificate & Upgrading of existing
system (Clause 25(1) WLEP 1995)

A developer compliance certificate under Part 6, Division 9 of the *Sydney Water Act* 1994
must have been issued by the Sydney Water Corporation prior to the issue of any
*Construction Certificate*. The effect of this certificate is that adequate provision has been
made or is available for the provision of potable water to and the removal of waste water from
the development.

**Note:** Following application to Sydney Water, a ‘Notice of Requirements’ will detail water and sewer
extensions to be built and charges to be paid. Please make early contact with Sydney Water’s authorised
Coordinator, since building of water/sewer extensions can be time consuming and may impact on other
services and building, driveway or landscape design.

**Note:** Further information can be obtained from the Sydney Water Corporation on or telephone 13 20 92 or by
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 Sewer grade 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 systems are replaced with new UPVC or copper continuously welded pipes between all sanitary fixtures and Sydney Waters sewer main as part of the development, 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. See:


*Standard Condition: C22 (Autotext CC22)*

**C.9 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


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 downloaded 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.

C.10 Tree Management Details

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

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

C.11 Amended Landscape Plan

An amended Landscape Plan, prepared by a qualified Landscape Architect or Landscape Designer, in accordance with Councils DA Guide Annexure 8 and conforming to the conditions of this Development Consent is to be submitted to Council for approval prior to issue of the Construction Certificate. Additionally the amended landscape plan must include the following:

- replacement tree planting of:
  - 2 x either Lagerstroemia indica Crepe Myrtle or Pyrus calleryana ‘Chanticleer’ Callery Pear or Caesalpinia ferrea Leopard Tree to be planted within the subject property, of 75 litre bag size to grow to natural dimensions.
  - 1 x either Melaleuca linariifolia Snow in Summer or Cupaniopsis anacardiodes Tuckeroo to be planted within the subject property, of 75 litre bag size to grow to natural dimensions.
  - 1 x Magnolia grandiflora ‘Exmouth’ to be planted within the rear yard north western corner, of 100 litre bag size to grow to natural dimensions.
  - 1 x Lophostemon confertus Brush Box to be planted on the Council verge approximately 14 metres to the north west of existing Lophostemon confertus Brush Box, of 75 litre bag size to grow to natural dimensions.

C.12 Professional Engineering Details

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

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

Standard Condition: C36

C.13 Geotechnical and Hydrogeological Design, Certification & Monitoring

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

a. Provide appropriate support and retention to ensure there will be no ground settlement or movement, during excavation or after construction, sufficient to cause an adverse impact on adjoining property or public infrastructure.

b. Provide appropriate support and retention to ensure there will be no adverse impact on surrounding property or infrastructure as a result of changes in local hydrogeology (behaviour of groundwater).

c. Provide foundation tanking prior to excavation such that any temporary changes to the groundwater level, during construction, will be kept within the historical range of natural groundwater fluctuations. Where the historical range of natural groundwater fluctuations is unknown, the design must demonstrate that changes in the level of the natural water table, due to construction, will not exceed 0.3m at any time.

d. Provide tanking of all below ground structures to prevent the entry of all ground water such that they are fully tanked and no on-going dewatering of the site is required.

e. Provide a Geotechnical and Hydrogeological Monitoring Program that:
   i. Will detect any settlement associated with temporary and permanent works and structures;
   ii. Will detect deflection or movement of temporary and permanent retaining structures (foundation walls, shoring bracing or the like);
   iii. Will detect vibration in accordance with AS 2187.2-1993 Appendix J including acceptable velocity of vibration (peak particle velocity);
   iv. Will detect groundwater changes calibrated against natural groundwater variations;

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

Standard Condition: C40
C.14 Ground Anchors

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.

The use of permanent ground anchors under Council land is not permitted.

Temporary ground anchors may be permitted, in accordance with Council’s “Rock Anchor Policy”, where alternative methods of stabilisation would not be practicable or viable, and where there would be benefits in terms of reduced community impact due to a shorter construction period, reduced disruption to pedestrian and vehicular traffic on adjacent public roads, and a safer working environment.

If temporary ground anchors under Council land are proposed, a separate application, including payment of fees, must be made to Council under Section 138 of the Roads Act 1993. Application forms and Council’s “Rock Anchor Policy” are available from Councils web-site [http://www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au). Approval may be granted subject to conditions of consent. Four weeks should be allowed for assessment.

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

Standard Condition: C41

C.15 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. The driveway levels by XPace Design Group Pty. Ltd are to be amended as follows:

- The existing footpath level and grade at the street alignment of the property must be maintained.
- The driveway gradients are to be amended to prevent the ingress of flood waters. All grades are to comply with AS2890.1.
- The new levels are to be a minimum level of 150mm above the top of the kerb. The provision of the driveway threshold and associated training walls will be required to provide flood protection.
- Each 2 carparking module is to be a minimum width of 5.4m and the wall at the carpark end adjacent to space 08 is to comply with Sect 2.4.2 (C) Blind Aisles requirements of 2890.1
- All vehicles are to enter and exit in a forward direction
• Traffic Signal System - a traffic signal system must be implemented to warn approaching vehicles of a vehicle exiting the basement garage. The signal must be clearly visible from the roadway to both pedestrians and vehicles approaching the entrance. The green default light is to face entering traffic.

• Where a vehicular entrance is proposed in conjunction with a fence of height greater than 1.2m, a 45° splay or its equivalent is provided either side (as applicable) of the entrance to ensure driver and pedestrian vision. The splay is to have minimum dimensions of 2.0m by 2.0m (WRDCP Section C5.4.8 (Figure 5.4.2)).

Access levels and grades must comply with access levels and grade required by Council under the Roads Act 1993. The existing footpath crossing grades and footpath levels at the road boundary must be maintained unless varied by an approval under the Roads Act 1993.

Revised plans are to be submitted and approved by Council with driveway application. An “Application to carry out works in a public road” available from Council’s website http://www.woollahra.nsw.gov.au. must be completed with plans/sections complying with the above and submitted to Council’s Customer Service Centre and approved by Council prior to the issue of a Construction Certificate. For any technical enquiries regarding alteration to existing footpath levels, alignments or inspections, please contact Council’s Works Supervisor on 9391 7982.

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

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

The Stormwater Management Plan must detail:

a. general design in accordance with Stormwater disposal concept plan prepared by AJK Design Consulting dated 17/09/2008 (Drwgs. SW01-2 to SW04-2) other than amended by this and other conditions;

b. the discharge of stormwater, by direct connection, to Wilberforce Ave Gutter invert;

c. compliance the objectives and performance requirements of the BCA;

d. any rainwater tank required by BASIX commitments including their overflow connection to the Stormwater Drainage System, and

e. general compliance with the Council’s draft Development Control Plan Stormwater Drainage Management (draft version 1.1, public exhibition copy dated 14/12/2006) and

f. on-site stormwater detention (“OSD”).

OSD Requirements

The minimum (OSD) Site Storage Requirements (“SSR”) and the Peak Site Discharge (“PSD”) from the site must be in accordance with the following minimum storage/discharge relationships based upon a 1000m² site area:
<table>
<thead>
<tr>
<th>Average Reoccurrence Interval</th>
<th>PSD L/s</th>
<th>Minimum Site Storage Requirement (SSR) m³</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 year</td>
<td>23.5 L/s</td>
<td>4m³</td>
</tr>
<tr>
<td>100 year</td>
<td>34 L/s</td>
<td>27m³ – Residential Flat Building</td>
</tr>
</tbody>
</table>

All values based on per 1000m² site area (interpolate to site area).

Where a rainwater tank is proposed in conjunction with OSD, the volume of the rainwater tank may contribute to the SSR as follows:

i. Where the rainwater tank is used for external uses only, 40% of the rainwater tank volume to a maximum of 4m³, or

ii. Where the rainwater tank is used for external and internal uses, 75% of the rainwater tank volume to a maximum of 7.5m³.

**Example:** The Site Storage Requirements may be 25,000 litres and a 10,000 litre rainwater tank is to be used for garden irrigation. Therefore, the rainwater tank contributes 4,000 litres toward SSR. Therefore, the OSD tank needs to be 21,000 litres (25,000 litres less the 4,000 litres allowance). Note: 1m³ = 1,000 litres.

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

**Layout plan**

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

It must include:

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

**On-site Detention (OSD) details:**

- Any potential conflict between existing and proposed trees and vegetation,
- Internal dimensions and volume of the proposed detention storage,
- Diameter of the outlet to the proposed detention storage basin,
- Plans, elevations and sections showing the detention storage basin invert level, centre-line level of outlet, top water level, finished surface level and adjacent structures,
- Details of access and maintenance facilities,
- Construction and structural details of all tanks and pits and/or manufacturer’s specifications for proprietary products,
- Details of the emergency overland flow-path (to an approved Council drainage point) in the event of a blockage to the on-site detention system,
- Non-removable fixing details for orifice plates where used,

Copies of certificates of title, showing the creation of private easements to drain water by gravity, if required.
Subsoil Drainage - Subsoil drainage details, clean out points, discharge point.

Note: This Condition is imposed to ensure that site stormwater is disposed of in a controlled and sustainable manner.
Standard Condition: C51

C.17 Flood protection

The Construction Certificate plans and specifications, required by clause 139 of the Regulation, must include a Flood Risk Management Plan on the basis of a 1:100 year flood at RL 11.5m AHD (the flood level), detailing:

a. Habitable floor levels not less than 300mm above the flood level.
b. Non-habitable floor levels not less than 150mm above flood level.
c. Driveway crest not less than 150mm above flood level before descending into the site (as applicable).

Note: The revised driveway profile, gradients and transitions must be in accordance with Australian Standard 2890.1 – 2004, Part 1 (Off-street car parking). The driveway profile submitted to Council must contain all relevant details: reduced levels, proposed grades and distances. Council will not allow alteration to existing reduced levels within the road or any other public place to achieve flood protection.
Standard Condition: C54

C.18 Swimming and Spa Pools – Child Resistant Barriers

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

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

C.19 Swimming and Spa Pools – Backwash

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

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

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

C.20 Sound Attenuation of the Swimming Pool Equipment

The Construction Certificate plans and specification required to be submitted pursuant to clause 139 of the Regulation must detail the sound attenuation works required to the swimming pool equipment to ensure that noise from the swimming pool equipment does not to exceed the background noise level when measured at any boundary of the site.
Note: Further information including lists of Acoustic Engineers can be obtained from:


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

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

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

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

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

This condition does not apply:

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

or

b. to the erection of a temporary building.

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

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

Standard Condition: D1

D.2 Dilapidation Reports for existing buildings

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

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

a. 31 Wilberforce Ave

b. 25 Wilberforce Ave

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

**Standard Condition: D4**

### D.3 Adjoining buildings founded on loose foundation materials

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

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

**Standard Condition: D6**

### D.4 Establishment of Tree Protection Zones

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

a) **Tree Protection Zone areas**

<table>
<thead>
<tr>
<th>Council Reference No:</th>
<th>Species</th>
<th>Location</th>
<th>Radius from Trunk (Metres)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><em>Lophostemon confertus</em></td>
<td>Council verge</td>
<td>2.3</td>
</tr>
<tr>
<td></td>
<td>Brush Box</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td><em>Plumeria acutifolia</em></td>
<td>Rear north western boundary of 27 Wilberforce Avenue</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Frangipani</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

c) **Trunk protection**, to a maximum height permitted by the first branches, is to be installed around the trunks of the trees listed in the table below;

<table>
<thead>
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<tbody>
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<tr>
<td></td>
<td>Brush Box</td>
<td></td>
</tr>
</tbody>
</table>

A padding material eg. Hessian or thick carpet underlay, is to be wrapt around the trunk first. Harwood planks, 50x100mm and to the maximum possible length, are to be placed over the padding and around the trunk of the tree at 150mm centres. These planks are to be secured in place by 8 gauge wire at 300mm spacing.
d) A sign must be erected on each side of the fence indicating the existence of a Tree Protection Zone and providing the contact details of the site Arborist.

e) Existing soil levels must be maintained within Tree Protection Zones. Where excavation is undertaken adjacent such an area, the edge of the excavation must be stabilised, until such time as permanent measures are installed (eg. retaining wall etc) to prevent erosion within the Tree Protection Zone.

f) Sediment control measures are to be installed around all Tree Protection Zones to protect the existing soil levels.

g) The storage of materials, stockpiling, siting of works sheds, preparation of mixes, cleaning of tools or equipment is not permitted within Tree Protection Zones.

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

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

Standard Condition: D8

D.5 Construction Management Plan

As a result of the site constraints, limited space and access a Construction Management Plan is to be submitted to Council. Due to the lack of on-street parking availability a Work Zone may be required from Council during construction.

A construction management plan must be submitted and approved by Council’s Development Engineer. The plan must:-

a. describe the anticipated impact of the construction works on:
   • local traffic routes
   • pedestrian circulation adjacent to the building site
   • and on-street parking in the local area, and;

b. describe the means proposed to:
   • manage construction works to minimise such impacts,
   • provide for the standing of vehicles during construction,
   • provide for the movement of trucks to and from the site, and deliveries to the site, and;

c. show the location of:
   • any site sheds and any anticipated use of cranes and concrete pumps,
   • any areas of Council property on which it is proposed to install a Works Zone (Construction Zone),
   • structures to be erected such as hoardings, scaffolding or shoring,
   • any excavation.

d. describe the excavation impact on the area including
   • Number and types of trucks to be used
   • Time frame
   • Streets to be used
   • Routes to be taken
   • Directions of travel
• Truck storage areas
• It is recommended that vehicle routes be shared
• Excavation is to only be carried out outside peak and school hours between 9.30am to 2.30pm week days
• The CMP is to include both demolition and excavation works.

**e. show the location** of all Tree Protection (Exclusion) Zones as required within the conditions of this development consent.

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. Standing of cranes and concrete pumps on Council property will need approval on each occasion.

**Note:** A minimum of eight weeks will be required for assessment. Work must not commence until the Construction Management Plan is approved. Failure to comply with this condition may result in fines and proceedings to stop work.

**Standard Condition: D9**

D.6 **Work (Construction) Zone – Approval & Implementation**

A work zone is required for this development. The *principal contractor* or *owner* must apply for, obtained approval for, pay all fees for and implemented the required work zone before commencement of any work.

The *principal contractor* must pay all fees associated with the application and occupation and use of the road as a work zone. All Work Zone signs must have been erected by Council to permit enforcement of the work zone by Rangers and Police before commencement of any work. Signs are not erected until full payment of work zone fees.

**Note:** The *principal contractor* or *owner* must allow not less than four weeks (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under the Clause 22 of the *Transport Administration (General) Regulation* 2000 to exercise those functions delegated by the Roads and Traffic Authority under Section 50 of the *Transport Administration Act* 1988.

**Note:** The enforcement of the work zone is at the discretion of Council’s Rangers and the NSW Police Service. The principal contractor must report any breach of the work zone to either Council or the NSW Police Service.

**Standard Condition: D10**

D.7 **Security Fencing, Hoarding and Overhead Protection**

Security fencing must be provided around the perimeter of the development site, including any additional precautionary measures taken to prevent unauthorised entry to the site at all times during the demolition, excavation and construction period. Security fencing must be the equivalent 1.8m high chain wire as specified in AS 1725.
Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless the least horizontal distance between the common boundary and the nearest parts of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8 m adjacent to the thoroughfare.

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

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

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

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

The *principal contractor* or *owner builder* must pay all fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection. The *principal contractor* or *owner builder* must ensure that Overhead Protective Structures are installed and maintained in accordance with WorkCover NSW Code of Practice - Overhead Protective Structures, gazetted 16 December 1994, as commenced 20 March 1995.

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

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

Standard Condition: D11 (Autotext DD11)

### D.8 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.9 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.10 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


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 downloaded 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.11 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.12 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.

D.13 Establishment of boundary location, building location and datum

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

a. the boundaries of the *site* by permanent marks (including permanent recovery points);

b. the location and level of foundation excavations, footings, walls and slabs by permanent marks, pegs or profiles relative to the boundaries of the land and relative to Australian Height Datum ("AHD") in compliance with the approved plans;

c. establishes a permanent datum point (bench mark) within the boundaries of the *site* relative to AHD; and

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

**Note:** Where the *principal contractor* or *owner builder* notes any discrepancy between the approved development consent and the *Construction Certificate*, especially in relation to the height, location or external configuration of the building (but not limited to these issues) the *principal contractor* or *owner builder* should not proceed until satisfied that the variations as shown are consistent with the consent. Failure to do so may result in a breach of development consent.
Note: On larger developments, or where boundary redefinition is required, the placement of new State Survey Marks as permanent marks should be considered by the registered surveyor. Standard Condition: D18

E. Conditions which must be satisfied during any development work

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

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

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

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

This condition does not apply:

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

b. to the erection of a temporary building.

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

Standard Condition: E1

E.2 Compliance with Australian Standard for Demolition


Standard Condition: E2

E.3 Compliance with Construction Management Plan

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

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

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

Standard Condition: E3

E.4 Requirement to notify about new evidence

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

Standard Condition: E4
E.5 Critical Stage Inspections

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

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

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

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

Standard Condition: E5

E.6 Hours of Work –Amenity of the neighbourhood

a. No work must take place on any Sunday or public holiday,
b. No work must take place before 7am or after 5pm any weekday,
c. No work must take place before 7am or after 1pm any Saturday, and
d. No piling, piering, 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.


Standard Condition: E6
E.7 Maintenance of Vehicular and Pedestrian Safety and Access

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

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

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

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

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

Note: Section 138 of the Roads Act 1993 provides that a person must not:
   (a) erect a structure or carry out a work in, on or over a public road, or
   (b) dig up or disturb the surface of a public road, or
   (c) remove or interfere with a structure, work or tree on a public road, or
   (d) pump water into a public road from any land adjoining the road, or
   (e) connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.

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

Part C Management of Waste:
   “1. For fee or reward, transport waste over or under a public place
   2. Place waste in a public place
   3. Place a waste storage container in a public place.”

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

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

Standard Condition: E7
E.8 Tree Preservation

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

General Protection Requirements:

a) There must be no excavation or work within the required Tree Protection Zone(s). The Tree Protection Zone(s) must be maintained during all development work.

b) Where excavation encounters tree roots with a diameter exceeding 50mm excavation must cease. The principal contractor must procure an inspection of the tree roots exposed by a qualified arborist. Excavation must only recommence with the implementation of the recommendations of the qualified arborist or where specific instructions are given by Council's Tree Management Officer in strict accordance with such Council instructions.

c) Where there is damage to any part of a tree the principal contractor must procure an inspection of the tree by a qualified arborist immediately. The principal contractor must immediately implement treatment as directed by the qualified arborist or where specific instructions are given by Council's Tree Management Officer in strict accordance with such Council instructions.


Standard Condition: E8

E.9 Tree Preservation & Approved Landscaping Works

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

a) The following trees must be retained:

Trees on Private Land

<table>
<thead>
<tr>
<th>Council Reference No:</th>
<th>Species</th>
<th>Location</th>
<th>Dimension (Metres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Plumeria acutifolia Frangipani</td>
<td>Rear north western boundary of 27 Wilberforce Avenue</td>
<td>3 x 4</td>
</tr>
</tbody>
</table>

Trees on Council Land

<table>
<thead>
<tr>
<th>Council Reference No:</th>
<th>Species</th>
<th>Location</th>
<th>Dimension (Metres)</th>
<th>Tree Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Lophostemon confertus</td>
<td>Council verge</td>
<td>12 x 10</td>
<td>$11,249.00</td>
</tr>
</tbody>
</table>

Note: The tree trees required to be retained should appear coloured green on the construction certificate plans.
c) The following trees may be removed:

<table>
<thead>
<tr>
<th>Council Reference No:</th>
<th>Species</th>
<th>Location</th>
<th>Dimension (Metres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td><em>Plumeria acutifolia</em> Frangipani</td>
<td>Front yard eastern side of 27 Wilberforce Ave Rose Bay</td>
<td>3 x 3</td>
</tr>
<tr>
<td>3</td>
<td><em>Camellia sp.</em> Camellia</td>
<td>Front yard of 27 Wilberforce Ave Rose Bay</td>
<td>3 x 3</td>
</tr>
<tr>
<td>4</td>
<td><em>Macadamia integrifolia</em> Macadamia</td>
<td>Rear yard of 27 Wilberforce Ave Rose Bay eastern side</td>
<td>7 x 4</td>
</tr>
<tr>
<td>5</td>
<td><em>Macadamia integrifolia</em> Macadamia</td>
<td>Rear yard of 27 Wilberforce Ave Rose Bay eastern side</td>
<td>7 x 4</td>
</tr>
<tr>
<td>6</td>
<td><em>Macadamia integrifolia</em> Macadamia</td>
<td>Rear yard of 27 Wilberforce Ave Rose Bay eastern side</td>
<td>7 x 5</td>
</tr>
</tbody>
</table>

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

d) The following trees may be pruned in accordance with Australian Standard AS 4373 – 2007 “Pruning of Amenity Trees” and Workcover NSW Code of Practice Amenity Tree Industry, 1998 to the minimum extent necessary to provide clearance to the new development:

<table>
<thead>
<tr>
<th>Council Reference No:</th>
<th>Species</th>
<th>Location</th>
<th>Approved pruning specification (extent of pruning)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><em>Lophostemon confertus</em> Brush Box</td>
<td>Council verge</td>
<td>Prune the two lowest limbs on the north western side of the tree back to their collar areas, the two limbs being 1 x 200mm diameter and 1 x 350mm diameter</td>
</tr>
</tbody>
</table>

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

Note: Water Restrictions take precedence over this condition.

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

Standard Condition: E9

E.10 Replacement trees which must be planted

The following compensatory replacement plantings must be planted to ensure the preservation of the landscape character of the area. Areas for future planting must be plotted on the submitted landscape or architectural plans and be protected from damage, especially soil compaction and contamination from construction activity by erecting a barrier or implementing ground protection. Where ground protection during construction activity is not implemented, remediation measures prior to planting such as soil ripping or subsoil aeration must be employed.

Any replacement plant is to be maintained in a healthy and vigorous condition until it attains a height of 5 metres or a spread of 3 metres, whereby it will be protected by Council’s Tree Preservation Order. If the replacement plant is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council’s Tree Preservation Order, it must be replaced with another of the same species which complies with the criteria outlined below.
<table>
<thead>
<tr>
<th>Species/Type</th>
<th>Planting Location</th>
<th>Container Size or Size of Tree (@ time of planting)</th>
<th>Minimum Dimensions at Maturity</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 x either <em>Lagerstroemia indica</em> Crepe Myrtle or <em>Pyrus calleryana</em> ‘Chanticleer’ Callery Pear or <em>Caesalpinia ferrea</em> Leopard Tree</td>
<td>Within the subject property</td>
<td>75 litre</td>
<td>Natural</td>
</tr>
<tr>
<td>1 x either <em>Melaleuca linariifolia</em> Snow in Summer or <em>Cupaniopsis anacardiodes</em> Tuckeroo</td>
<td>Within the subject property</td>
<td>75 litre</td>
<td>Natural</td>
</tr>
<tr>
<td>1 x <em>Magnolia grandiflora</em> ‘Exmouth’</td>
<td>Rear yard north western corner</td>
<td>100 litre</td>
<td>Natural</td>
</tr>
<tr>
<td>1 x <em>Lophostemon confertus</em> Brush Box</td>
<td>Council verge approximately 14 metres to the north west of existing <em>Lophostemon confertus</em> Brush Box</td>
<td>75 litre</td>
<td>natural</td>
</tr>
</tbody>
</table>

All replacement trees are to be NATSPEC grown.

**E.11 Level changes in the vicinity of trees**

No level changes are to occur within the specified radius from the trunks of the following trees to allow for the preservation of their root zones.

<table>
<thead>
<tr>
<th>Council Reference No:</th>
<th>Species</th>
<th>Location</th>
<th>Radius from Trunk (metres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><em>Lophostemon confertus</em> Brush Box</td>
<td>Council verge</td>
<td>2.3</td>
</tr>
<tr>
<td>7</td>
<td><em>Plumeria acutifolia</em> Frangipani</td>
<td>Rear north western boundary of 27 Wilberforce Avenue</td>
<td>2</td>
</tr>
</tbody>
</table>

**E.12 Hand excavation within tree root zones**

To prevent damage to roots and compaction within the root zone, excavation undertaken within the specified radius from the trunks of the following trees must be hand dug. Small hand tools only are to be utilised, mattocks and similar digging tools are not be used within these areas. No root with a diameter equal to or in excess of 50mm is to be cut unless approved, in writing, by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 4 or recognised equivalent).

All root pruning must be undertaken in accordance with the *Australian Standard 4373 “Pruning of Amenity Trees”* and carried out by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 4 or recognised equivalent).

Any exposed surface roots must be covered to prevent drying out and watered. Materials used to minimise surface roots drying out include leaf litter mulch or a geotextile fabric.

Beyond this radius, mechanical excavation is permitted, when root pruning by hand along the perimeter line of such works is completed.

<table>
<thead>
<tr>
<th>Council Reference No:</th>
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<th>Location</th>
<th>Radius from Trunk (metres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><em>Lophostemon confertus</em> Brush Box</td>
<td>Council verge</td>
<td>2.3</td>
</tr>
</tbody>
</table>
E.13 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;


E.14 Compliance with Geotechnical/Hydrogeological Monitoring Program

Excavation must be undertaken in accordance with the recommendations of the Geotechnical / Hydrogeological Monitoring Program and any oral or written direction of the supervising professional engineer.

The principal contractor and any sub-contractor must strictly follow the Geotechnical / Hydrogeological Monitoring Program for the development including, but not limited to;

a) the location and type of monitoring systems to be utilised;
b) recommended hold points to allow for inspection and certification of geotechnical and hydrogeological measures by the professional engineer; and
c) the contingency plan.

Note: The consent authority cannot require that the author of the geotechnical/hydrogeological report submitted with the Development Application to be appointed as the professional engineer supervising the work however, it is the Council’s recommendation that the author of the report be retained during the construction stage.

E.15 Support of adjoining land and buildings

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

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

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

a) the consent of the owners of such adjoining or supported land to trespass or encroach, or
b) an access order under the Access to Neighbouring Land Act 2000, or
c) an easement under section 88K of the Conveyancing Act 1919, or
d) an easement under section 40 of the Land & Environment Court Act 1979 as appropriate.
Note: Section 177 of the *Conveyancing Act 1919* creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

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

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

**E.16 Vibration Monitoring**

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

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity an audible alarm must activate such that the principal contractor and any sub-contractor are easily alerted to the event. Where any such alarm triggers all excavation works must cease immediately. Prior to the vibration monitoring equipment being reset by the professional engineer and any further work recommencing the event must be recorded and the cause of the event identified and documented by the professional engineer.

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

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

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

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

Note: Professional engineer has the same mean as in Clause A1.1 of the BCA.
Note: Building has the same meaning as in section 4 of the Act i.e. “building includes part of a building and any structure or part of a structure”.

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

Standard Condition: E14

E.17 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

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.18 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.19 Site Cranes

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

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

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

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

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

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

Standard Condition: E19

E.20 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.21 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.22 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 downloaded free of charge from Council’s web site [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or obtained from Council’s office.

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

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

E.23 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](http://www.woollahra.nsw.gov.au)

E.24 Swimming and Spa Pools – Temporary Child Resistant Barriers and other matters

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

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

F.2 Amenity Landscaping

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

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

F.3 Commissioning and Certification of Systems and Works

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

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

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

b. All flood protection measures.

c. All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1 – “Off-Street car parking.”

d. All stormwater drainage systems.

e. All mechanical ventilation systems.

f. All hydraulic systems.

g. All structural work.

h. All acoustic attenuation work.

i. All waterproofing.

j. Such further matters as the Principal Certifying Authority may require.

Note: This condition has been imposed to ensure that systems and works as completed meet development standards as defined by the Act, comply with the BCA, comply with this consent and so that a public record of works as execute is maintained.
Note: The PCA may require any number of WAE plans, certificates, or other evidence of suitability as necessary to confirm compliance with the Act, Regulation, Development Standards, BCA, and relevant Australia Standards. As a minimum WAE plans and certification is required for stormwater drainage and detention, mechanical ventilation work, hydraulic services (including but not limited to fire services).

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

Standard Condition: F7

F.4 Letter Box(es)

All letter boxes must be constructed and located in accordance with AS/NZS 4253:1994 Mailboxes and to Australia Post’s satisfaction.

Note: This condition has been imposed to ensure that mail can be delivered to occupiers of the site.

Standard Condition: F12

F.5 Swimming and Spa Pools – Permanent Child Resistant Barriers and other matters

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


c. Public Pools must comply with the NSW Health Public Swimming Pool and Spa Pool Guidelines in force at that time and private pools are encouraged to comply with the same standards as applicable.

d. Water recirculation and filtration systems must be installed in compliance with AS 1926.3-2003: Swimming pool safety - Water recirculation and filtration systems.

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

e. Water recirculation and filtration systems must be connected to the electricity supply by a timer that limits the systems operation such that it does not operate:

f. before 8 am or after 8 pm on any Sunday or public holiday, or before 7 am or after 8 pm on any other day.


Standard Condition: F13

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

G.1 Electricity Substations – Dedication as road and/or easements for access

If an electricity substation, is required on the site the owner must dedicate to the appropriate energy authority (to its satisfaction), free of cost, an area of land adjoining the street alignment to enable an electricity substation to be established. The size and location of the electricity substation is to be in accordance with the requirements of the appropriate energy authority and Council. The opening of any access doors are not to intrude onto the public road (footway or road pavement).
Documentary evidence of compliance, including correspondence from the energy authority is to be provided to the Principal Certifying Authority prior to issue of the Construction Certificate detailing energy authority requirements.

The Accredited Certifier must be satisfied that the requirements of energy authority have been met prior to issue of the Construction Certificate.

Where an electricity substation is provided on the site adjoining the road boundary, the area within which the electricity substation is located must be dedicated as public road. Where access is required across the site to access an electricity substation an easement for access across the site from the public place must be created upon the linen plans burdening the subject site and benefiting the Crown in right of New South Wales and any Statutory Corporation requiring access to the electricity substation.

Standard Condition: G4

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

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

All BASIX commitments must be effected in accordance with the BASIX Certificate No.219356M.

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

Standard Condition: H7

H.2 Landscaping

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

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

Standard Condition: H9

H.3 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.4 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. relocation of existing power/light pole
f. relocation/provision of street signs
g. new or replacement street trees;
h. 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.
i. new or reinstated kerb and guttering within the road; and
j. 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 released 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](http://www.woollahra.nsw.gov.au) or obtained from Council’s customer service centre.

Standard Condition: H13

H.5 Positive Covenant & Works-As-Executed certification of stormwater systems

On completion of construction work, stormwater drainage works are to be certified by a professional engineer with Works-As-Executed drawings supplied to the PCA detailing:

a. compliance with conditions of development consent relating to stormwater;
b. the structural adequacy of the On-Site Detention system (OSD);
c. that the works have been constructed in accordance with the approved design and will provide the detention storage volume and attenuation in accordance with the submitted calculations;
d. Pipe invert levels and surface levels to Australian Height Datum; and
e. Contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.
f. A positive covenant pursuant to Section 88E of the Conveyancing Act 1919 must be created on the title of the subject property, providing for the indemnification of Council from any claims or actions and for the on-going maintenance of the on-site-detention system and/or absorption trenches, including any pumps and sumps incorporated in the development. The wording of the Instrument must be in accordance with Council’s standard format and the Instrument must be registered at the Land Titles Office.

Note: The required wording of the Instrument can be downloaded from Council’s website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au). The PCA must supply a copy of the WAE Plans to Council together with the Final Occupation Certificate. The Final Occupation Certificate must not be issued until this condition has been satisfied.

Standard Condition: H20
1. **Conditions which must be satisfied during the ongoing use of the development**

1.1 **Maintenance of BASIX commitments**

All BASIX commitments must be maintained in accordance with the BASIX Certificate No.219356M.

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

Standard Condition: 17

1.2 **Maintenance of Landscaping**

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

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

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

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

Standard Condition: 18

1.3 **On-going maintenance of the on-site-detention system**

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

a. permit stormwater to be temporarily detained by the system;

b. keep the system clean and free of silt rubbish and debris;

c. if the car park is used as a detention basin, a weather resistant sign must be maintained in a prominent position in the car park warning residents that periodic inundation of the car park may occur during heavy rain;

d. maintain renew and repair as reasonably required from time to time the whole or part of the system so that it functions in a safe and efficient manner and in doing so complete the same within the time and in the manner reasonably specified in written notice issued by the Council;

e. carry out the matters referred to in paragraphs (b) and (c) at the Owners expense;

f. not make any alterations to the system or elements thereof without prior consent in writing of the Council and not interfere with the system or by its act or omission cause it to be interfered with so that it does not function or operate properly;

g. permit the Council or its authorised agents from time to time upon giving reasonable notice (but at anytime and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant;

h. comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time reasonably stated in the notice;
i. where the Owner fails to comply with the Owner’s obligations under this covenant, permit the Council or its agents at all times and on reasonable notice at the Owner’s cost to enter the land with equipment, machinery or otherwise to carry out the works required by those obligations;

j. indemnify the Council against all claims or actions and costs arising from those claims or actions which Council may suffer or incur in respect of the system and caused by an act or omission by the Owners in respect of the Owner’s obligations under this condition.

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

Note: This condition is supplementary to the owner(s) obligations and Council’s rights under any positive covenant.
Standard Condition: 112

I.4 Swimming and Spa Pools – Maintenance

Swimming and Spa Pools must be maintained:

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

- before 8 am or after 8 pm on any Sunday or public holiday, or
- before 7 am or after 8 pm on any other day.

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

Standard Condition: 113

I.5 Outdoor lighting – Residential

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

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

Note: This condition has been imposed to control the obtrusive effects of outdoor lighting.
Standard Condition: 142
I.6 Noise from mechanical plant and equipment

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

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

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

  ISBN 0 7313 2715 2, dated January 2000, and

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.

**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.

**K.3 Commonwealth Disability Discrimination Act 1992 (“DDA”)**

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

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

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


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

**K.4 Builders Licences and Owner Builders Permits**

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

Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder): http://www.dft.nsw.gov.au/building.html.
The Owner(s) must appoint the PCA. The PCA must check that Home Building Act insurance is in place before the commencement of building work. The Principal Contractor (Builder) must provide the Owners with a certificate of insurance evidencing the contract of insurance under the Home Building Act 1989 for the residential building work.

K.5 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 downloaded from:

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

K.6 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.

K.7 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 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.

K.8 Lead Paint


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.

K.9 Appeal

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

Eleanor Smith, Assessment Officer on (02) 9391 7090

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 Advising: K8

Standard Advising: K9

Standard Condition: K14
K.10 Release of Security

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

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

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

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

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


Standard Condition: K15

K.11 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.12 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.13 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.14 Model

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

Standard Condition: K21 (Autotext KK21)

Ms E Smith                   Mr N Economou
ASSESSMENT OFFICER           TEAM LEADER

ANNEXURES

1. Plans and elevations
2. Streetscape photographs.
3. Development Engineers referral response
4. Tree’s and Landscape referral response
5. Heritage referral response
6. Design Verification Statement
7. Applicant’s SEPP 1 Objection – FSR
DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No. D9
FILE No. DA 690/2008
PROPERTY DETAILS 70-72 Wolseley Road, Point Piper
Lot & DP No.: LOT: 1 PT: SEC: DP: 1085057 CNR: 
Side of Street: West
Site Area (m²): 1271m²
Zoning: Residential 2(b)
PROPOSAL: A new deck and landscaping within the foreshore building line.
TYPE OF CONSENT: Integrated Development
APPLICANT: JPR Architects
OWNER: Mr G J & Mrs J Z Wolman
DATE LODGED: 23/10/2008
AUTHOR: Ms S Chambers

DOES THE APPLICATION INVOLVE A SEPP 1 OBJECTION? YES ☒ NO ☐

1. RECOMMENDATION PRECIS

It is recommended that development consent be granted, subject to conditions.

2. PROPOSAL PRECIS

The proposal involves a new deck and landscaping within the foreshore building line.
3. LOCALITY PLAN

4. DESCRIPTION OF PROPOSAL

The proposal involves the following works:

- A new deck within the foreshore building line (approx. 5.4m x 9m)
- Landscaping works

5. SUMMARY

<table>
<thead>
<tr>
<th>Reasons for report</th>
<th>Issues</th>
<th>Submissions</th>
</tr>
</thead>
<tbody>
<tr>
<td>The DA does not satisfy the criteria for determination under staff delegation</td>
<td>FSBL non-compliance</td>
<td>No submissions were received.</td>
</tr>
<tr>
<td></td>
<td>Setback from significant trees non-compliance</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Excavation setback (steps) non-compliance</td>
<td></td>
</tr>
<tr>
<td></td>
<td>DSL non-compliance</td>
<td></td>
</tr>
</tbody>
</table>

6. ESTIMATED COST OF WORKS

Council adopted (DCC 6 June 2005) administrative changes for determining DA fees based on the estimated cost of work. The cost of works is $100,000 which has been checked using this criteria and is considered to be accurate.
7. DESCRIPTION OF SITE OF LOCALITY

<table>
<thead>
<tr>
<th>THE SITE AND LOCALITY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Physical features</strong></td>
</tr>
<tr>
<td>The site is located on the western side of Wolseley Road, between Wingadal Place and Wentworth Street, Point Piper. The site has frontage to Wolseley Rd at its eastern boundary and to Sydney Harbour at its western boundary. The front boundary to Wolseley Road has a length of 22.9m in length, the rear boundary has a length of 22.3m, the northern side boundary has a length of 57.4m and the southern side boundary has a length of 60.3m. The site has an area of 1271m².</td>
</tr>
<tr>
<td><strong>Topography</strong></td>
</tr>
<tr>
<td>The site has a steep fall from east (Wolseley Road) to west (the harbour) of approximately 28m.</td>
</tr>
<tr>
<td><strong>Existing buildings and structures</strong></td>
</tr>
<tr>
<td>The site is currently occupied by a residential flat building with terraced garden areas to the rear and a timber jetty that extends into the harbour.</td>
</tr>
<tr>
<td><strong>Environment</strong></td>
</tr>
<tr>
<td>The site is located within the Point Piper precinct under the WRDCP 2003. The following properties adjoin the site:</td>
</tr>
<tr>
<td>• Two sites adjoin the subject site to the north, 74 and 76 Wolseley Road</td>
</tr>
<tr>
<td>• Two sites adjoin the subject site to the south, 66-68 Wolseley Road and 3 Wingadal Place</td>
</tr>
<tr>
<td>• Two sites are opposite the subject site (across Wolseley Road); 51-53 and 55-57 Wolseley Road</td>
</tr>
<tr>
<td>Surrounding development consists of large two and three storey dwelling houses and residential flat buildings.</td>
</tr>
</tbody>
</table>

8. PROPERTY HISTORY

<table>
<thead>
<tr>
<th>PROPERTY HISTORY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current use</strong></td>
</tr>
<tr>
<td>Residential flat building</td>
</tr>
<tr>
<td><strong>Previous relevant applications</strong></td>
</tr>
<tr>
<td>DA 114/2006 involved demolition of the existing building and construction of a residential flat building containing three apartments.</td>
</tr>
<tr>
<td><strong>Pre-DA</strong></td>
</tr>
<tr>
<td>N/A</td>
</tr>
<tr>
<td><strong>Requests for additional information</strong></td>
</tr>
<tr>
<td>Information was requested on 11 December 2008. The information was provided on 12 January 2009.</td>
</tr>
<tr>
<td><strong>Amended plans/ Replacement Application</strong></td>
</tr>
<tr>
<td>N/A.</td>
</tr>
<tr>
<td><strong>Land &amp; Environment Court appeal</strong></td>
</tr>
<tr>
<td>N/A</td>
</tr>
</tbody>
</table>
9. REFERRALS

9.1 The following table contains particulars of internal referrals.

<table>
<thead>
<tr>
<th>INTERNAL REFERRALS</th>
<th>Comment</th>
<th>Annexure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Referral Officer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Development Engineer</td>
<td>Council’s Technical Services Team Leader has determined that the development proposal is satisfactory and provided informal comments on the driveway access and stormwater.</td>
<td>Refer to Conditions.</td>
</tr>
<tr>
<td>Landscaping Officer</td>
<td>Council’s Tree and Landscape Officer has determined that the development proposal is satisfactory in terms of tree preservation and landscaping.</td>
<td>Refer to Conditions.</td>
</tr>
</tbody>
</table>

9.2 The following table contains particulars of external referrals.

<table>
<thead>
<tr>
<th>EXTERNAL REFERRALS</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>External Referral Body</td>
<td>Reason for referral</td>
</tr>
<tr>
<td>Department of Water and Energy</td>
<td>Water Management Act 2000</td>
</tr>
</tbody>
</table>

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 – Remediation of Land

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

10.2 REPs

SREP (Sydney Harbour Catchment) 2005

The provisions of this instrument require Council, as the consent authority, to consider the visual impact that a development proposal will have upon Sydney Harbour and the adjoining foreshore areas. Further, development should protect, maintain and enhance the natural assets and unique environmental qualities of Sydney Harbour and its foreshores.
The proposed works are relatively minor and include landscaping and a deck. The works will be visible from the harbour however, given the minor nature of the works, they will not appear incongruous with surrounding development. Furthermore, the proposed works are ancillary and will retain the existing seawall, increase landscaping and improve the visual appearance of the subject site as viewed from the harbour.

Accordingly, the proposed works will not have an adverse visual impact from the harbour or foreshore areas and is satisfactory with regard to this control.

10.3 Section 94 contribution

N/A.

10.4 Other relevant legislation

N/A.

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(b) zone, subject to Conditions.

11.2 Statutory compliance table

<table>
<thead>
<tr>
<th>Site Area: 1271m²</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall Height</td>
<td>-</td>
<td>Nil-1.8m</td>
<td>9.5m</td>
<td>Yes</td>
</tr>
<tr>
<td>FSBL</td>
<td>-</td>
<td>Within FSBL</td>
<td>12m</td>
<td>No</td>
</tr>
</tbody>
</table>

11.3 Height

Clause 12 of WLEP 1995 stipulates a maximum height of 9.5m. The proposal complies with this control and is satisfactory with regard to the objectives under Clause 12AA.

11.4 FSBL

The proposed deck and landscaping works encroach within the 12 m foreshore building line. The applicant has submitted an objection pursuant to SEPP 1-Development Standards in relation to the non-compliance.

The SEPP 1 objection forwarded by the applicant states that the proposal would enable the objectives of this standard to be upheld and is summarised as follows:

- *The proposed works do not alter the existing Sydney Harbour Shoreline/subject site interface. The existing sandstone seawall is to be retained in its existing location, profile and construction*
- *The provision of larger set-backs*
The proposed works within the foreshore building line relate primarily to the protection of the retained significant trees within the zone while providing an appropriate terraced transition in the form of an elevated timber deck between the approved lower dwelling on the site and the harbour edge. The proposal also includes for the significant enhancement of the landscaping to the foreshore zone. The layout and species selection shown on the submitted landscape design documents will enhance the views of the harbour and the foreshore.

The proposed landscape works within the foreshore zone are low-rise and will have no impact on the existing view corridors and sunlight access to adjoining properties.

The works subject to this application will have no impact or effect on existing rock platforms and intertidal ecology.

The proposal is consistent with the planning objectives under Clause 22(4) of WLEP 1995 particularly as larger structures are permitted under this clause than are proposed.

The following assessment of the SEPP 1 Objection uses the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46 (6 April 2001).

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

The planning control in question is the 12 m foreshore building line standard set by Clause 22 of the Woollahra LEP 1995. As such, any variation of this standard requires a SEPP 1 objection, as has been prepared in this case.

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

The objectives of the foreshore building line standard listed under Clause 22AA of Woollahra LEP 1995 are:

(a) To retain Sydney Harbour’s natural shorelines

(b) To provide larger foreshore setbacks at the points and heads of bays in recognition of their visual prominence

(c) To protect significant areas of vegetation and, where appropriate, provide areas for future planting which will not detrimentally impact on views of the harbour and its natural foreshore

(d) To protect the amenity of adjoining lands in relation to reasonable access to views and sunlight

(e) To preserve the rights of property owners to maintain an encroachment on the foreshore building line by an existing main building

(f) To protect rock platforms and the intertidal ecology

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

Under the EPA Act, 1979, Section 5(a)(i) & (ii) the following is required:

(i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

(ii) The promotion and co-ordination of the orderly and economic use and development of land,
It is contended that the proposed redevelopment of the subject land is consistent with the intent of the objects of the Act under S.5(a)(i) & (ii) above. In this regard, the proposed works are minor, involving a new deck and landscaping works. The works will provide improved amenity to the approved residential flat building providing better management and use of the open space area which fronts the harbour.

Furthermore, the proposed works will not have any significant adverse impacts on neighbouring properties, the harbour or foreshore areas. Hence, the works will contribute to reasonable economic use of the land.

Having considered the arguments presented by the applicant in the SEPP 1 submission against the relevant objectives of the development standard contained under Clause 22AA of WLEP 1995, it is considered that:

- Objective (a) would be upheld as the proposed works are relatively minor and will not alter the natural shoreline
- Objective (b) would be upheld as the works are ancillary and will not alter the rear setback of the residential flat building from the foreshore
- Objective (c) would be upheld as, subject to Conditions, the existing vegetation will be protected, additional landscaping will be provided and the area adjacent to the harbour will be consolidated to integrate it as usable open space that is accessible from the residential flat building
- Objective (d) would be upheld as the proposed works include minor works that will not adversely impact upon views or solar access
- Objective (e) is not relevant as the works do not relate to an existing building within the foreshore building line
- Objective (f) would be upheld as the proposed works will not adversely impact upon rock platforms or inter tidal ecology

Further, Clause 22 (4)(a) states that baths (swimming pools) and ancillary buildings are permissible. The proposed deck, located adjacent to the approved swimming pool, is an ancillary structure. Clause 22(4)(e) states that structures or works below or at the surface of the ground are permissible, this would include the proposed landscaping works.

On this basis it is argued that strict compliance with the standard is unnecessary as there are minimal adverse impacts associated with the non-compliance and this would unreasonably restrict the development of the site generally in accordance with the development principles of the Residential Development Control Plan (RDCP).

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

It is considered that the proposal satisfies the underlying intent of the objectives of Council's FSBL development standard and the Objects of the Act. Therefore, strict compliance with the standard is unreasonable and unnecessary in the circumstances of the case.

5. **Is the objection well founded?**

The objection advanced by the applicant that compliance with the development standard is unreasonable and unnecessary is well founded as the non-complying structures and landscaping works would achieve consistency with the objectives underlying the standard. Therefore the SEPP 1 objection is consistent with the aims and objectives set out in Clause 3 of SEPP 1.
11.5 Other special clauses/development standards

Clause 18 Excavation:

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

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

The proposed excavation relates to footings for the proposed steps, deck and landscaping and is acceptable in terms of Clause 18.

Clause 19 HFSPA:

Clause 19 of WLEP 1995 requires Council to consider the visual impact of a development proposal upon Sydney Harbour in terms of land located within the Harbour Foreshore Scenic Protection Area.

The proposed works are minor and will not have any significant impact on Sydney Harbour (refer to assessment above under SREP (Sydney Harbour Catchment) 2005).

Clause 25 Water, wastewater and stormwater:

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

The proposal has been assessed against the provisions of Clause 25 and is considered to be satisfactory, subject to Condition C.7.

Clause 25D Acid Sulfate Soils:

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

Clauses 27 Development within the vicinity of a Heritage Item:

Council is required to take into consideration the likely effect of the proposed development on the heritage significance of a heritage item and its setting.
The subject site is located adjacent to a heritage listed residential flat building at 66 Wolseley Road. The heritage site adjoins only the front of the site and the works are proposed are to the rear of the subject site, approximately 30m from the heritage item. Further, the proposed works are minor, including a deck and landscaping works, and will not have any adverse impact upon the heritage item. The proposal is therefore satisfactory with regard to the provisions under Clause 27.

12. DEVELOPMENT CONTROL PLANS

12.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

<table>
<thead>
<tr>
<th>Site Area (1271m²)</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ancillary Development (Deck)</td>
<td>-</td>
<td>&lt;3.6m</td>
<td>3.6m</td>
<td>Yes</td>
</tr>
<tr>
<td>Maximum Height</td>
<td>-</td>
<td>&gt;1.5m</td>
<td>1.5m</td>
<td>Yes</td>
</tr>
<tr>
<td>Rear Setback (West)</td>
<td>-</td>
<td>&gt;1.5m</td>
<td>1.5m</td>
<td>Yes</td>
</tr>
<tr>
<td>Side Setback (North)</td>
<td>-</td>
<td>&gt;1.5m</td>
<td>1.5m</td>
<td>Yes</td>
</tr>
<tr>
<td>Side Setback (South)</td>
<td>-</td>
<td>&gt;1.5m</td>
<td>1.5m</td>
<td>Yes</td>
</tr>
<tr>
<td>Setback from Significant Mature Trees</td>
<td>3m</td>
<td>&lt;3m</td>
<td>3.0m</td>
<td>No</td>
</tr>
<tr>
<td>Excavation Piling and Subsurface Wall Setback</td>
<td>&lt;1.5m</td>
<td>&lt;1.5m (steps)</td>
<td>1.5m</td>
<td>No (steps)</td>
</tr>
<tr>
<td>Deep Soil Landscaping – RFB</td>
<td>40% (508m²)</td>
<td>36% (457m²)</td>
<td>40% 1271m² (508m²)</td>
<td>No</td>
</tr>
</tbody>
</table>

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

The site is located in the Point Piper precinct. The proposal involves minor works including a new deck and landscaping works to the rear of the site. The proposal will retain significant vegetation and the topography of the site while enhancing the visual appearance when viewed from the harbour. The proposal will not adversely impact on any streetscape elements, views or the evolution of residential building styles. Accordingly, the proposal is satisfactory with regard to the performance criteria and objectives of Part 4.5.

Building size and location performance criteria (Part 5.2)

The objectives for Building Size and Location are as follows:

- **O 5.2.1** To preserve established tree and vegetation networks and promote new networks by ensuring sufficient areas for deep soil planting and sufficient setbacks between the rear of buildings
- **O 5.2.2** To ensure the size and location of buildings allow for the sharing of views and preserve privacy and sunlight access for neighbouring residences
- **O 5.2.3** To ensure the form and scale of development is not excessive and maintains the continuity of building forms and front setbacks in the street
- **O 5.2.4** To limit site excavation and minimise cut and fill to ensure that building form relates to the topography and to protect the amenity of adjoining properties both during and after construction

The proposal is considered to be consistent with the above-mentioned objectives for the following reasons:
• Council’s Tree and Landscape Officer has determined that the proposal is satisfactory in terms of tree preservation and landscaping, subject to **Conditions**
• The development will not adversely impact on views, solar access or privacy (refer to assessment under Section 5.8)
• The proposed works are minor and will not adversely impact on the scale and form of the development
• The works require minimal excavation for footings and landscaping and will not result in the site topography being substantially altered

The proposal is inconsistent with the following performance criteria:

*Setback from significant mature trees:*

C 5.2.1 stipulates that buildings are to be located at least 3m from the base of the tree to minimise root damage.

The proposed deck is located around the base of Tree 2 resulting in a non-compliance with this control. The applicant has stipulated measures to ensure the roots of the tree are not impacted. Council’s Trees and Landscaping officer has stipulated that the proposal is satisfactory in terms of trees and landscaping issues subject to **Condition C.1** which requires separation between the slats of the deck to allow water penetration to the root zone.

Subject to **Condition C.1**, the proposal is satisfactory.

*Excavation, piling and sub-surface wall setback:*

C 5.2.16 stipulates that the outer edge of excavation, piling and sub-surface walls shall not be less than 1.5m. The works involve minor excavation for footings and landscaping adjacent to the side boundaries resulting in a non-compliance with this control. The works are of a minor nature and will not adversely impact on the adjoining properties or alter the topography of the site. Accordingly, the works are satisfactory in this instance.

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

The development results in the following non-compliance:

*Deep soil landscaping:*

C 5.3.1 stipulates that 40% of the site area is to consist of deep soil landscaping. The proposal will result in a deep soil landscaping area of 457m$^2$ resulting in a non-compliance of 51m$^2$. The area of non-compliance relates completely to the area of the proposed deck. The non-compliance is satisfactory in this instance for the following reasons:

- The deck provides an extension of usable open space as it connects with the approved pool and deck area. Further, the site slopes in this area and the deck will provide better utilisation of this area
- The deck will not adversely impact on significant trees as specific measures are being taken to ensure that the existing significant trees are protected, refer to **Conditions**
- The deck will not have any adverse impact on stormwater drainage as, subject to **Condition C.1**, the deck will have open slats which will allow water penetration to provide water to the trees

Accordingly, the non-compliance is satisfactory in this instance.
Energy efficiency performance criteria (Part 5.6)

A BASIX certificate is not required for this application. The proposal is satisfactory with regard to Part 5.6.

Stormwater management performance criteria (Part 5.7)

Subject to Conditions C.6 & C.7, the proposal is considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under Part 5.7 of WRDCP 2003.

Acoustic and visual privacy performance criteria (Part 5.8)

Objective O 5.8.1 requires adequate acoustic and visual privacy to be maintained for occupants and neighbours.

C 5.8.6 stipulates that balconies, terraces, decks and other like areas within a development are suitably screened to prevent direct views into habitable rooms or private open space areas of adjacent dwellings.

The proposed deck is satisfactory with regard to privacy for the following reasons:

- The proposed deck is located 2.2m from the northern side boundary and 4.4m from the southern side boundary
- Significant landscaping exists between the deck and the boundaries
- Side boundary walls exist along the northern and southern boundaries
- The proposed deck is located in the primary area of private open space where noise transmissions are reasonably expected to occur

Harbour foreshore development performance criteria (Part 5.11)

The objectives of Part 5.11 require the protection of the scenic quality of the natural landscape and built environment as viewed from Sydney Harbour, protection of indigenous flora and fauna habitats and the natural land and water interface is to be conserved.

C 5.11.16 stipulates that hard surfaces and artificial surfaces, such as paving, are to be minimised within the foreshore building line area and are to be limited to pool surrounds or modest walkways.

The proposed decking does not consist of hard paved surfaces, it is a wooden decking area with separated slats to allow water penetration. The deck forms an extended open space area connecting to the pool. The works will not have any detrimental impact on existing vegetation, subject to Conditions. The works will not alter the topography of the site or have any significant adverse impact as viewed form the Harbour. Accordingly, the proposal is satisfactory with regard to Part 5.11.

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

No change is proposed to car parking.

12.3 Woollahra Access

No change is proposed to access.
12.4 Other DCPs, codes and policies

N/A.

13. APPLICABLE REGULATIONS

N/A.

14. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts of the proposal have been considered within this report.

15. THE SUITABILITY OF THE SITE

The subject site is suitable for the proposed development.

16. SUBMISSIONS

The proposal was advertised and notified in accordance with Council’s Advertising and Notifications DCP. No submissions were received.

17. CONCLUSION - THE PUBLIC INTEREST

The proposal is acceptable against the relevant considerations under s79C.

18. DISCLOSURE STATEMENTS

Under S.147 of the Environmental Planning and Assessment Act, 1979 there have been no disclosure statements regarding political donations or gifts made to any councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.

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

THAT the Council, as the consent authority, is of the opinion that the objection under State Environmental Planning Policy No. 1 – Development Standards to foreshore building line – development standard under Clause 22 is well founded. The Council is also of the opinion that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of this case as the proposed works are minor and will not adversely impact upon the harbour or foreshore areas.

AND

THAT the Council, as the consent authority, being satisfied that the objection under SEPP No. 1 is well founded and also being of the opinion that the granting of consent to Development Application No. 690/2008 is consistent with the aims of the Policy, grant development consent to DA No. 690/2008 for a new deck and landscaping within the foreshore building line on land at 70-72 Wolseley Road Point Piper, subject to the following conditions:
A. General Conditions

A.1 Conditions

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

Standard Condition: A1

A.2 Definitions

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

Applicant means the applicant for this Consent.

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

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

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

Council means Woollahra Municipal Council

Court means the Land and Environment Court

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

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

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

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

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

PCA means the Principal Certifying Authority under the Act.

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

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

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

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

Site means the land being developed subject to this consent.

WLEP 1995 means Woollahra Local Environmental Plan 1995

Work for the purposes of this consent means:

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

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

Standard Condition: A2

A.3 Approved Plans and supporting documents

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

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Author/Drawn</th>
<th>Date(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>DA350 Rev A</td>
<td>Site Analysis/Location Plan</td>
<td>JPR Architects Pty Ltd</td>
<td>14/10/08</td>
</tr>
<tr>
<td>DA351 Rev A</td>
<td>Level 0 Plan</td>
<td>JPR Architects Pty Ltd</td>
<td>14/10/08</td>
</tr>
<tr>
<td>DA352 Rev A</td>
<td>Section A</td>
<td>JPR Architects Pty Ltd</td>
<td>14/10/08</td>
</tr>
<tr>
<td>DA353 Rev A</td>
<td>Section C</td>
<td>JPR Architects Pty Ltd</td>
<td>14/10/08</td>
</tr>
<tr>
<td>DA354 Rev A</td>
<td>West Elevation</td>
<td>JPR Architects Pty Ltd</td>
<td>14/10/08</td>
</tr>
<tr>
<td>DA355 Rev A</td>
<td>South Elevation</td>
<td>JPR Architects Pty Ltd</td>
<td>14/10/08</td>
</tr>
<tr>
<td>DA356 Rev A</td>
<td>North Elevation</td>
<td>JPR Architects Pty Ltd</td>
<td>14/10/08</td>
</tr>
<tr>
<td>DA357 Rev A</td>
<td>West Elevation, North Elevation &amp; South Elevation</td>
<td>JPR Architects Pty Ltd</td>
<td>14/10/08</td>
</tr>
<tr>
<td>1475 DA</td>
<td>Arborist Report</td>
<td>Tree Wise Men Pty, Ltd</td>
<td>Feb 06</td>
</tr>
<tr>
<td>Dwgs No. H-DA-01 and H-DA-02 revision B</td>
<td>Stormwater disposal concept plan</td>
<td>ITM Design P/L</td>
<td>16/02/06</td>
</tr>
</tbody>
</table>
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

B.2 Arborists Periodic Site Inspection and Log

To ensure the condition and health of existing trees are maintained an arboricultural log book for the subject property is to be prepared by a qualified arborist and retained by the site foreman. Details of the arborists site inspection are to be recorded in the log during each visit. At each site visit the arborist must check and monitor the condition of existing trees and compliance with approved protection measures or recommend action to improve site conditions. As a minimum the following intervals of site inspections by a qualified arborist must be made.
Stage of arboricultural inspection | Minimum considerations at each stage | Additional visits required determined by arborist notes/comments
---|---|---
Prior to the demolition of any building or construction. | Correct installation of Tree Protection Zone barriers. | Make additional site visits as deemed necessary for ongoing monitoring/supervisory work.
During development work. | Tree Preservation and approved works are complied with. Monitor condition of trees. | Visit site at two week intervals to monitor condition of protected trees.
Prior to the issue of a Final Occupation Certificate. | Supervise the dismantling of tree protection measures. | Make additional site visits as deemed necessary for ongoing monitoring of tree vigour.

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

C.1  Amended Landscape Plan

An amended Landscape Plan, prepared by a qualified Landscape Architect or Landscape Designer, in accordance with Councils DA Guide Annexure 8 and conforming to the conditions of this Development Consent is to be submitted to Council for approval prior to issue of the Construction Certificate. Additionally the amended landscape plan must include the following:

- Illustrate the proposed decking surrounding Tree 2 as being ‘open joint’.
- Adequate distance of a minimum of 100mm between the timber slats surrounding tree 2 and the trunk of the tree (to allow for the expansion of the trunk of the tree over time.)

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

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

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

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

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Indexed</th>
<th>Council Fee Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**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 Council as a consequence of the doing of anything to which the consent relates. | $4,000 | No | T600 |

**INSPECTION FEES**
under section 608 of the Local Government Act 1993

| Security Administration Fee | $175 | No | T16 |

**TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES**
Plus any relevant indexed amounts and long service levy

$4,175

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**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/](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

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 development levy will delay the issue of any Part 4A Certificate and could void any Part 4A Certificate (construction certificate, subdivision certificate, or occupation certificate).
Deferred periodic payment of section 94A levy under the Woollahra Section 94A Development Contributions Plan 2005

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

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

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

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

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

Standard Condition: C5

C.3 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

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 downloaded 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.4 Structural Adequacy of Existing Supporting Structures

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

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

Standard Condition: C35

C.5 Professional Engineering Details

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

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

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

Standard Condition: C36

C.6 Stormwater Discharge to Harbour (Clause 25(2) WLEP 1995)

The developer must obtain written approval from the NSW Department of Water and Energy to discharge stormwater from the subject property directly into Sydney Harbour.

Standard Condition: C50

C.7 Stormwater management plan (Clause 25(2) WLEP 1995)

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

The Stormwater Management Plan must detail:

a) general design in accordance with Stormwater disposal concept plan prepared by ITM Design P/L, dated 16/02/2006 Dwgs No. H-DA-01 and H-DA-02 revision B other than amended by this and other conditions;

b) the discharge of stormwater, by direct connection, to Sydney Harbour;

c) compliance the objectives and performance requirements of the BCA;

d) any rainwater tank required by BASIX commitments including their overflow connection to the Stormwater Drainage System, and

e) general compliance with the Council’s draft Development Control Plan Stormwater Drainage Management (draft version 1.1 public exhibition copy dated 14/12/2006), and

f) on-site stormwater detention (“OSD”).

The Stormwater Management Plan must include the following specific requirements:
Layout plan

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

It must include:

- All pipe layouts, dimensions, grades, lengths and material specification,
- All invert levels reduced to Australian Height Datum (AHD),
- Location and dimensions of all drainage pits,
- Point and method of connection to Councils drainage infrastructure.

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

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

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 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.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


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 downloaded 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.4 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

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

a. a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited Certifier, and

b. the person having the benefit of the development consent has:
   i. appointed a principal certifying authority for the building work, and
   ii. notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and

b1. the principal certifying authority has, no later than 2 days before the building work commences:
   i. notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
   ii. notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and

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

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

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

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

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

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

Standard Condition: D15
D.5 Notification of *Home Building Act 1989* requirements

a. For the purposes of section 80A (11) of the Act, the requirements of this condition are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the *Home Building Act 1989*.

b. Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

i. in the case of work for which a *principal contractor* is required to be appointed:
   - the name and licence number of the principal contractor, and
   - the name of the insurer by which the work is insured under Part 6 of that Act,

ii. in the case of work to be done by an owner-builder:
   - the name of the owner-builder, and
   - if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

c. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

d. This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State’s building laws.

Standard Condition: D17

D.6 Establishment of Tree Protection Zones

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

a) Tree Protection Zone areas

<table>
<thead>
<tr>
<th>Council Reference No:</th>
<th>Species</th>
<th>Location</th>
<th>Radius from Trunk (metres)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><em>Lophostemon confertus</em> Brush Box</td>
<td>Western side of property</td>
<td>3.5 metres</td>
</tr>
<tr>
<td>2</td>
<td><em>Ficus microcarpa var. ‘Hillii’</em> Hills Weeping Fig</td>
<td>Western side of property</td>
<td>7 metres</td>
</tr>
</tbody>
</table>
b) Trunk protection, to a maximum height permitted by the first branches, is to be installed around the trunks of the trees listed in the table below;

<table>
<thead>
<tr>
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<th>Location</th>
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<tbody>
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</tbody>
</table>

A padding material e.g. Hessian or thick carpet underlay is to be wrapped around the trunk first. Hardwood planks, 50x100mm and to the maximum possible length, are to be placed over the padding and around the trunk of the tree at 150mm centres. These planks are to be secured in place by 8 gauge wire at 300mm spacing (see Figure 2).

c) Existing soil levels must be maintained within Tree Protection Zones. Where excavation is undertaken adjacent such an area, the edge of the excavation must be stabilised, until such time as permanent measures are installed (e.g. retaining wall etc) to prevent erosion within the Tree Protection Zone.

d) Sediment control measures are to be installed around all Tree Protection Zones to protect the existing soil levels.

e) The storage of materials, stockpiling, siting of works sheds, preparation of mixes, cleaning of tools or equipment is not permitted within Tree Protection Zones.

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

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

**Standard Condition:** D8

### D.7 Permissible work within Tree Protection Zones

In accordance with British Standard BS5837, one incursion no greater than 20% of a trees calculated Tree Protection Zone is considered allowable provided the tree is a healthy and vigorous specimen. The table below provides a radius distance from the centre of the trunk of existing trees whereby the following incursions are permissible:

a) Permissible Work within Tree Protection Zones

<table>
<thead>
<tr>
<th>Council Reference No:</th>
<th>Species</th>
<th>Location</th>
<th>Radius from Trunk (metres)</th>
<th>Approved works within incursion</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><em>Lophostemon confertus</em> Brush Box</td>
<td>Western side of property</td>
<td>1 metre</td>
<td>Footings for decking</td>
</tr>
<tr>
<td>2</td>
<td><em>Ficus microcarpa var. ‘Hillii’</em> Hills Weeping Fig</td>
<td>Western side of property</td>
<td>1.5 metres</td>
<td>Footings for decking</td>
</tr>
</tbody>
</table>

b) Where excavation is undertaken within a specified Tree Protection Zone, the edge of the excavation must be stabilised, until such time as permanent measures are installed (e.g. retaining wall etc) to prevent erosion within the Tree Protection Zone.
c) To prevent damage to roots and compaction within the Tree Protection Zone of specified trees, excavation must be hand dug. Small hand tools only are to be utilised, mattocks and similar digging tools are not be used within these areas. No root with a diameter equal to or in excess of 50mm is to be cut unless approved, in writing, by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 4 or recognised equivalent).

All root pruning must be undertaken in accordance with the Australian Standard 4373 “Pruning of Amenity Trees” and carried out by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 4 or recognised equivalent).

Beyond this radius, mechanical excavation is permitted, when root pruning by hand along the perimeter line of such works is completed.

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


Standard Condition: E2

E.3 Critical Stage Inspections

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

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

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

Standard Condition: E5

E.4 Hours of Work –Amenity of the neighbourhood

a. No work must take place on any Sunday or public holiday,
b. No work must take place before 7am or after 5pm any weekday,
c. No work must take place before 7am or after 1pm any Saturday, and
d. No piling, piering, 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.


Standard Condition: E6

E.5 Maintenance of Vehicular and Pedestrian Safety and Access

The principal contractor or owner builder and any other person acting with the benefit of this consent must:
a. Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.
b. Not use the road or footway for the storage of any article, material, matter, waste or thing.
c. Not use the road or footway for any work.
d. Keep the road and footway in good repair free of any trip hazard or obstruction.
e. Not stand any plant and equipment upon the road or footway.

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

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

d. Noise controls;
e. Connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.

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

Note: Section 138 of the Roads Act 1993 provides that a person must not:
(a) erect a structure or carry out a work in, on or over a public road, or
(b) dig up or disturb the surface of a public road, or
(c) remove or interfere with a structure, work or tree on a public road, or
(d) pump water into a public road from any land adjoining the road, or
(e) connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.

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

Part C Management of Waste:
“1. For fee or reward, transport waste over or under a public place
2. Place waste in a public place
3. Place a waste storage container in a public place.”

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

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

Standard Condition: E7

E.6 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;


Standard Condition: E11

E.7 Support of adjoining land and buildings

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

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

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

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

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

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

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

Standard Condition: E13

E.8 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

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.

**E.9 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: E15**

**E.10 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.11 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 downloaded 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.

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

Standard Condition: E23

E.12 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.13 Tree Preservation

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

a) Where excavation encounters tree roots with a diameter exceeding 50mm excavation must cease. The principal contractor must procure an inspection of the tree roots exposed by a qualified arborist. Excavation must only recommence with the implementation of the recommendations of the qualified arborist or where specific instructions are given by Council's Tree Management Officer in strict accordance with such Council instructions.

b) Where there is damage to any part of a tree the principal contractor must procure an inspection of the tree by a qualified arborist immediately. The principal contractor must immediately implement treatment as directed by the qualified arborist or where specific instructions are given by Council's Tree Management Officer in strict accordance with such Council instructions.

Note: Trees must be pruned in accordance with Australian Standard AS 4373 “Pruning of Amenity Trees” and WorkCover NSW Code of Practice Amenity Tree Industry.

E.14 Hand excavation within tree root zones

To prevent damage to roots and compaction within the root zone, excavation undertaken within the specified radius from the trunks of the following trees must be hand dug. Small hand tools only are to be utilised, mattocks and similar digging tools are not be used within these areas. No root with a diameter equal to or in excess of 50mm is to be cut unless approved, in writing, by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 4 or recognised equivalent).

All root pruning must be undertaken in accordance with the Australian Standard 4373 “Pruning of Amenity Trees” and carried out by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 4 or recognised equivalent).

Any exposed surface roots must be covered to prevent drying out and watered. Materials used to minimise surface roots drying out include leaf litter mulch or a geotextile fabric.

Beyond this radius, mechanical excavation is permitted, when root pruning by hand along the perimeter line of such works is completed.

<table>
<thead>
<tr>
<th>Council Reference No:</th>
<th>Species</th>
<th>Location</th>
<th>Radius from Trunk (metres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Lophostemon confertus</td>
<td>Brush Box</td>
<td>Western side of property</td>
</tr>
<tr>
<td>2</td>
<td>Ficus microcarpa var. 'Hillii'</td>
<td></td>
<td>Western side of property</td>
</tr>
</tbody>
</table>

E.15 Footings in the vicinity of trees

Footings for any structure constructed within the specified radius from the trunks of the following trees, is to be constructed using an isolated pier and beam construction method. Excavations for installation of piers is to be located so that no tree root with a diameter equal to or in excess of 50mm is to be severed. The smallest possible area is to be excavated which allows construction of the pier. The beam is to be placed a minimum of 300mm above ground level and is to be designed to bridge all tree roots with a diameter equal to or in excess of 50mm.
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 include but may not be limited to:

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

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

Note: The PCA may require any number of WAE plans, certificates, or other evidence of suitability as necessary to confirm compliance with the Act, Regulation, Development Standards, BCA, and relevant Australia Standards. As a minimum WAE plans and certification is required for stormwater drainage and detention, mechanical ventilation work, hydraulic services (including but not limited to fire services).
Note: The PCA must submit to Council, with any Occupation Certificate, copies of works-as-executed (“WAE”) plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA upon which the PCA has relied in issuing any Occupation Certificate.

Standard Condition: F7

F.3 Amenity Landscaping

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

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

Standard Condition: F6

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

No Conditions.

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

H.1 Landscaping

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

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

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

No Conditions.

J. Miscellaneous Conditions

No 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.

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.

K.3 Builders Licences and Owner Builders Permits

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

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

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

Standard Advising: K1

Standard Advising: K2

Standard Advising: K2

Standard Condition: K5

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 downloaded from:

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: K6

K.6 Appeal

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

Sarah Chambers, Senior Assessment Officer on (02) 9391 7064

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

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

Standard Condition: K14
K.7 Release of Security

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

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

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

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

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


Standard Condition: K15

K.8 Recycling of Demolition and Building Material

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

Standard Condition: K17

K.9 Owner Builders

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

Standard Condition: K18

K.10 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
ANNEXURES

1. Plans and elevation
2. Technical Services comments
3. Trees and Landscaping comments
4. Department of Water and Energy comments
Item No: D10 Delegated to Committee  
Subject: Register of Current Land and Environment Court Appeals for Development Applications  
Author: Patrick Robinson, Manager Development Control

Council, at its meeting of 17 August 1994 resolved in the following terms:

THAT the Register of current Land and Environment Court Appeals for Development Applications presented in the Development Applications Summary be transferred to the Development Control Committee to be considered at each meeting.

Please find attached a copy of the current register.

Recommendation:

THAT the attached register of current Land and Environment Court Appeals for Development Applications be received and noted.

Patrick Robinson  
Manager Development Control
Item No: D11  Delegated to Committee
Subject: Register of SEPP 1 Objections
Author: Patrick Robinson, Manager Development Control

Council, at its meeting of 13 October 2008 resolved that Councillors be furnished with a monthly report of all development applications granted consent with a SEPP 1 objection.

The attached register is produced in accordance with that resolution.

Recommendation:

THAT the attached register of SEPP 1 Objections be received and noted.

Patrick Robinson
Manager Development Control
DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No. D12
FILE No. DA 616/2007/1

PROPERTY DETAILS
88 Old South Head Road WOOLLAHRA

Lot & DP No.: LOT: 9 DP: 80725
Side of Street: Western
Site Area (m²): 417.3m² (by Deposited Plan) and 421.2 m² (by Survey Plan)
Zoning: Residential 2(b)

PROPOSAL
Alterations and additions to existing building including a new 3 car garage with roof top garden above garage, spa and decking to yard, air-conditioning system and new first floor balcony.

TYPE OF CONSENT: Local Development
APPLICANT: Mr T & Mrs T A Atherton
OWNER: Mr T & Mrs T A Atherton
AUTHOR: Mr T. Moody (Consultant Planner)

1. RECOMMENDATION PRECIS
Approval subject to conditions

2. PROPOSAL PRECIS
Alterations and additions to existing building including a new 3 car garage with roof top garden above spa and decking to yard, air-conditioning system and new first floor balcony.
3. **LOCALITY PLAN**

![Locality Plan Diagram]

4. **DESCRIPTION OF PROPOSAL**

The application seeks approval to undertake the following alterations and additions to the existing building:

- **Ground floor level**
  - Internal reconfigurations;
  - New ensuite;
  - Minor addition to kitchen with glass roof over; and
  - New bi-fold doors to rear elevation

- **First floor level**
  - New bathroom; and
  - New balcony at rear.

- **External**
  - New 3-car garage on rear boundary with roof top garden above garage. Access is proposed off Icasia Lane;
  - New stairs along northern boundary providing access from the proposed garage to the proposed roof top garden;
- New timber deck at rear which links with the roof top garden over the garage;
- New spa; and
- New landscaping to front setback area

The existing building is configured for use as a residential flat building. The proposal seeks to revert the use to a dwelling house. Whilst internal facilities and the proposed layout may lead to possible use for units, the Applicants have agreed to conditions requiring the building to be used only as a single dwelling with no subdivision.

A first set of amended plans were submitted in December 2007 with the following modifications:

- New privacy screen to proposed rear balcony at first floor level
- Height of planter boxes above garage lowered to 350mm above garage roof level
- Tree species in front garden nominated to be Blue Arrow
- Lattice screen along northern boundary adjoining stairs extended
- Balustrade adjoining stairs to be 1 metre high and altered to stainless steel marine wire.

Following lodgement of the first set of amended plans in December, 2007, a complaint was made by Mrs T. Atherton (one of the Applicants) claiming, in effect, that she has been discriminated against by Woollahra Council on the grounds of disability under the Disability Discrimination Act, 1992 (DDA). Extensive discussions were held between the Complainant, her representatives and Council Officers. As a result, a Conciliation Conference between the Applicants and Council was undertaken by the Australian Human Rights Council. The main result of that Conciliation Conference was the agreement of the parties to have an independent expert to prepare an assessment of the proposed development. The author of this report was appointed by the parties to undertake this independent assessment. The brief to this author was to prepare an independent report and not to review any previous assessments. On this point, it is noted that there have been 2 previous draft reports prepared for the proposed development, one by Ms J. Askin (Consultant Planner) appointed by Council in which she recommended approval of the application subject to conditions and a second draft report prepared by Mr Mark Schofield of Council who recommended refusal of the application primarily on the grounds of adverse impact arising from the proposed rear roof top garden over the garage. The main issue arising from this application is the proposed roof top garden. Further comments on the proposed roof top garden is provided later in this report.

In effect, the Complainant claimed that Council did not give proper consideration to the provisions of the Disability Discrimination Act and her personal health circumstances. Further comment on this matter is provided in the following sections of this report.

The author has carried out an assessment of the proposed development, inspected the subject site and adjoining locality and met with Council Officers, the Applicants and the Architect and other Consultants representing the Applicants. The author also spoke to both adjoining owners at Nos. 90 and 86 Old South Head Road and also met with the owner of No. 86 (which lies to the south). The author was provided with all previous documentation relating to the application including the above complaint by Mrs T. Atherton and copies of the previous draft reports of Ms Askin and Mr Schofield. The author considered that further amendments were required to the amended plans and a second set of amended plans was lodged in January, 2009 which incorporated the following amendments:-
Planter beds are proposed at the rear of the subject site on the proposed roof top garden level above the 3 car garage. These planter beds are adjacent to a proposed ornamental garden. The author was of the view that the planter beds should be substantially increased in width to both the rear laneway and also along part of the southern boundary adjacent to No. 86 to improve the landscape setting of the site and also to substantially reduce the likelihood of overlooking onto the adjoining property to the south at No. 86 Old South Head Road. The proposed planter beds have been increased in width to 2 metres wide under the current set of amended plans.

5. SUMMARY

<table>
<thead>
<tr>
<th>Reasons for report</th>
<th>Issues</th>
<th>Submissions</th>
</tr>
</thead>
</table>
| • The DA was originally called to AAP by Councillor Shapiro for the following reasons:  
  - Proposed garden above garage  
  - Amenity for neighbours. | Privacy, deep soil landscaping | Three submissions were received in relation to the original proposal. Two of the submissions were from immediately adjoining properties (Nos. 90 and 86) which were subsequently withdrawn. |
| • This DA has now been referred to the DCC by reason of the complaint under the Disability Discrimination Act. | | |

6. ESTIMATED COST OF WORKS

The Applicants’ estimated cost of the proposed development is $200,000. This figure has been checked by Council Officers using Council’s adopted practice and is considered to be accurate.

7. DESCRIPTION OF SITE OF LOCALITY

<table>
<thead>
<tr>
<th>THE SITE AND LOCALITY</th>
</tr>
</thead>
</table>
| Physical features     | The site is legally described as Lot 9 in DP: 80725. It is located on the northern side of Old South Head Rd, in the block bounded by Tindale Lane, Icasia Lane and Fern Place.  
  The eastern boundary fronting Old South Head Road has a length of 10.05m, with the northern, western and south-western boundaries being 40.19, 10.55, and 43.42m in length respectively. The site has an area of 421.2m$^2$ (417.3 m$^2$ by Deposited Plan).  
  The site has frontage to Old South Head Road along eastern boundary and to Icasia Lane at its western boundary. Vehicular access to the site is from Icasia Lane. |
| Topography            | The site falls approx 3.9m from its eastern boundary to its western boundary. |
| Existing buildings and structures | Two storey Victorian building with informal parking at rear. |
| Environment           | Single and two storey dwelling house development with garages along Icasia Lane. The streetscape along the near lane is characterized by single storey garages extending the full width of the respective properties. |
8. PROPERTY HISTORY

<table>
<thead>
<tr>
<th>PROPERTY HISTORY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current use</strong></td>
</tr>
<tr>
<td><strong>Previous relevant applications</strong></td>
</tr>
<tr>
<td><strong>Pre-DA</strong></td>
</tr>
<tr>
<td></td>
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<td></td>
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<tr>
<td></td>
</tr>
<tr>
<td><strong>Requests for additional information</strong></td>
</tr>
<tr>
<td><strong>Amended plans/Replacement Application</strong></td>
</tr>
<tr>
<td><strong>Land &amp; Environment Court appeal</strong></td>
</tr>
<tr>
<td><strong>Disability Discrimination Act</strong></td>
</tr>
</tbody>
</table>
9. REFERRALS

9.1 The following table contains particulars of internal referrals.

<table>
<thead>
<tr>
<th>Referral Officer</th>
<th>Comment</th>
<th>Annexure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development Engineer</td>
<td>Approval, subject to conditions</td>
<td>2</td>
</tr>
<tr>
<td>Landscaping Officer</td>
<td>Approval, subject to conditions</td>
<td>3</td>
</tr>
<tr>
<td>Heritage Officers (x 2)</td>
<td>Approval, subject to conditions</td>
<td>4</td>
</tr>
</tbody>
</table>

9.2 The following table contains particulars of external referrals.

No external referrals were required.

ENVIRONMENTAL ASSESSMENT UNDER S.79C

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

10. COMMONWEALTH /STATE/REGIONAL INSTRUMENTS AND LEGISLATION

10.1 Disability Discrimination Act 1992

As previously noted, Mrs T. Atherton lodged a complaint against Council claiming, in effect, that she has suffered discrimination under the Disability Discrimination Act. The Objectives of the Disability Discrimination Act 1992 (DDA 1992) include:

“(a) to eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of:

(i) work, accommodation, education, access to premises, clubs and sport: and…”

“(b) to ensure as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community; and

(c) to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.”

Section 4 (Interpretation) of the DDA 1992 defines “discriminate” as follows:

“discriminate has the meaning given by sections 5 to 9 (inclusive)”

Sections 5 and 6 of the DDA 1992 are as follows:
5 Disability discrimination

(1) For the purposes of this Act, a person (discriminator) discriminates against another person (aggrieved person) on the ground of a disability of the aggrieved person if, because of the aggrieved person’s disability, the discriminator treats or proposes to treat the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person without the disability.

(2) For the purposes of subsection (1), circumstances in which a person treats or would treat another person with a disability are not materially different because of the fact that different accommodation or services may be required by the person with a disability.

6 Indirect disability discrimination

For the purposes of this Act, a person (discriminator) discriminates against another person (aggrieved person) on the ground of a disability of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition:

(a) with which a substantially higher proportion of persons without the disability comply or are able to comply; and

(b) which is not reasonable having regard to the circumstances of the case; and

(c) with which the aggrieved person does not or is not able to comply.

Sections 7, 8, 9 of the DDA 1992 are titled as follows:
- 7 Disability discrimination—palliative and therapeutic devices and auxiliary aids
- 8 Disability discrimination—interpreters, readers and assistants
- 9 Disability discrimination—guide dogs, hearing assistance dogs and trained animals

These sections are not relevant to this case and as such have not been referenced in full.

Circumstances of the Case

Mrs T. Atherton, an owner of this site and one of the Applicants, suffers from a degenerative eye disease known as retinitis pigmentosa. A submission has been made which provides details on this disease, its impact on Mrs Atherton’s vision and the manner in which their development has been designed to cater for her current and future needs. The text below is excerpts from that submission:-
The disability

“The impact so far on Trudie’s vision is described in the enclosed report from the Royal Blind Society. At that stage her actual vision was 6/30 meaning she could see at 6 meters what a fully sighted person could see at 30 meters. But more seriously her field of vision was 7 – 12 degrees compared with a fully sighted persons 180 degree field of vision”.

“Among other things, the disability makes it very difficult and often impossible to see near, low level obstacles. Consequently Trudie continually runs into things, trips over and falls, particularly when there is a step and especially at entrances. As her sight has deteriorated, this problem has become progressively more serious. In recent years she has had more and more falls and has broken toes and suffered other minor injuries. So for some time we have been looking for a home without these hazards.”

Modifications required for access and mobility

“The main objective of our DA is to modify the property to provide a dwelling with accessibility, mobility and adaptability to meet our needs, given the disability in our family including Trudie’s mother and daughter when they visit or stay.

The principle measure required for this is to eliminate the present 26 steps in 4 + locations at ground floor which impede access and mobility on our property between the interior and exterior. As modified, there will be only one exterior flight of stairs down to the garage which will be used infrequently by Trudie and never by her alone because she does not drive. Without these modifications she will be unable to access and enjoy the exterior of our property without great difficulty and risk. The difficulty and risk will increase continually as her eyesight deteriorates and, without the modifications, ultimately she would become a prisoner in her own home. We also intend to demolish the external fire stairs (a further 21 steps) which will be unnecessary with the modified layout and uses proposed.

After the modifications, our home will still have some stairs internally between split levels and between floors. This is unavoidable given our associated need to be close to shops, services and transport and the economic and other difficulties of finding single level dwellings in such locations in Woollahra. Although stairs are always a challenge for the disabled, it is important to understand that people with severe visual impairment are able to successfully navigate a flight of stairs provided they can remember or can easily detect their location and provided they have memorized the route and the number of stairs in the flight. Problems and unacceptable risks arise where there are one or more stairs in many scattered locations, which are more difficult to remember or detect as in the existing 26 steps between internal and external areas at the subject property, especially where they are at the transition between interior and exterior light for the reasons mentioned above”.

In support of the Applicants’ submissions a report has been submitted by Mr M. Relf, Access Consultant who, in effect, supports the proposal from a disabled access perspective. Mr Relf considers the proposed works will substantially improve the accessibility of the existing site.
Assessment

Following the complaint by Mrs T. Atherton under the Disability Discrimination Act, Council Officers undertook a review of the action undertaken by the relevant Council staff and sought advice from Council’s Solicitors as to whether discrimination has occurred. Advices were received from Council’s Solicitors who considered that no discrimination has occurred. It should be noted that the relevant advices of Council’s Solicitors were provided to Mr and Mrs Atherton.

The purpose of this report is not to assess the complaint of Mrs T. Atherton but rather to provide a full assessment of the current application under the relevant planning legislation.

The author considers that the assessment of this application has also been carried out in accordance with the relevant requirements of the Environmental Planning and Assessment Act, 1979 which includes, but is not limited to, Woollahra Local Environmental Plan 1995 (WLEP 1995) and the relevant Development Control Plans. It is the view of the author (confirmed by a number of Council’s Planning Controls) that the issue of disabled access is a relevant issue for this assessment given that the issue of improved accessibility is an objective of a number of Council’s Controls. However, the issue of access, whilst a relevant matter, is not a determinative matter.

10.2 SEPPs

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The Development Application was accompanied by BASIX Certificate No. A16873 committing to environmental sustainability measures.

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

State Environmental Planning Policy No. 55

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

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

Development approval is not sought under the provisions for self contained dwellings contained within this SEPP.
10.3 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. In particular, the proposal will not have an impact from the Harbour.

10.4 Section 94 Contribution

The Woollahra Section 94A Contributions Plan 2005 is applicable. In accordance with Schedule 1, a 1% levy (of the total cost of works) applies. With a cost of works of $200,000, a payment of $2000 would be required, should approval be granted, which will be used for a variety of works as outlined in Schedule 2 of the Section 94A Contributions Plan.

10.5 Other legislation

Not applicable to this assessment.

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 considered consistent with the Aims and Objectives of WLEP 1995 and the relevant objectives of the Residential 2(b) zone.

11.2 Statutory compliance table

<table>
<thead>
<tr>
<th>Site Area (421.2m²) by Survey Plan</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall Height (metres)</td>
<td>9.5m</td>
<td>9.5m</td>
<td>9.5m</td>
<td>YES</td>
</tr>
</tbody>
</table>

11.3 Site area requirements

Not applicable to this assessment. The site is an existing lot.

11.4 Height

The proposal does not seek to increase the maximum height of the dwelling, being 9.5 metres above ground level (excluding the existing chimneys). The proposed works to the rear will have a maximum height of 9.5 metres above existing ground level.

It is noted that a “height control” line has been indicated on the drawings, which shows the proposed parapet extension at the front exceeding the height control. However, the height of this parapet is a maximum 9.4 metres above existing ground level and therefore complies with the statutory control.
11.5 Other special clauses/development standards

Clause 18 Excavation: The proposed minor excavation in the rear yard is acceptable in terms of Clause 18.

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

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

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

Clauses 26-33 Heritage and Conservation Area provisions:

The subject site does not adjoin, nor is located within the vicinity of any heritage items. However, the site is located within the Woollahra Heritage Conservation Area and consideration must be given to the impact of the development on the Conservation Area. Accordingly, the Woollahra Heritage Conservation Area DCP applies.

This Development Application has been assessed on 2 occasions by 2 separate Heritage Officers of Council. Copies of the relevant advices of Council’s Heritage Officers are contained at Annexure ‘4’.

The following points should be noted in relation to the advices from the 2 Council Heritage Officers:-

- Both Officers note that the subject property is not a Heritage Item and is not within the vicinity of a Heritage Item. However, the subject property is within the Grafton Precinct of the Woollahra Heritage Conservation Area.

- The first Heritage Officer (Mr M. D’Alessio) considered that the proposed new parapet over the existing front north-eastern balcony should be deleted from any approval to prevent the proposed additions further eroding the existing key contribution that the subject dwelling makes to the Conservation Area. Mr D’Alessio considered that the symmetrical proposed parapet is not sympathetic to the Conservation Area. The second Heritage Officer (Ms S. O’Neill) agrees with this advice. An appropriate condition has been imposed deleting the proposed new parapet over the existing front north-eastern balcony.

- The second Heritage Officer (Ms S. O’Neill) raises a number of additional concerns not included in the advice of the first Heritage Officer. Ms O’Neill raises the following additional matters:-

  (i) Ms O’Neill considers that the proposed rear elevation consisting of a raised parapet does not comply with Clause 3.3.4, Terrace Houses, Control 12 of the Woollahra HCA DCP. Ms O’Neill considers that the proposed skillion roof over the rear section of the terrace house should be expressed externally and not conceal by a parapet wall. An appropriate condition has been imposed.
(ii) Ms O’Neill considers that the form of the rear upper floor terrace does not comply with Table 3.23 verandahs under the Woollahra DCA DCP. Ms O’Neill considers that an appropriate form for the proposed rear verandah would be an attached, lightweight structure, with a roof separated from the main roof and using material similar to traditional materials with simplified detailing. An appropriate condition has been imposed.

(iii) Ms O’Neill objects to the proposed skylights and contends that they do not comply with the Woollahra HCA DCP. An appropriate condition has been imposed.

(iv) Ms O’Neill raised a number of concerns relating to the proposed rear garage. Further comments on the proposed rear garage are contained in this report. It is the view of the author of this report that the proposed rear garage is acceptable subject to an additional width in the planter beds on top of the garage.

(v) Ms O’Neill raises a concern relating to adverse privacy and solar impacts of the proposed roof top garden on the adjoining neighbours but notes that these impacts are to be assessed by the Planner. On this point, the author of this report agrees that there were adverse impacts which have now been resolved by appropriate amendments in the current set of amended plans.

The Applicants disagree with the advices of both Council Heritage Officers. The Architect and Heritage Consultant for the Applicants have produced their own advices which are attached to this report at Annexure ‘5’.

12. DRAFT AMENDMENTS TO STATUTORY CONTROLS

None applicable to this assessment.

13. DEVELOPMENT CONTROL PLANS
13.1 Compliance Table - Woollahra Heritage Conservation Area DCP 2003 (WHCA DCP 2003)

<table>
<thead>
<tr>
<th>Site Area (421.2m²)</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Floor Space Ratio (m²)</td>
<td>0.80:1 (335m²)</td>
<td>0.86:1 (361m²)</td>
<td>0.55:1 (231.7m²)</td>
<td>NO</td>
</tr>
<tr>
<td>Deep Soil Landscape Area (m²)</td>
<td>9m² (2.14%)</td>
<td>48.13m² (11.4%)</td>
<td>62.5m² (14.8%)</td>
<td>NO</td>
</tr>
<tr>
<td>Excavation Piling &amp; Subsurface Wall Setback (metres)</td>
<td>N/A</td>
<td>Nil</td>
<td>1.5m</td>
<td>NO</td>
</tr>
<tr>
<td>Minimum Floor to Ceiling Height – Habitable Rooms (metres)</td>
<td>&gt;2.7m</td>
<td>&gt;2.7m</td>
<td>2.7m</td>
<td>YES</td>
</tr>
<tr>
<td>Solar Access to Ground Level Open Space of Adjacent Properties</td>
<td>50%+ 2.5m 2 hours +</td>
<td>50%+ 2.5m 2 hours +</td>
<td>50% Dimension - 2.5m 2 hours</td>
<td>YES</td>
</tr>
<tr>
<td>Solar Access to North-Facing Living Areas of Development (Hours in mid winter)</td>
<td>3 hours +</td>
<td>3 hours +</td>
<td>3 hours +</td>
<td>YES</td>
</tr>
<tr>
<td>Solar Access to North-Facing Living Areas of Adjacent Properties (Hours in mid winter)</td>
<td>3 hours +</td>
<td>3 hours +</td>
<td>3 hours +</td>
<td>YES</td>
</tr>
<tr>
<td>Private open space Per Dwelling</td>
<td>&lt;35m² &lt;3m</td>
<td>&gt;35m² &gt;3m</td>
<td>Area – 35m² Dimension – 3m</td>
<td>YES</td>
</tr>
<tr>
<td>Front Fence Height (metres)</td>
<td>Approx 0.6m</td>
<td>1.5m</td>
<td>1.5m</td>
<td>YES</td>
</tr>
<tr>
<td>Car Parking Spaces</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>YES</td>
</tr>
<tr>
<td>Location of Car Parking Structures</td>
<td>N/A</td>
<td>Behind front building line</td>
<td>Behind front building line</td>
<td>YES</td>
</tr>
<tr>
<td>Laneway garages with roof garden Location</td>
<td>N/A</td>
<td>N/A</td>
<td>Rear boundary</td>
<td>YES</td>
</tr>
<tr>
<td>Door height</td>
<td>N/A</td>
<td>N/A</td>
<td>2 – 2m</td>
<td>YES</td>
</tr>
<tr>
<td>Door width</td>
<td>N/A</td>
<td>N/A</td>
<td>2.8m - 5.0m</td>
<td>YES</td>
</tr>
<tr>
<td>Parapet height</td>
<td>N/A</td>
<td>N/A</td>
<td>3.0m (average)</td>
<td>YES</td>
</tr>
<tr>
<td>Height side fence at rear boundary</td>
<td>N/A</td>
<td>N/A</td>
<td>3m</td>
<td>N/A</td>
</tr>
<tr>
<td>Planting strip</td>
<td>Nil</td>
<td>Nil</td>
<td>1metre</td>
<td>NO</td>
</tr>
</tbody>
</table>

13.2 Grafton Precinct Controls

The subject site is located with the Grafton Precinct of the Woollahra Heritage Conservation Area. There are a number of relevant provisions under the Woollahra Heritage DCP which have been assessed by Council Officers (including Council’s Heritage Officers) and the author of this report.

The first primary provision is C1 of Section 3.1.7 requires a minimum of 15% of the site to be Deep Soil Landscaping. The existing site provides deep soil landscaping (within the front setback area) which only amounts to approximately 9 sq. metres (2.1%) of the site. This is a significant non-compliance.
The current amended proposal seeks to provide deep soil landscaping area amounting to 48.13m² which is substantially provided in the front setback area. Thus, the amended proposal will actually increase the area of landscaping on the site and decrease the breach of Council’s Deep Soil Landscape Area requirement. In addition, the proposal provides additional landscaping in the proposed rear planter beds above the garage. These beds are not technically included in the calculation of Deep Soil Landscape Area but nonetheless still contribute to the landscaped setting.

It should be noted that the existing building footprint would allow for adequate deep soil landscaping to be provided in the rear setback area. This area is currently a gravel area and provides no deep soil landscaping. However, the amended proposal seeks to utilise this rear setback area to erect a 3 car garage. The proposal will undertake minor excavation to provide 3 new carspaces in lieu of the existing gravel parking area with the main ground level private open space area to be above the garages in a roof top garden. The provision of a garage in the rear yard is entirely consistent with the character of the locality and is considered acceptable.

The proposed garage will accommodate 3 of street parking spaces, which is 1 space in excess of the maximum control of 2 spaces. Should the garages be limited to only 2 spaces, additional deep soil landscaping can be provided. However, it is considered that the provision of 3 garage spaces is reasonable in terms of Council’s Deep Soil Landscape Area requirement and the streetscape for the following reasons:-

(i) The rear laneway is characterised by garages extending along the full extent of the rear boundary of the adjoining properties. The current proposal is consistent with the existing streetscape.

(ii) The current proposal will actually increase landscaping on site and thus reduce the current breach of Council’s Deep Soil Landscaping requirement.

(iii) The current amended proposal provides substantial planter beds on both the western (fronting the laneway) and the southern boundaries (adjoining No. 86). Whilst these planter beds are not strictly included in the calculation of “Deep Soil Landscape Area”, they will nonetheless provide a substantial improvement to the landscape setting of the site. As noted previously, an increase in the width of these planter beds was sought by the author of this report and agreed to by the Applicants.

(iv) The rear planter beds referred to in (iii) above are a significant improvement compared to adjoining properties. There are only a very limited number of existing garages which have planter beds on top.

In light of the above, it is considered that variation of Council’s Deep Soil Landscaping requirement is considered reasonable. Overall, the proposed development will provide a substantial improvement to the landscape setting of the site and the locality.

13.3 Significant items and group significant buildings

The building is not identified as a significant item or group significant building in the Woollahra HCA DCP. Please refer to the comments of Council’s Heritage Officers previously provided in this report.
13.4 Building Type Controls

The subject property is characterised as a free standing multi storey building. It is a modified Victorian period two storey dwelling of mixed architectural style, which has undergone 1920-30 additions.

O1 of 3.3.2 specifies that development must ensure that additions do not compromise the architectural style of the house.

As previously noted, this application has been considered by 2 Heritage Officers of Council. The Officers recommended certain amendments to the design which have been incorporated in the proposed conditions. The Applicants disagree with the amendments and have provided responses by their Architect and Heritage Consultant which are attached to this report for the consideration of the Development Control Committee.

13.5 General controls for development

Buildings and elements adjoining heritage items

Not applicable to this assessment.

Subdivision and site amalgamation

Not applicable to this assessment. As previously noted, the Applicants advised that the building will be used for a single dwelling only. An appropriate condition has been imposed limiting the use to a single dwelling with no subdivision allowed. The Applicants verbally agreed to this condition.

In addition, it is noted that the proposal provides a highly functional private open space area above the proposed garage which is consistent with the Objectives of a number of Council’s Development Control Plans (e.g. Objective 03 of 3.4.3 of Woollahra HCA DCP)

Building location

The location of the existing main building on-site will remain. The proposal will increase the existing amount of site coverage by constructing a new garage within the rear setback area with a roof garden above connected to the dwelling.

C5 requires that site coverage is to be no greater than that of adjoining properties. The following points are noted:-

- The existing building structure is to be retained in its current location.
- The rear building line of the dwelling is generally consistent with the rear building line of adjoining buildings.
- The rear yards of adjoining properties are generally characterised by garages/carports in the rear. The proposal is consistent with this character.
- The garages in the rear on adjoining properties generally extend along the full width of the rear boundaries. The current proposal complies with this character. However, the current proposal also provides planter beds above the garage. This desirable feature is not part of adjoining existing garages.
The proposed roof garden above the garages extends for the major part of the rear yard. It is considered that the proposed roof top garden is very reasonable particularly in light of the following:

(i) Significant planter beds are proposed to be provided around the perimeters of the roof top rear garden which will improve the landscape setting of the site and locality. The great majority of adjoining properties do not contain such planter beds. Thus, the proposed garden with associated planter beds will be an improvement to the visual appearance of the development compared to adjoining properties.

(ii) The width of the planter beds around the rear deck and then provision of trellis screens with climbing plants will ensure that there is no unreasonable privacy impact on adjoining properties. It is also noted that the adjoining property owners have not raised objection to the proposed development. Whilst the fact that the adjoining owners have not objected to the proposed development is a point in favour of the proposal, Council is still required to make its own independent assessment on the issue of overlooking. On this point, it is considered that the width of the new planter beds and the proposed trellis screens will ensure no unreasonable overlooking onto adjoining properties to either the north, south or across the laneway. It is also considered that the proposed trellis screens (with climbing plants) will also not create adverse overshadowing and visual impact when viewed from adjoining properties.

C6 requires new development to be sited to include sufficient area for deep soil planting as set out in the Precinct Controls. This issue of deep soil landscaping has been previously discussed.

C9 requires the outer edge of excavation shall not be less than 1.5 metres. The proposal seeks to undertake excavation at the rear of the site to allow for the construction of the garage to be sited up to the side boundaries. Excavation is not required along the rear boundary. However, to provide a level garage floor, excavation will occur further into the site to a maximum depth of 300mm for the main area of the garage and to a maximum depth of approximately 800mm adjoining the northern boundary. The minor extent of excavation is not considered excessive or is not likely to lead to unreasonable adverse impacts on the adjoining properties.

**Building height, form, bulk, scale and character**

The proposal seeks to increase the floor space ratio by 26.0m². The increase primarily results from the third proposed carspace.

The proposal will maintain the existing bulk and scale of the dwelling as presented to Old South Head Road and the rear of the dwelling will present a similarly scaled dwelling compared with adjoining existing developments to Icasia Lane. Thus, the proposal achieves the objective of being also consistent with the predominant form of development. The proposed 3 car garage is consistent with the predominant form of adjoining development. As previously noted, the laneway is characterised by garages extending the full width of the areas and this proposal will be consistent with this character. A pedestrian door is also provided. As previously noted, the provision of planter beds above the proposed garages will improve the landscape setting of the site compared to other existing garages in the laneway.
The shadows from the development generally fall within shadows cast by existing structures. The proposal will not unduly impact on the existing provision of solar access to the main ground private open space area of adjoining properties. The proposed trellis screens with plants to be located along the side boundaries are unlikely to create adverse impacts due to their location and the fact that they will be a landscape feature. The adjoining owners also agreed to the provision of the trellis screens. It should also be noted that the adjoining properties have rear multiple balconies which will not be unreasonably overshadowed by the proposed development (including proposed garages).

**Materials, finishes and colours**

The proposal is considered satisfactory in this regard.

**Open space and landscaping**

The controls for the Grafton Precinct set out the deep soil landscaping requirement for the site and this has been discussed above.

Objective 05 of 3.4.6 seeks to ensure that private open space areas are designed to minimise the impacts on the amenity of neighbours. It is considered that the current amended proposal satisfies this provision. Firstly, the alterations and additions to the existing building are unlikely to have an adverse impact on the amenity of neighbours. In relation to the proposed roof top garden, it is noted that the deck and roof garden are elevated above existing ground level and erected to the boundaries. Ordinarily, this would create concern in terms of amenity impacts on adjoining properties. This concern was raised in the Pre-DA Minutes and the report of Mr M. Schofield of Council. It is considered that the current amended plans now resolve the above valid concerns. The following points are noted in relation to the current set of amended plans:-

(i) The adjoining owners withdrew their objections following lodgement of the first set of amended plans in December, 2007. Since that time, additional width has been provided to the planter beds on the roof top garden which further protect adjoining properties.

(ii) The additional width in the rear planter beds will not only remove any unreasonable overlooking but will also improve the landscape setting of the subject site.

The proposal will remove the existing hardstand carparking area to the rear of the site and provide a new garage with private open space area above. This results in an improvement in terms of the amenity of the occupants of the proposed development by providing a more useful open space which is directly accessible from the main living area of the dwelling. The fact that the roof top garden will provide greater accessibility for disabled persons is a positive element. In addition, the landscape setting of the subject site and locality will be improved by the planter beds provided above the garages.

The proposal includes the provision of a spa within the roof top garden at the rear of the subject site above the garages. C15 requires that spa pools will not be permitted in the rear of properties if the deep soil landscaping cannot be met. However, as previously advised, it is considered that the proposed development (even with the spa in the rear yard) will provide an improvement in the landscaping setting and therefore variation of Council’s control is considered reasonable.
Fences, gates and retaining walls

The proposal seeks to provide a new front fence with the fence having a maximum height of 1.5 metres, excluding the pillars. This is considered acceptable and is in keeping with front fences along this section of Old South Head Road.

A rear gate is provided off the rear laneway consistent with the advice of Ms S O’Neill, Heritage Officer of Council.

Roofs and skylights

It is proposed to erect new solar tubes at roof level to provide energy to heat the proposed spa. No specific details on these tubes have been provided on the plans with regard to the size and height of the tubes. Should approval be granted, it would be recommended that this component be deleted from the proposal and details be submitted as part of a separate development application. An appropriate condition has been imposed.

Ms S. O’Neill, Heritage Officer of Council has also recommended deletion of certain skylight and roof windows. An appropriate condition has been included in the consent.

Parking and garages

The proposal seeks to construct a garage within the rear setback area providing off street car parking for 3 vehicles.

The garage does not require extensive excavation and will not affect any trees, the character of the laneway or the subject dwelling. In the author’s opinion, the proposed garage will be an improvement to the existing adjoining garages by the provision of the planter beds above the garage which is not evident on adjoining garages in the lane.

Dwelling houses may provide a maximum of 2 on-site parking spaces. The proposal seeks to provide 3 spaces. No specific objection is raised to the additional carspace.

Table 3.29 provides design controls for laneway garages with roof gardens. The proposal complies with these requirements, with the exception of door height and door width. The door height varies with the slope of the laneway complying where the level of the lane is at its highest. The non compliance at the lower end is considered acceptable.

In terms of width, 2 doors are proposed. The single garage door is proposed at a width of 2.8 metres, which complies with the maximum width of 3.3 metres. The proposal includes a double garage door with a width of 4.7 metres which does not comply. This does not have any significant detrimental effect on the laneway given the laneway is characterized by garage doors extended along the full width of the rear boundaries.

C12 of 3.4.9 states that garages with roof gardens will only be permitted on steeply sloping properties where the floor level of the roof terrace is no higher than the ground floor level of the building and the terrace is non-trafficable except for garden maintenance. The current proposal does not comply with this provision, particularly as part of the roof top garden is trafficable. Given that a DCP (and its provisions) must be the “focal point” (in the words of the Land and Environment Court) there must be strong grounds to vary a provision of the DCP. The proposed roof top garden above the garage is clearly the most contentious element of the proposed development and was the subject of critical comment in the Pre-DA Minutes of Council Officers
and the draft report of Mr Mark Schofield of Council. Mr Schofield raised a concern relating to potential overlooking impact on adjoining properties. It is considered by the author of this report that Mr Schofield’s concern relating to overlooking were valid and it is for this reason that the author required the Applicant to substantially increase the width of the planter beds to 2 metres wide along the southern and western boundaries in order to further reduce any unreasonable overlooking. Thus, the privacy measures would comprise the increased width of planter beds and the previously required landscaped trellis screens. In addition, the provision of the wider planter beds will contribute positively to the landscape setting of the site and locality. Additional points in support of the roof top garden are as follows:-

(i) The proposed roof garden is directly accessible from the deck which adjoining the living room and will a functional open space for future occupants. Thus, the amenity of future occupants will be improved consistent with the objectives of the number of Planning Controls.

(ii) There were no objections from adjoining property owners at Nos. 86 and 90 in terms of the amenity impacts on their properties. As previously noted, additional width has been provided in the planter beds around the deck to further improve the amenity of adjoining property owners.

(iii) Whilst approximately 50% of the roof top garden is trafficable, the remaining 50% comprises planter beds which is not trafficable. If the fountain in the garden is classed as non-trafficable, then only 35% of the roof top garden is trafficable.

(iv) The presentation of the proposed garage to the rear laneway is typical of adjoining developments. However, this current amended proposal provides substantial planter beds on the roof of the garage particularly along the western boundary fronting the laneway and along the southern and northern boundaries which are clearly visible from the laneway. The provisions of these planter beds will provide a substantial improvement to the landscape setting of the locality compared to adjoining properties which have garages but no roof top planter beds.

Overall, it is considered that there are strong grounds in support of the proposed roof top garden. Whilst the previous concerns of Mr M Schofield were considered to be valid, these concerns have, in the view of this author, been resolved by the current amended set of plans.

Security

The proposal is considered satisfactory in this regard.

Advertising

Not applicable to this assessment.

Acoustic and visual privacy

The acoustic and visual privacy objective is:

\[ O1 \text{ To ensure an adequate degree of acoustic and visual privacy in building design} \]

\[ O2 \text{ To minimise the impact of new development, which includes alterations and additions to existing building, on the acoustic and visual privacy of existing development on neighbouring land.} \]
Visual Privacy

The proposal seeks to provide the main private open space area in the roof top garden above the proposed garage with an elevated deck connecting this area to the dwelling.

The Land and Environment Court has established a number of Planning Principles in relation to amenity impacts including privacy. Of particular note is Meriton v Sydney City Council [2004] NSWLEC 313:

**Privacy - General principles**

*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 is in the NSW-specific Residential Flat Design Code attached to SEPP 65. AMCORD recommends a separation of 9m 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 12m between habitable rooms and balconies, 9m between a habitable and non-habitable room, and 6m between non-habitable rooms. For tall buildings (such as the proposal) it suggests 24m between habitable rooms, 18m between habitable rooms and non-habitable rooms, and 12m 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:*

(a) *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.*

(b) *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.)*

(c) *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.*

(d) *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.*
(e) 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.

(f) 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.

(g) 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.

(h) 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.

Having regard to the above principles, it is noted that:

a) Density

The site is located in a low-medium density area that is characterised by dwelling houses interspersed with residential flat buildings. Some level of mutual aural and visual privacy intrusion is unavoidable. It is reasonable to provide a level of private open space that is conducive to the enjoyment of the occupants of the dwelling, whilst maintaining a reasonable level of privacy for adjoining properties, in terms of their private open space and habitable space. Providing a level of private open space that goes beyond the immediate needs of the occupants and results in a loss of privacy could not be supported. On this point, the control for private open space for the subject site is 35m². The proposal provides open space well in excess of 35m² at the rear and above the proposed garage.

The primary issue to be considered is whether the provision of the private open space on the proposed garage is reasonable.

b) Separation

The proposed private open space is to run from the rear building line of the dwelling to the rear boundary. Most of the private open space is to be in a roof top garden above the proposed garage. The finish level of the private open space area will match the floor level of the ground floor balcony at the adjoining property to the south at No. 86 Old South Head Road.

It is considered that the previous proposal did create unreasonable potential overlooking to the adjoining property to the south at No. 86. The author agrees with the previously stated concerns of Mr Schofield of Council. Whilst a degree of overlooking is inevitable and should be accepted in a residential environment, the potential for overlooking from the proposed roof top garden onto the adjoining property at 86 Old South Head Road arising from the original proposal was unreasonable.
As a result of this concern, the author advised the Applicants that the proposed planter beds particularly along the western (facing the lane) and southern boundary (adjoining No. 86) must be increased in width to a minimum of 2 metres in order to severely limit the potential for any overlooking. As a result, the Applicants agreed to modify the proposal to provide the 2 metres wide planter beds which will not only substantially reduce any overlooking onto adjoining properties but also make a positive contribution to the landscape setting of the site. The provision of the wider planter beds with the proposed trellis screens will ensure no unreasonable privacy loss.

c) Use

The proposed use of the terrace and garden for the purposes of private open space is considered reasonable having regard to the residential nature of the property and the privacy measures incorporated. An appropriate condition is to be imposed limiting the use of the premises for the purposes of a single dwelling and no subdivision is permitted.

As previously noted, the elevated nature of the rear terrace and garden does have the potential to increase the privacy impact on adjoining properties notwithstanding the fact that the adjoining owners withdrew their objections. However, the implementation of wider planter beds and trellis screens within those beds will resolve unreasonable overlooking.

It should also be noted that the area of the rear deck is substantially above the Council’s minimum requirement for private open space being 35 sq. metre. However, the provision of additional private open space well above Council’s minimum requirement is supported for the following reasons:-

(i) The Council requirement of 35 sq. metres is a minimum control and not a maximum limit. Accordingly, it is desirable for a proposal to provide additional private open space in circumstances where there are no unreasonable adverse impacts. On this point, it is considered that there are no unreasonable adverse impacts on adjoining property owners or the locality for the reasons outlined in this report.

(ii) The adjoining owners do not object, subject to the agreed privacy measures.

(iii) The provision of an enlarged terrace actually assists in the provision of much larger planter beds on the perimeters of the roof top garden with the consequential benefits of reducing adverse overlooking and improving the landscape setting of the subject site and locality.

(iv) The private open space at the rear is the primary area for the future occupants. The proposed private open space contains 2 parts; the first part being timber decking with a spa which is the more active area with a second area being an ornamental garden surrounded by the planter beds on 3 sides. Thus, the future occupants will enjoy 2 different types of private open space which is desirable. Furthermore, the proposed private open space will assist in the development being very accessible for the future occupants from a disabled access perspective which is also desirable and consistent with objectives contained in Council’s LEP and Access DCP.

d) Design

The roof top garden has been proposed at the subject level to allow for the proposed garage underneath. Due to the level of the laneway and the requirements under AS2890.1, a lower level for the garage roof is not achievable.
The use of planter boxes surrounding the garage roof is an appropriate design solution.

e) Importance of private open space

The private open space area of the subject dwelling and those adjoining have been given equal importance in this assessment.

f) Use of treatment devices

As previously advised, wider planter beds and trellis screens have been incorporated in the current amended plans which will have desirable results in terms of the amenity adjoining owners and the streetscape.

g) Landscaping

Mr Mark Schofield of Council previously advised that landscaping should not be relied on as a sole protection against overlooking. The author of this report agrees with this comment which is consistent with a Planning Principle of the Land and Environment Court.

Instead of proposed landscaping, the major privacy measure incorporated in the current amended set of plans is wide planter beds which physically separate the viewer from adjoining properties. Not only is there additional separation distance provided by the wider planter beds, there will be landscaping within those planter beds which will further assist privacy. The provision of trellis screens will also assist privacy. Thus, the proposed landscaping is not the sole privacy measure but a contributor to a reasonable level of privacy.

Acoustic Privacy

On the issue of acoustic privacy, it is noted that the rear private open space deck is much larger than Council’s minimum requirement of 35 sq. metres. However, in the circumstances of this case, it is considered that such an area is reasonable on acoustic grounds for the following reasons:-

(i) The area of the private open space has been significantly reduced under the current amended set of plans by the provision of much wider planter beds around the perimeters of the deck.

(ii) A condition of consent (agreed to by the Applicants) is that the building be used for a dwelling house only with no future subdivision (either Strata, Company or Torrens Title) in the future. The conversion of the existing flat building back into a house is likely to reduce potential acoustic impact.

(iii) The main area of private open space, whilst exceeding Council’s requirement, is not inordinately large. Whilst there would be some acoustic impact from activities normally associated with the dwelling house in the future, some degree of acoustic impact is inevitable.
Conclusion

Having regard to the above assessment against the above planning principles, it is considered that acoustic and visual privacy objective and performance criteria of the Woollahra Heritage Conservation Area DCP are complied with.

Stormwater management

This is considered acceptable, subject to the submission of further details with the Construction Certificate, should approval be granted.

Site facilities and aerial devices

Not applicable to this assessment.

Energy efficiency

A BASIX certificate has been submitted with the development application outlining commitments to ensure the adequate energy efficiency of the dwelling.

The proposal will ensure adequate solar access is provided to north facing windows of the subject building and adjoining properties.

Access and Mobility

The proposed development is generally consistent with the objectives of the access and mobility controls, as it proposes works which will improve the functionality of the building to serve people with disabilities.

C1 of Section 3.4.16 requires that developments comply with the requirements of the Access DCP. The compliance of the proposal with the Access DCP is assessed below.

13.6 Woollahra Access DCP

The objectives of the Access DCP include:

\[(iv) \text{ to create appropriate levels of access and mobility when alterations and additions} \]
\[\text{are proposed to existing buildings including existing commercial and industrial buildings.} \]

A similar objective is contained in Council’s WLEP.

As noted previously, a report has been submitted by Mr M. Relf, Access Consultant who strongly supports the proposal from a disabled access perspective.

The proposed development is consistent with this objective as it provides appropriate access for the needs of the disabled owner. However, as previously noted, whilst the issue of disabled access is relevant, it has not been a determinative issue in this assessment. The proposal is considered to be reasonable even if one disregards the issue of accessibility.
The requirements of the access code vary dependent upon the classification of the building under the Building Code of Australia. The subject application proposes to create a single detached dwelling which would be classified as a Class 1 building. The DCP encourages visitor access to Class 1 buildings. The proposal is considered satisfactory in this regard.

13.7 Other DCPs, codes and policies

No other policies are applicable.

14. APPLICABLE REGULATIONS

Not applicable to this assessment.

15. THE LIKELY IMPACTS OF THE PROPOSAL

Section 79C of the Environmental Planning and Assessment Act 1979 requires Council to take into consideration the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

In this assessment specific consideration must be given to the social impacts of the development, as a key objective of the development is create a level private open space area, as is needed by one of the owners who has limited and deteriorating vision.

However, whilst the personal circumstances of the future occupants of the dwelling is a relevant consideration, it should not be determinative particularly in view of the likelihood that the premises will be sold in the future to a 3rd party who will most likely not have the personal circumstances. Accordingly, it is considered that the development must be objectively assessed against the relevant requirements of the Planning Controls. It is considered that the proposed development, particularly the rear elevated garden, is a reasonable development in view of the following:-

(i) The proposal will improve and upgrade the appearance of the existing building itself subject to the comments of Council’s Heritage Officers.
(ii) The proposal, by the of wide planter beds on the rear roof top garden will improve the landscape setting compared to the existing situation. In addition, the provision of landscape planter beds above the garage will be a significant improvement compared to other rear structures in the laneway.
(iii) There are no unreasonable adverse impacts on adjoining property owners. This point is confirmed, in part, by the fact that immediately adjoining owners have withdrawn their objections. The additional privacy measures in the current set of plans are of particular importance.
(iv) The proposal will provide a dwelling which provides a high level of internal amenity consistent with Council’s Planning Controls.
(v) The proposal will provide formal on-site carparking by way of an enclosed garage instead of the existing unattractive unsealed rear yard.
(vi) The proposal will increase on-site landscaping within the front setback to Old South Head Road. In combination with the upgrading of a front facade (subject to recommended amendments of Council’s Heritage Officers, there will be an improved appearance of the development from Old South Head Road.
16. THE SUITABILITY OF THE SITE

There is no evidence to suggest that the site is unsuitable for the subject proposal.

17. SUBMISSIONS

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

- Paul Adams, 90 Old South Head Road, Woollahra
- Suzanne Stevens, 32 Edgecliff Road, Woollahra
- Alan Mather, 86 Old South Head Road, Woollahra

Following discussions between the Applicant and the objectors, all objections were withdrawn, subject to the submission of amended plans numbered ATHB01 – ATHB03 inclusive, Issue A which primarily involved the provision of additional privacy measures.

Following withdrawal of the objections from adjoining owners, a further set of amended plans were lodged with Council in January, 2009 (Issue B) which substantially increases the width of the planter beds on the rear deck which further reduces any unreasonable overlooking and also improves the landscape setting of the subject site and adjoining locality.

The current amended proposal Issue B, (as defined by Clause 90 of the Environmental Planning and Assessment Regulation 2000) was not formally renotified under clause 5.1 of the DCP because, having considered clause 9 of the DCP, the replacement application is substantially the same development as the original proposal and considered to have no greater environmental impact upon neighbours. However, in the interests of procedural fairness, the author personally spoke to the owners of both immediately adjoining properties (Nos. 86 and 90) and also met with the adjoining owner to the south at No. 86 to discuss the amended plans. Both owners did not object to the current amended set of plans subject to the provision of the agreed privacy measures.

It is considered that the current amended proposal (Issue B) will further reduce any potential impact on adjoining property owners by reason of the increased planter beds on the rear deck.

18. CONCLUSION - THE PUBLIC INTEREST

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

The main contentious element is the proposed roof top garden and garage below. It is considered that the current amended proposal will result in a very reasonable development which will be much improved compared to the existing garages in the streetscape. In particular, the following points are noted:-

- The proposed garage is entirely consistent with adjoining garages.
- The proposed planter beds on top of the garage will provide an improved landscape setting compared to adjoining existing garages which generally do not have such planter beds.
- Amenity impacts have been resolved subject to the privacy measures incorporated in the current set of amended plans.
The roof top garden will provide an improved amenity for future occupants and will provide an improved dwelling in terms of accessibility which is consistent with a number of Council’s Planning Controls.

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

THAT Council, as the Consent Authority, approved Development Consent to Development Application No. 616/2007 for alterations and additions to an existing building including new garage with roof top garden, spa and deck into yard, air-conditioning system and new first floor balcony on land at 88 Old South Head Road, Woollahra subject to the following conditions.

A. General Conditions

A.1 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.

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Author/Drawn</th>
<th>Date(s)</th>
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<tr>
<td>ATHB01 – ATHB03 inclusive Revision C</td>
<td>Architectural Plans</td>
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<td>28.1.2009</td>
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<td>A16873</td>
<td>BASIX Certificate</td>
<td>Department of Planning</td>
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<td></td>
<td>Arborist Report</td>
<td>Trees Naturally</td>
<td>October 2007</td>
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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.)

A.2 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.

A.3 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, piering, 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.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 Development Consent is not Granted in Relation to these Matters

This approval does not give consent to the proposed solar tubes at roof level. A separate Development Application or Complying Development Certificate and Part 4A Certificates, as appropriate, will need to be obtained prior to the such development work commencing. Furthermore, any application shall provide all details of the solar tubes including but not limited to, the height and size of such tubes.

Standard Condition: A9

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

B.1 Establishment of Tree Protection Zones

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

a) Tree Protection Zone areas

<table>
<thead>
<tr>
<th>Council Reference No.</th>
<th>Species</th>
<th>Location</th>
<th>Radius from Trunk (Metres)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Castanospermum australe</td>
<td>Black Bean</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Council Street Tree</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*NB: Where this condition relates to street trees and the fence cannot be placed at the specified radius, the fencing is to be positioned so that the entire verge (nature strip) area in front of the subject property, excluding existing driveways and footpaths, is protected.
b) Tree Protection Zones are to be fenced with a 1.8 metre high chainmesh or weldmesh fence to minimise disturbance to existing ground conditions. The area within the fence must be mulched, to a depth of 75mm, irrigated and maintained for the duration of the construction works.

c) A sign must be erected on each side of the fence indicating the existence of a Tree Protection Zone and providing the contact details of the site Arborist.

d) The storage of materials, stockpiling, siting of works sheds, preparation of mixes, cleaning of tools or equipment is not permitted within Tree Protection Zones.

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

Standard Condition: B5

B.2 Construction Certificate required prior to any demolition

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

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

Standard Condition: B1

C. Conditions which must be satisfied prior to the issue of any Construction Certificate

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

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

a) The proposed new parapet over the existing front north-eastern balcony fronting Old South Head Road is to be deleted.

b) The provision of a 8 metre vehicular crossover on the boundary with Icasia Lane.

c) The proposed skillion roof over the rear section of the terrace house fronting Icasia Lane shall be expressed externally and not a concealed by a parapet wall.

d) The proposed rear verandah shall be amended to be expressed as an attached, lightweight structure, with a roof separated from the main roof and using material similar to traditionally materials with simplifying detailing.

e) The proposed skylights within the principle building form shall be deleted.

f) The proposed solar tubes at roof level shall be deleted.

Note: The effect of these conditions are that they require design changes and/or further information to be provided with the Construction Certificate drawings and specifications to address specific issues identified during assessment under Section 79C of the Act.

Note: Clause 146 of the Regulation prohibits the issue of any Construction Certificate subject to this condition unless the Certifying Authority is satisfied that the condition has been complied with.
Note: Clause 145 of the Regulation prohibits the issue of any Construction Certificate that is inconsistent with this consent.
Standard Condition: C4

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

The person(s) with the benefit of this consent must pay the following long service levy, security, development levy, and fees prior to the issue of any Construction Certificate, Subdivision Certificate or Occupation Certificate, as will apply.

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

a. prior to the issue of a Construction Certificate, where a Construction Certificate is required; or
b. prior to the issue of a Subdivision Certificate, where only a Subdivision Certificate is required; or
c. prior to the issue of an Occupation Certificate in any other instance.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Indexed</th>
<th>Council Fee Code</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LONG SERVICE LEVY</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>under Building and Construction Industry Long Service Payments Act 1986</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long Service Levy</td>
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<td></td>
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<tr>
<td>Use Calculator:</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Contact LSL Corporation or use their online calculator</td>
<td></td>
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<tr>
<td>Indexed</td>
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</tr>
<tr>
<td>No</td>
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<td></td>
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<tr>
<td><strong>SECURITY</strong></td>
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<tr>
<td>under section 80A(6) of the Environmental Planning and Assessment Act 1979</td>
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</tr>
<tr>
<td>Property Damage Security Deposit - Making good any damage caused to any</td>
<td>$8,000</td>
<td>No</td>
<td>T600</td>
</tr>
<tr>
<td>property of the Council as a consequence of the doing of anything to which the consent relates.</td>
<td></td>
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<td></td>
</tr>
<tr>
<td><strong>DEVELOPMENT LEVY</strong></td>
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<td></td>
</tr>
<tr>
<td>under Woollahra Section 94A Development Contributions Plan 2005</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>This plan may be inspected at Woollahra Council or downloaded from our</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Development Levy</td>
<td>$2000 + Index Amount</td>
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<td>T94</td>
</tr>
<tr>
<td><strong>INSPECTION FEES</strong></td>
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<tr>
<td>under section 608 of the Local Government Act 1993</td>
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<tr>
<td>Public Road and Footpath Infrastructure Inspection Fee</td>
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<td>T99</td>
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<tr>
<td>Security Administration Fee</td>
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<td><strong>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</strong></td>
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<td></td>
</tr>
<tr>
<td>Plus any relevant indexed amounts and long service levy</td>
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</tbody>
</table>
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

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

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

How will the section 94A levy be indexed?

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

Do you need HELP indexing the levy?

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

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

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

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

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

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

c) the bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent; and

d) the bank’s obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

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

Standard Condition: C5

C.3 BASIX commitments

The applicant must submit to the Certifying Authority BASIX Certificate No. A16873 with any application for a Construction Certificate.

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

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

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

Standard Condition: C7

C.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:

a. Full width vehicular crossings having a width of 8 metres 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: When a large Roads Act is required, then four (4) weeks is to be allowed for assessment.

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 Amended Landscape Plan

An amended Landscape Plan, prepared by a qualified Landscape Architect or Landscape Designer, in accordance with Councils DA Guide Annexure 8 and conforming to the conditions of this Development Consent is to be submitted to Council for approval prior to issue of the Construction Certificate. Additionally, the amended landscape plan must include the following:

- The new plantings in the rear planter beds are to be limited to a maximum maturity height of 1.0-1.5m above the floor level of the rear terrace (RL 82.85)

C.6 Structural Adequacy of Existing Supporting Structures

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

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

Standard Condition: C35

C.7 Bicycle, Car and Commercial Parking Details


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 14 December 2006)

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

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

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

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


Standard Condition: C49

C.9 **Swimming and Spa Pools – Child Resistant Barriers**

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

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

Standard Condition: C55
C.10 Swimming and Spa Pools – Backwash

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

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

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

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

Prior to the issuing of a Construction Certificate, a report must be submitted by a qualified BCA Consultant confirming that all works comply with the requirements of the Building Code of Australia.
D.2 Construction Management Plan

As a result of the site constraints, limited space and access a Construction Management Plan is to be submitted to Council. Due to the lack of on-street parking availability a Work Zone may be required from Council during construction.

A construction management plan must be submitted and approved by Council’s Development Engineer. The plan must:

a. describe the anticipated impact of the construction works on:
   - local traffic routes
   - pedestrian circulation adjacent to the building site
   - and on-street parking in the local area, and;

b. describe the means proposed to:
   - manage construction works to minimise such impacts,
   - provide for the standing of vehicles during construction,
   - provide for the movement of trucks to and from the site, and deliveries to the site, and;

c. show the location of:
   - any site sheds and any anticipated use of cranes and concrete pumps,
   - any areas of Council property on which it is proposed to install a Works Zone (Construction Zone),
   - structures to be erected such as hoardings, scaffolding or shoring,
   - any excavation.

d. describe the excavation impact on the area including
   - Number and types of trucks to be used
   - Time frame
   - Streets to be used
   - Routes to be taken
   - Directions of travel
   - Truck storage areas
   - It is recommended that vehicle routes be shared
   - Excavation is to only be carried out outside peak and school hours between 9.30am to 2.30pm week days
   - The CMP is to include both demolition and excavation works.

e. show the location of all Tree Protection (Exclusion) Zones as required within the conditions of this development consent.

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. Standing of cranes and concrete pumps on Council property will need approval on each occasion.

Note: A minimum of eight weeks will be required for assessment. Work must not commence until the Construction Management Plan is approved. Failure to comply with this condition may result in fines and proceedings to stop work.

Standard Condition: D9
D.3 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.4 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

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

a. a Construction Certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited Certifier, and

b. the person having the benefit of the development consent has:
   i. appointed a principal certifying authority for the building work, and
   ii. notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
b1. the principal certifying authority has, no later than 2 days before the building work commences:
   i. notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
   ii. notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and

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

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

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

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

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

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

Standard Condition: D15

D.5 Notification of Home Building Act 1989 requirements

a. For the purposes of section 80A (11) of the Act, the requirements of this condition are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the Home Building Act 1989.

b. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
i. in the case of work for which a principal contractor is required to be appointed:
   • the name and licence number of the principal contractor, and
   • the name of the insurer by which the work is insured under Part 6 of that Act,

ii. in the case of work to be done by an owner-builder:
   • the name of the owner-builder, and
   • if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

c. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

d. This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State’s building laws.

D.6 Establishment of boundary location, building location and datum

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

a. the boundaries of the site by permanent marks (including permanent recovery points);

b. the location and level of foundation excavations, footings, walls and slabs by permanent marks, pegs or profiles relative to the boundaries of the land and relative to Australian Height Datum (“AHD”) in compliance with the approved plans;

c. establishes a permanent datum point (bench mark) within the boundaries of the site relative to AHD; and

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

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

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

E. Conditions which must be satisfied during any development work

E.1 Tree Preservation & Approved Landscaping Works

All landscape works must be undertaken in accordance with the approved amended landscape plan to be approved by Council and the Arborist report.
a) The following trees must be retained:

**Trees on Private Land**

<table>
<thead>
<tr>
<th>Council Reference No:</th>
<th>Species</th>
<th>Location</th>
<th>Dimension (Metres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><em>Persea americana</em> Avocado</td>
<td>Overhanging from northern neighbours property</td>
<td>3 metres into site</td>
</tr>
</tbody>
</table>

**Trees on Council Land**

<table>
<thead>
<tr>
<th>Council Reference No:</th>
<th>Species</th>
<th>Location</th>
<th>Dimension (Metres)</th>
<th>Tree Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td><em>Castanospermum australe</em> Black Bean</td>
<td>Council Street Tree</td>
<td>7 m x 6m</td>
<td>$1567</td>
</tr>
</tbody>
</table>

*Note:* The tree trees required to be retained should appear coloured green on the Construction Certificate plans.

d) The following trees may be pruned in accordance with Australian Standard AS 4373 – 2007 “Pruning of Amenity Trees” and Workcover NSW Code of Practice Amenity Tree Industry, 1998 to the minimum extent necessary to provide clearance to the new development:

<table>
<thead>
<tr>
<th>Council Reference No:</th>
<th>Species</th>
<th>Location</th>
<th>Approved pruning specification (extent of pruning)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><em>Persea americana</em> Avocado</td>
<td>Overhanging from northern neighbours property</td>
<td>Minimal pruning to clear building works</td>
</tr>
</tbody>
</table>

*Note:* The tree trees required to be pruned should appear coloured blue on the Construction Certificate plans.

*Note:* Water Restrictions take precedence over this condition.

*Note:* Having regard to water restrictions manual hosing may be necessary.

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

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

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

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

This condition does not apply:
a. to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4) of the Regulation, or

b. to the erection of a temporary building.

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

Standard Condition: E1

E.3 Compliance with Australian Standard for Demolition


Standard Condition: E2

E.4 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.5 Critical Stage Inspections

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

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

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

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

Standard Condition: E5

E.6 Hours of Work —Amenity of the neighbourhood

a) No work must take place on any Sunday or public holiday,

b) No work must take place before 7am or after 5pm any weekday,

c) No work must take place before 7am or after 1pm any Saturday, and
d) No piling, piering, 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.


Standard Condition: E6

E.7 Maintenance of Vehicular and Pedestrian Safety and Access

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

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

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

a. Australian Standard AS 1742 (Set) Manual of uniform traffic control devices and all relevant parts of this set of standards.
b. Australian Road Rules to the extent they are adopted under the Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999.
Note: Section 73 of the Road Transport (Safety and Traffic Management) Act 1999 allows the Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose. Any road closure requires Police approval.

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

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

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

- Part C Management of Waste:
  "1. For fee or reward, transport waste over or under a public place
  2. Place waste in a public place
  3. Place a waste storage container in a public place."

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

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

Standard Condition: E7

E.8 Tree Preservation

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

General Protection Requirements:

a. There must be no excavation or work within the required Tree Protection Zone(s). The Tree Protection Zone(s) must be maintained during all development work.

b. Where excavation encounters tree roots with a diameter exceeding 40mm excavation must cease. The principal contractor must procure an inspection of the tree roots exposed by a qualified arborist. Excavation must only recommence with the implementation of the recommendations of the qualified arborist or where specific instructions are given by Council's Tree Management Officer in strict accordance with such Council instructions.

c. Where there is damage to any part of a tree the principal contractor must procure an inspection of the tree by a qualified arborist immediately. The principal contractor must immediately implement treatment as directed by the qualified arborist or where specific instructions are given by Council's Tree Management Officer in strict accordance with such Council instructions.


Standard Condition: E8
E.9 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;


Standard Condition: E11

E.10 Support of adjoining land and buildings

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

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

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

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

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

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

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

Standard Condition: E13
E.11 Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum

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

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

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

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

Standard Condition: E20

E.12 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 downloaded free of charge from Council’s web site www.woollahra.nsw.gov.au or obtained from Council’s office.
Note 2: Special precautions must be taken when removing asbestos or lead materials from development sites. Additional information can be obtained from www.workcover.nsw.gov.au and www.epa.nsw.gov.au. Other specific condition and advice may apply.

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

Standard Condition: E23

E.13 Swimming and Spa Pools – Temporary Child Resistant Barriers and other matters

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

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

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

Standard Condition: E26

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

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

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

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

Standard Condition: F1

F.2 Amenity Landscaping

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

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

Standard Condition: F6

F.3 Commissioning and Certification of Systems and Works

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

Works-as-executed (“WAE”) plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA must including but may not be limited to:
a) Certification from the supervising professional engineer that the requirement of the Geotechnical / Hydrogeological conditions and report recommendations were implemented and satisfied during development work.

b) All flood protection measures.

c) All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1 – “Off-Street car parking.”

d) All stormwater drainage systems.

e) All mechanical ventilation systems.

f) All hydraulic systems.

g) All structural work.

h) All acoustic attenuation work.

i) All waterproofing.

j) Such further matters as the Principal Certifying Authority may require.

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

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

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

Standard Condition: F7

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

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


c. Public Pools must comply with the NSW Health Public Swimming Pool and Spa Pool Guidelines in force at that time and private pools are encouraged to comply with the same standards as applicable.

d. Water recirculation and filtration systems must be installed in compliance with AS 1926.3-2003: Swimming pool safety - Water recirculation and filtration systems.

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

e. Water recirculation and filtration systems must be connected to the electricity supply by a timer that limits the systems operation such that it does not operate:

f. before 8 am or after 8 pm on any Sunday or public holiday, or before 7 am or after 8 pm on any other day.


Standard Condition: F13
G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate

Nil

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

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

All BASIX commitments must be effected in accordance with the BASIX Certificate No. A16873.

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

Standard Condition: H7

H.2 Landscaping

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

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

Standard Condition: H9

H.3 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:

i. stormwater pipes, pits and connections to public stormwater systems within the road;
ii. driveways and vehicular crossings within the road;
iii. removal of redundant driveways and vehicular crossings;
iv. new footpaths within the road;
v. relocation of existing power/light pole
vi. relocation/provision of street signs
vii. new or replacement street trees;
viii. 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.
ix. new or reinstated kerb and guttering within the road; and
x. new or reinstated road surface pavement within the road.
I. Conditions which must be satisfied during the ongoing use of the development

I.1 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. A16873.

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

I.2 Noise from mechanical plant and equipment

Noise from the operation of all mechanical plant and equipment (including, but not limited to, air conditioning units, spa pool machinery and any other plant or equipment) must not exceed background noise when measured at the nearest lot boundary of the site. Where noise sensitive receivers are located within the site, noise from the operation of mechanical plant and equipment must not exceed background noise when measured at the nearest strata, stratum or community title boundary.

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

Note: Words in this condition have the same meaning as in the:  
ISBN 0 7313 2715 2, dated January 2000, and  

I.3 Maintenance of Landscaping

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

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

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

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

I.4 Swimming and Spa Pools – Maintenance

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

- before 8 am or after 8 pm on any Sunday or public holiday, or
- before 7 am or after 8 pm on any other day.

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


Standard Condition: I13

I.5  **Outdoor lighting – Residential**

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

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

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

Standard Condition: I42

I.6  **Noise Control**

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

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


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


J. Miscellaneous Conditions

J.1 Use of premises

The subject building is to be used as a single dwelling constituting only 1 domicile and this approval does not allow the use of the premises for the purpose of separate domiciles. In addition, there shall be no subdivision of any form permitted for the approved dwelling.

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.

K.3 Builders Licences and Owner Builders Permits

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

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

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

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.

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 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 Dividing Fences

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

**Note:** Further information can be obtained from the NSW Department of Lands - http://www.lands.nsw.gov.au/LandManagement/Dividing+Fences.htm. Community Justice Centres provide a free mediation service to the community to help people resolve a wide range of disputes, including dividing fences matters. Their service is free, confidential, voluntary, timely and easy to use. Mediation sessions are conducted by two impartial, trained mediators who help people work together to reach an agreement. Over 85% of mediations result in an agreement being reached. Mediation sessions can be arranged at convenient times during the day, evening or weekends. Contact the Community Justice Centre either by phone on 1800 671 964 or at http://www.cjc.nsw.gov.au/.

Standard Advising: K10
K.8 Appeal

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

Mr Patrick Robinson - Manager on (02) 9391 7081

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 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.10 Pruning or Removing a Tree Growing on Private Property

Woolahra 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

MR TONY MOODY
CONSULTANT TOWN PLANNER

ANNEXURES

1. Plans and elevations
2. Referral Response: Technical Services
3. Referral Response: Landscaping Officer
4. Referral Response: Heritage Officers (x2)
5. Response by Architect and heritage Consultant for Applicant.
6. Letter from Trevor and Trudie Atherton discussing Access and Mobility Issues
POLITICAL DONATIONS DECISION MAKING FLOWCHART
FOR THE INFORMATION OF COUNCILLORS

Matter before Committee or Council meeting

Did the applicant, owner (if not the applicant) or someone close to the applicant make a donation in excess of $1,000 that directly benefited your election campaign? (Code of Conduct Cl 7.23)

Action
Declare a significant non-pecuniary conflict of interest, absent yourself from the meeting and take no further part in the debate or vote on the matter (Code of Conduct Cl 7.17(b))

Yes

Did the applicant or someone close to the applicant make a donation less than $1,000 that directly benefited your election campaign? (Code of Conduct Cl 7.23)

Action
Do you believe the political contribution creates a significant non-pecuniary conflict of interest for you? (Code of Conduct Cl 7.24)

Yes

Action
Declare a significant non-pecuniary conflict of interest, absent yourself from the meeting and take no further part in the debate or vote on the matter (Code of Conduct Cl 7.17(b))

No

Action
Consider appropriate action required. This could include limiting involvement by:
1. participating in discussion but not in decision making (vote),
2. participating in decision making (vote) but not in the discussion
3. not participating in the discussion or decision making (vote)
4. removing the source of the conflict

No

Staff to record decision process (motions/amendments) and Division of votes for the determinative resolution or recommendation in the meeting minutes

Is the matter before the meeting a Planning Matter?

Yes

Action
Participate in debate and vote on the matter

No

or

Action
Consider appropriate action required. This could include limiting involvement by:
1. participating in discussion but not in decision making (vote),
2. participating in decision making (vote) but not in the discussion
3. not participating in the discussion or decision making (vote)
4. removing the source of the conflict

No

Staff to record decision process (motions/amendments) and determinative resolution or recommendation in the meeting minutes

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