

ANNEXURE 7



Land and Environment Court
of New South Wales

CITATION : Anglican Parish of Watsons Bay v Woollahra Municipal Council
[2010] NSWLEC 1326

PARTIES : APPLICANT
Anglican Parish of Watsons Bay

RESPONDENT
Woollahra Municipal Council

FILE NUMBER(S) : 10393 of 2010

CORAM: Brown C

KEY ISSUES: DEVELOPMENT APPLICATION :- 2 lot Torrens title subdivision -
impact on the heritage significance of heritage item and heritage item in
the vicinity of the site - potential demolition of existing church hall -
whether dwelling can be erected on new lot

LEGISLATION CITED: Environmental Planning and Assessment Act 1979
Woollahra Local Environmental Plan 1995
draft Woollahra Local Environmental Plan 1995 (Amendment 66)

CASES CITED: Dem Gillespies v Warringah Council [2002] NSWLEC 224
Hospital Action Group Association Inc v Hastings Municipal Council
(1993) 80 LGERA 190
Parrot v Kiama [2004] NSWLEC 77
Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21

DATES OF HEARING: 15, 16 November 2010

DATE OF JUDGMENT: 26 November 2010

LEGAL REPRESENTATIVES: APPLICANT
Mr G Green, solicitor
SOLICITORS
Pikes Lawyers

RESPONDENT
Mr P Rigg, solicitor
SOLICITORS
Norton Rose

JUDGMENT:

**THE LAND AND
ENVIRONMENT COURT
OF NEW SOUTH WALES**

Brown C

26 November 2010

10393 of 2010 Anglican Parish of Watsons Bay v Woollahra Municipal Council

JUDGMENT

1 COMMISSIONER: This is an appeal against the refusal by Woollahra Municipal Council (the council) of Development Application No. 09/0439 for the subdivision of the property at 32B Fitzwilliam Road, Vaucluse (the site) into two Torrens title lots.

2 The contentions identified by the council relate to be unacceptable impact on the heritage significance of the site, through the likely demolition of the existing church hall (the Hall), the proximity to the Wentworth Memorial Church (the Church) and the heritage landscape qualities of the site. The council also raises the unacceptable impact on the heritage significance of a heritage item in the vicinity of the site, being the Wentworth Mausoleum.

The site

3 The site is Lot 1 in DP 871485. It is generally rectangular in shape with a 36.7 m frontage to Fitzwilliam Road, a north-western side boundary of 60 m, a south-eastern side boundary of 58.35 m and a rear boundary of 45.9 m, giving a total site area of 2693 sq m.

4 The site rises approximately 8 m from the street frontage to the rear of Lot 1 where the Church is located. A drive way is provided off Fitzwilliam Road to a small car park located below the Church. The Hall is located towards the Fitzwilliam Road frontage. Regular church services ceased at the Church from around 2006 and the previous use of the Hall as a child-care centre has also ceased.

5 The area is predominately residential in character with multi-level housing occupying the moderately steep topography of the area.

The proposal

6 The amended proposal provides for the Torrens title subdivision of Lot 1 into two lots, comprising:

- Lot 11 which has an area of 724 sq m and contains the existing Hall with a frontage to Fitzwilliam Road of approximately 25 m,
- Lot 12 which has an area of 1976 sq m and contains the existing Church. The existing access, driveway and parking area for the Church are retained on this lot.

7 The proposal does not seek the demolition of existing Hall but provides a hypothetical building envelope for a dwelling located in the general area of the Hall based on the requirements in *Woollahra Residential Development Control Plan 2003* (DCP 2003). The evidence addressed the likelihood of the Hall being demolished and a residential dwelling erected on proposed Lot 11.

Relevant planning controls

8 The site is within Zone No 2(a)-(Residential "A" Zone) under *Woollahra Local Environmental Plan 1995* (LEP 1995). Subdivision of land is permissible but is subject to other provisions in LEP 1995. Clause 8(4) provides:

(4) The development control table for each zone must be read subject to the special provisions and heritage provisions in Part 3 and 4 of this plan, respectively. In the event of any inconsistency between a provision of a development control table relating to a zone and a special provision or a heritage provisions in Part 4 and 5 of this plan, the special provision or heritage provision shall prevail.

9 Clause 8(5) provides:

(5) The Council shall not grant consent to the carrying out of development of land to which this plan applies unless the Council is of the opinion that the carrying out of the development is consistent with the such objectives of this plan and of the zone within which the development is proposed to be carried out as apply to that development.

10 The relevant objectives of the plan were identified as:

(f) in relation to landscape -

(i) to protect and enhance the natural landscapes throughout the area of Woollahra,

(ii) to promote the retention of trees and the planting of suitable new trees in appropriate locations,

(iii) to control will minimise the impact of future development upon natural features such as significant trees water stands of trees, ridgelines or land within view of any waterway

(g) in relation to heritage conservation -

(i) to identify heritage items and heritage conservation areas and to provide measures for their conservation, protection and enhancement,

(ii) to ensure that new development is undertaken in a manner that is sympathetic to and does not detract from the heritage significance of heritage items and their settings and of heritage conservation areas,

(iii) to encourage the restoration already construction of buildings or works which are heritage items or buildings and works that contribute to the character of heritage conservation areas,

(vi) to require, when considered necessary, the consideration of a statement of heritage significance or a conservation plan before consent is granted for development relating to a heritage item will development within a hair at its conservation area, and

11 The relevant zone objectives are:

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

(b) to allow certain non-residential development of low intensity which is compatible with the residential character and amenity of the locality,

12 Schedule 3 provides a list of heritage items. The relevant items are identified as:

Fitzwilliam Road - Grounds and native vegetation of Wentworth Memorial Anglican Church.

13 The NSW Heritage Branch inventory listing relevantly describes the site in the following terms:

Item

Name of Item: Grounds and native vegetation of Wentworth Memorial Anglican Church

Type of Item: Landscape

Group/Collection: Landscape - Cultural

Category: Historic Landscape

Primary Address: Fitzwilliam Road

Statement of Significance:

The site is significant as it forms part of the original Crown Grant to Thomas Laycock in 1793. Ownership transferred to the barrister and statesman William Charles Wentworth in 1827 and the Wentworth Memorial Church is significant as it was constructed with a bequest from Wentworth upon his death in 1873. The site was a favourite spot of Wentworth and the Wentworth Mausoleum, also on the site, has state historic significance as the burial place of William Charles Wentworth. The Wentworth Memorial Church has aesthetic significance as a design by architect Donald Gazzard of Clarke, Gazzard and Partners and it was completed in September 1965.

14 The other relevant item in Schedule 3 is:

- Chapel Road – Wentworth Mausoleum, surrounding stone and wrought iron fence, grounds, trees.

15 Part 4 provides heritage provisions. Clause 26(2) states that consent shall not be granted unless consideration has been given to the extent to which the proposed development would affect the heritage significance of the item and... any stylistic or horticultural features of its setting. Clause 27 provides that consideration must be given to the likely effect of the proposed development on the heritage significance of a heritage item.... and on its setting,

when determining an application for consent to carry a development on land in its vicinity.

16 The site is also subject to *draft Woollahra Local Environmental Plan 1995 (Amendment 66)* (the draft Plan). The draft Plan adds properties to the schedule of heritage items in LEP 1995, and includes:

- 32B Fitzwilliam Road Vacluse - Wentworth Memorial Church - Church and grounds.

17 The draft Plan has completed its exhibition period and is subject to a report to council recommending gazettal by the Department of Planning.

The evidence

18 Ms Sara Reilly, a heritage architect provided evidence for the council. Mr Robert Staas, a heritage architect and Mr Chris Betteridge, a landscape heritage consultant provided evidence for the applicant. A number of parishioners from the Anglican Parish of Watsons Bay provided evidence at the site inspection opposing the development. Their concerns, not already identified by the council, relate to:

- the removal of vegetation,
- the previous use of the Hall as a pre-school kindergarten should be reactivated,
- the proposed subdivision will impact on the heritage significance of the access to the Church,
- the subdivided lot is inappropriate for a dwelling because of its size,
- the Hall is an important part of church activities, and
- to subdivide the land is to show great disrespect to the War Memorial Church and the reasons why it was constructed.

19 A number of parishioners also spoke in support of the application on the basis that:

- the subdivision will not have a detrimental effect the heritage values of the Church or the land,
- services at the Church were discontinued in 2006 due to a lack of support,
- the Parish currently has a viable congregation at St Peters at Watsons Bay,
- the steep access to the Church is difficult for the elderly and mothers with prams,
- the Hall has ceased to be used when the previous pre-school kindergarten departed,
- the Church has very little support for non-worship activities and because of this, there is no purpose for the Hall,
- the best use of resources is to sell the Hall and carry out the renovations to the new hall at St Peters, and
- the church has insufficient funds to maintain the Church, particularly considering the structural and water leakage issues.

20 A single local resident supported the proposed subdivision. She stated that the use of the land for a dwelling was the only viable use and that the commercial use of the Hall was not appropriate given the lack of parking available on the site and the potential loss of existing vegetation.

Heritage impact

Reilly evidence

21 Ms Reilly provided a comprehensive history on the Wentworth Family, particularly William Charles Wentworth, the Hall, the Church and the subdivisions that have taken place over time. She states that the subdivision will sever the completeness of the history of the site. The Hall was built in 1933 and was used for church services for the next 32 years. Ms Reilly states that the Hall was integral to the eventual construction of the Church. The congregation that worshipped there was a branch of St Peters Watson's Bay, but called themselves Wentworth Memorial. This referred to their intention, at that time, that the church should honour the memory of William Charles Wentworth. The last service was held in the Hall in 1965. In her opinion, the inevitable demolition of the Hall, once subdivided, will degrade the heritage listed grounds and lead to a loss of architectural character and integrity of the Church, which she anticipates will become a state-listed item in the near future.

22 Ms Reilly describes the site as extremely sensitive, particularly in an environmental sense. The access to the Church was seen to have great importance when the Church was designed and the proposed development will have a major and deleterious impact on this aspect of the Church.

23 In her opinion, no part of the site is appropriate for residential purposes as this is contrary to the historic

intentions of land, the purpose of the buildings and the spirit of the place. The subdivision would reduce the possible future options for the Church by severing the Church from the Hall. There is undoubtedly a close relationship between the Church, the Hall and the Mausoleum and their grounds, existing on physically distinct but interwoven curtilages with interwoven access paths and interwoven cultural themes; the themes being of commemoration, of safe custody, and of social investment.

24 Ms Reilly notes that the Heritage Landscape Study prepared in 1984 by William Ashton details the type of native vegetation that contributes to the significance of the vegetation on the site. Unfortunately, of the species listed in this study as being significant, only fig trees are currently evident. In her opinion, reconstructing some of the previous known and significant landscape would enhance the significance of the site overall, especially the Church, which should remain buffered by a setting or curtilage of native vegetation, as has historically been the case. Approval of the subdivision and the likely residential development will degrade the setting of the Church, as the likelihood of new owners fulfilling owner's obligations to create a native landscape cannot be guaranteed.

Staas evidence

25 Mr Staas states that the decision to subdivide a lot from the setting of the Church will be an acceptable outcome for the site and provide incentives for the repair and continued maintenance of the Church and its landscape setting for the immediate future.

26 Mr Staas states that the Hall is not listed by any heritage authority and is not mentioned in any of the existing listings for the Church or the landscape. The Statement of Significance in the Conservation Management Strategy for the Hall (the Strategy), prepared by Mr Staas, states:

The Wentworth Memorial Church Hall is a typical Inter War Parish Hall structure erected to meet the requirements of a caveat on the sale of the land to the Anglican Church requiring the erection of the Church on the site within 10 years.

The hall has no aesthetic or physical connection or affinity with the significant 1960s Church or the earlier Mausoleum and is not a critical element of their setting.

The hall has been substantially modified by later alterations to allow its use as a school and is currently redundant and largely disused.

There is no existing heritage listing of the Church Hall though it is located within the landscape site for the adjoining church listed by Woollahra Council as having heritage significance

The Wentworth church hall does not meet thresholds for heritage listing as an item of Local significance in the Woollahra LEP based on the inclusion/exclusion criteria of the NSW Heritage Office

27 The Strategy recommends, in relation to conservation needs and the interpretation requirements for the Hall, that:

Prepare an archival record and photographic record of the place, and lodge a copy with Woollahra Local Studies Library.

28 Mr Staas notes the support for the proposed subdivision from council staff, Mr Betteridge and the NSW Heritage Council. Mr Staas argues that the Hall does not have any significant social significance despite its history and location within the grounds of the Church and despite any previous association with former parishioners. The use of the Hall as a temporary church and church hall was discontinued many years ago and the subsequent use as a pre-school has also ceased. The association with any particular group is now very tenuous and there is no demonstrated weight of opinion that the Hall is highly valued by the wider community.

29 Overall, the subdivision will not have any impact on the limited social values of the Church or the more significant social values of the Wentworth Family Mausoleum in Chapel Street.

Betteridge evidence

30 Mr Betteridge states that the only local native species likely to have existed in the grounds of the Church in 1984 would have been the single specimen of Cheese Tree, the self sown figs on the rock outcrop or possibly some self-sown *Pittosporum undulatum*. Neither the Cheese Tree or the *Pittosporum* are mentioned in the 1984 Heritage Landscape Study as being characteristic of the original vegetation of the area. The existing landscape plantings on the site are dated to the late 1960's so consequently the description of the items does not coincide with the title of " Grounds and native vegetation of Wentworth Memorial Anglican Church". Overall, and apart

from the existing Hoop pine, the native vegetation on the site (both self-sown and planted) is not sufficiently significant to warrant its listing for that reason. In his opinion, the listing largely relates to the architectural significance of the Church rather than the grounds and the native vegetation..

31 Mr Betteridge states that the Hall is not of sufficient significance to warrant listing in its own right or to be grounds for refusing its demolition. The application is within the limits of acceptable change for the site and retains sufficient curtilage with the Church for its historic, associational, aesthetic, social and other heritage values to be retained.

Findings – heritage impact

The amended plans

32 The plans relied upon by the applicant (Option 4 plans) provided a smaller area for Lot 11 than on earlier plans (originally 880 sq m with a Right of Way to provide access to both lots). The amended plans reduce the area to 724 sq m and delete the Right of Way to allow for the retention of the stone retaining wall and memorial plaques and the flagpole on Lot 12.

33 The amended plans and the deletion of the Right of Way have the effect of addressing the council's concerns over the existing historical access to the Church.

The Wentworth Mausoleum

34 Clause 27 provides that consideration must be given to the likely effect of the proposed development on the heritage significance of a heritage item.... and on its setting, when determining an application for consent to carry a development on land in its vicinity.

35 The council's contention states that the proposed subdivision will have a negative impact on the social significance of a heritage item in the vicinity of the site; being the Wentworth Mausoleum, surrounding stone and wrought iron fence, grounds, trees.

36 With the benefit of the site inspection, including the Wentworth Mausoleum, I agree with the conclusions of Mr Staas and Mr Betteridge. The Wentworth Mausoleum has very little physical connection to the site beyond the path that leads to the Church from Fitzwilliam Road and the path that connects the Church to the Wentworth Mausoleum. The topography dictates that the Wentworth Mausoleum and proposed Lot 11 are on opposite sides of a rocky outcrop. In my view, the physical and social relationship with Church is unaffected by the proposed subdivision and any future development on proposed Lot 11.

37 Pursuant to cl 27, the proposed development will not adversely affect the heritage significance of the Wentworth Mausoleum.

Will the proposed development affect the heritage significance of the item and its setting?

38 While the development application seeks only the subdivision of the site and not the removal of the Hall, the evidence was premised on the potential removal of Hall, or at best, its adaptive reuse. The applicant stated that Lot 11 was to be sold to provide funds for other church activities, including the ongoing maintenance of the Church. So there can be no future dispute over development on Lot 11, I propose to consider the requirements of cl 26(2) as if demolition of the Hall was likely to occur.

39 Clause 26(2) provides that consent shall not be granted unless consideration has been given to the extent to which the proposed development would affect the heritage significance of the item and... any stylistic or horticultural features of its setting. The consideration required by this clause is generally based on the Statement of Significance set out in the inventory listing of the Heritage Branch. In this case, the task required by cl 26(2) is more difficult given the "Name of Item" being "Grounds and Native Vegetation of Wentworth Memorial Anglican Church" and the terms of the "Statement of Significance" that relates principally to the Church building rather than the grounds and any native vegetation.

40 In balancing the competing evidence, I prefer the evidence of Mr Staas and Mr Betteridge for a number of reasons. First, I accept the conclusions of the Strategy that appropriately relies on the assessment using the inclusion/exclusion criteria of the NSW Heritage Office for determining the heritage significance of the Hall.

41 Second, I accept that the curtilage plan accepted by the NSW Heritage Office satisfactorily protects the heritage significance of the Church, including its architectural significance and its historic, associational, aesthetic, social and other heritage values. I note that the proposed subdivision provides a greater curtilage than that accepted by the NSW Heritage Office.

42 Third, the amended plans provide for the retention of the existing retaining wall, commemorative plaques and flagpole on the proposed Lot 12.

43 Fourth, given the emphasis placed on the access to the Church by Ms Reilly and a number of objectors and its significance to the Church; the access is now largely unaffected by the proposed amended subdivision layout.

44 Fifth, and adopting the position that the inventory listing focuses on the Church building (as distinct from the grounds and native vegetation) the absence of any reference to the Hall in the inventory is of some importance. Also of importance is the weight of expert evidence supporting the proposal. Of the expert evidence available to the Court, Mr Staas, Mr Betteridge, the council's Heritage Officer in a report to the Council on 19 July 2010, Mr Stapleton, a heritage consultant commissioned by the council to assess whether a number of sites have potential heritage significance (including the Church) and the NSW Heritage Office in their considerations of an appropriate curtilage for the Church found that the Hall had insufficient heritage significance to warrant its retention. Ms Reilly was alone in her support for the retention of the Hall.

45 Sixth, and adopting the opposite position to point five; that is, the inventory listing focuses on the grounds and native vegetation, I agree with Mr Betteridge that the absence of any substantive native vegetation, beyond the Hoop Pine, supports the proposed subdivision. Mr Rigg, for the council, submitted that the applicant was in essence, challenging the terms of the listing, however I do not accept this submission. As I understand Mr Betteridge's evidence, he was simply responding to the terms of the listing by stating that the native vegetation on the site is, at present, not sufficiently significant to warrant its listing for that reason and this was a reason for concluding that the proposed development would not unacceptably impact on the heritage significance of the grounds and native vegetation. I note that a Heritage Conservation Management Strategy has been prepared by Mr Staas, for the grounds and native vegetation, and that compliance with the Strategy has been accepted by the applicant as a condition of consent.

46 Seventh, and accepting the draft LEP is a relevant consideration, the exhibited draft LEP and the accompanying report on the heritage significance of the site prepared by Mr Stapleton does not suggest that the Hall has any heritage significance that would require its protection. Even though Ms Reilly considered it appropriate to amend Mr Stapleton's report on the heritage significance of the site to include the Hall, there must be some doubts whether the statement of heritage significance, as amended by Ms Reilly, would ultimately be accepted given that the amendments were made after the exhibition period and inconsistent with the conclusions of the NSW Heritage Office on the acceptance of a curtilage plan for the Church that largely reflects the proposed subdivision. I do not accept the amended statement of heritage significance could be seen as imminent or certain.

47 Pursuant to cl 26(2), and for the reasons mentioned in the preceding paragraphs, I am satisfied that the proposed development will not affect the heritage significance of the item and... any stylistic or horticultural features of its setting.

Can the Hall be demolished?

48 Based on the findings for the tests imposed by cl 26(2) and cl 27, there is no heritage reason why the Hall could not be demolished.

Can a dwelling be reasonably erected on Lot 11?

49 The development application provided a potential building form for a dwelling on Lot 11, in the general location of the Hall. The building form was based on the requirements in DCP 2003. The Court was also directed to the planning principle in *Parrot v Kiama* [2004] NSWLEC 77 where it states that "a subdivision application should provide constraints on future buildings when the proposed allotments are smaller than usual, or environmentally sensitive or where significant impacts on neighbours is likely and needs careful designed to minimise them".

50 In this case, I am satisfied that Lot 11 has sufficient area, per se, for the erection of a dwelling and to allow some flexibility in its design. I do not accept that Lot 11 imposes any significant constraints that would require any more information to be provided beyond the building form diagram. Clearly, any future design of a dwelling, ancillary buildings and garden will have to consider the heritage significance of the Church. This detail is more appropriately addressed as part of the development application process for any future dwelling on Lot 11. Any development application for a dwelling will also need to address cl 8(4), which can potentially limit the form of development, even if there is compliance with the applicable planning controls for a dwelling.

Is the proposal consistent with the zone objectives?

51 Clause 8(5) provides that development must be consistent with the objectives of LEP 1995 and of the zone within which the development is located. Clause 8(4) provides that in the event of any inconsistency between a provision of a development control table relating to a zone and heritage provisions in Part 4 and 5 of LEP 1995, the heritage provision shall prevail.

52 In relation to the test of consistency in cl 8, Mr Rigg submitted that the Court should adopt the meaning of consistency used in *Dem Gillespies v Warringah Council* [2002] NSWLEC 224 where the word is given its ordinary and natural meaning and not confined to the meaning of *not being antipathetic* as stated in *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21 and in *Hospital Action Group Association Inc v Hastings Municipal Council* (1993) 80 LGRA 190.

53 In this case, and pursuant to cl 8(5) I am satisfied that there is no inconsistency between the proposed development and the relevant LEP 1995 objectives and zone objectives, irrespective of whether the *Dem Gillespies* or *Schaffer Corporation* test is applied. I am also satisfied that, pursuant to cl 8(4) there is no inconsistency between a provision of a development control table and any heritage provision in Part 4 and 5 of LEP 1995.

Conditions

54 The following conditions were in dispute between the parties:

55 Condition A3 - the council proposed a deferred management condition providing for the submission of a Conservation Management Plan to cover both lots. The applicant opposed this condition and offered conditions H1 (for Lot 12) and H2 (for Lot 11) that required compliance with the conservation policies and recommendations prepared by Mr Staas for the two lots. The applicant further submits that this approach is consistent with the directions of the NSW Heritage Branch. I accept the applicant's submission and deferred commencement condition A3 can be deleted.

56 Conditions A6 and G1 - these conditions can be deleted as they relate to a previous version of the plan and are superseded by condition A4 that identifies the Option 4 plans.

57 Conditions B, C, D, E, F and G - these conditions are blank or have no requirements and can be deleted.

58 Condition A7 - this condition requires the retention of existing Hall and its adaptive reuse. For reasons set out in the judgement the retention of the Hall cannot be supported and the condition can be deleted.

Orders

59 The orders of the Court are:

1. The appeal is upheld.
2. Development Application No. 09/0439 for the subdivision of the property at 32B Fitzwilliam Road, Vacluse into two Torrens title lots is approved subject to the conditions in Annexure A.
3. The exhibits are returned with the exception of exhibits A, B and 1.

G T Brown
Commissioner of the Court

ANNEXURE "A"

Woollahra Municipal Council ats Anglican Parish of Watson Bay

Land and Environment Court Proceedings 10393 of 2010

Property: 32b Fitzwilliam Road, Vacluse

Development consent is granted to Development Application No. 439/2009 for the Torrens title subdivision of the

site known as 32B Fitzwilliam Road, Vaucluse into two lots 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.

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.4 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 to which is affixed a Council stamp "*Approved DA Plans*" and supporting documents listed below as submitted by the Applicant **unless modified by any following condition. This consent does not include the indicative building envelope and footprint plans.**

Reference	Description	Author/Drawn	Date(s)
17237-21441- option 1 (also referred on plan as "option 4"	Plan of subdivision	Project Surveyors	September 2010

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*.)

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

G.2 Land Subdivision Certificate (s109J of the Act)

A plan of subdivision cannot be registered under the Conveyancing Act 1919 unless a subdivision certificate has been issued for the subdivision. The person with the benefit of this consent must submit to Council an application for a Subdivision Certificate demonstrating compliance with section 109J of the Act.

No Subdivision Certificate must be issued until the linen plan of subdivision detailing the provision of all required easements and right of ways or the like to be registered upon the title of each lot to be so benefited or burdened has been submitted to Council.

G.3 Water and waste water - Section 73 Developers Certificate and Upgrading of existing system (Clause 25(1) WLEP 1995)

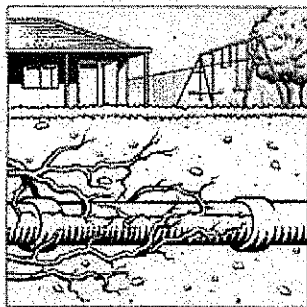
A developer compliance certificate under Part 6, Division 9 of the *Sydney Water Act 1994* must have been issued by the Sydney Water Corporation prior to the issue of any *Subdivision Certificate*. The effect of this certificate is that adequate provision has been made or is available for the provision 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.

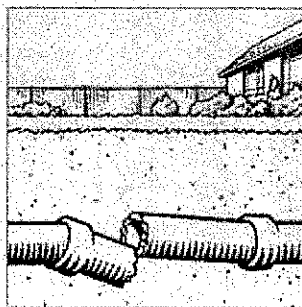
Note: Further information can be obtained from the Sydney Water Corporation on or telephone 13 20 92 or by visiting their web site:

http://www.sydneywater.com.au/html/yourHome/edeveloper/urban_dev_qa.cfm

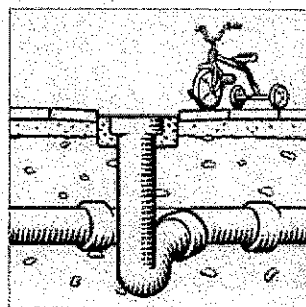
Any Construction Certificate plans and specifications, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail the replacement of all private sewer pipes between all sanitary fixtures and Sydney Waters sewer main where they are not found by inspection to be Sewer grade UPVC or copper with continuously welded joints.



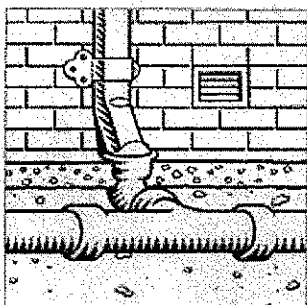
Cracked pipes



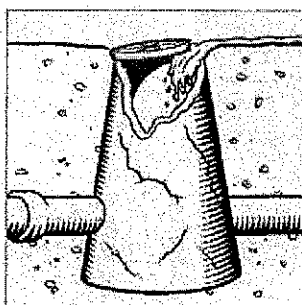
Broken pipes



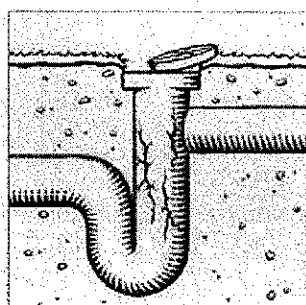
Damaged or low-lying gullies



Direct stormwater connections



Hidden or damaged maintenance holes



Hidden or damaged inspection points

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:

<http://www.sydneywater.com.au/Publications/Factsheets/SewerfixLookingAfterYourSewerPipes.pdf>

G.4 Payment of Long Service Levy, Security, Contributions and Fees

The certifying authority must not issue any *Part 4A Certificate* until provided with the original

receipt(s) for the payment of all of the following levy, security, contributions, and fees prior to the issue of a *construction certificate, subdivision certificate or occupation certificate*, as will apply.

Description	Amount	Indexed	Council Fee Code
	CONTRIBUTIONS Under Woollahra Section 94 Contribution Plan 2002 (March 2005 update) This plan may be inspected at Woollahra Council or downloaded at www.woollahra.nsw.gov.au		
Recreational facilities contribution	\$2187 +Index Amount	Yes, yearly	T94
Administration charge	\$32.80 + Index Amount	Yes, yearly	T94
TOTAL	\$2219.80		

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 [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable];

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;

The bank guarantee is lodged with the Council prior to the issue of the construction certificate: and

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 section 94 contributions be indexed?

To ensure that the monetary value of the contributions are not eroded over time by increases in costs the contributions will be increased annually. Clause 3.13 of Woollahra Section 94 Contributions Plan 2002 sets out the formula and index to be used in adjusting the contributions.

Do you need HELP indexing the contributions?

Please contact our customer service officers on 9391-7000. Failure to correctly calculate the indexed contributions 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 94 contributions under Woollahra Section 94 Contributions Plan 2002

Where the applicant makes a written request supported by reasons for payment of the contribution other than as required by clause 3.7 of the plan, 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:

The reasons given;

Whether any prejudice will be caused to the community deriving benefit from the public facilities required by the proposed development;

Whether any prejudice will be caused to the efficacy and operation of this Plan; and

Whether the provision of public facilities in accordance with the adopted works schedule will be adversely affected.

Where Council accepts periodic payment by way of instalments, it will be on the basis that each instalment is 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 overall development.

Council may, as a condition of accepting deferred or periodic payment, require the provision of 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 [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable];

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;

The bank guarantee is lodged with the Council prior to the issue of the construction certificate; and

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 contribution will be indexed in accordance with clause 3.13 of the plan. Under the indexation provisions, if a deferred or periodic payment is made before the next anniversary of the Plan, there will be no increase in the amount payable. 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.

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

H.1 Conservation management of lot 12

The conservation policies and recommendations set out in the "Wentworth Memorial Church Conservation Management Strategy", prepared by Robert Staas NBRs + Partners dated 11 October 2010 shall be complied with.

The conservation policies and recommendations, as they relate to lot 12, set out in the "Grounds and Native Landscape of the Wentworth Memorial Church Conservation Management Strategy", prepared by Robert Staas NBRs + Partners dated 12 October 2010 shall be complied with.

H.2 Conservation management of lot 11

The conservation policies and recommendations as they relate to lot 11, set out in the "Grounds and Native Landscape of the Wentworth Memorial Church Conservation Management Strategy", prepared by Robert Staas

NBRS + Partners dated 12 October 2010 shall be complied with.

The conservation policies and recommendations set out in the "Former Wenworth Memorial Church Hall Conservation Management Strategy", prepared by Robert Staas NBRS + Partners dated 12 October 2010 shall be complied with.

G T Brown

Commissioner of the Court

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.

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