



Development Control Committee

Agenda: *Development Control Committee*

Date: *Monday 4 February 2008*

Time: *6.00 pm*

Session: *One*

Part: *One of One*

Item: *D1 to D6*

Outline of Meeting Protocol & Procedure:

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

Delegated Authority (“D” Items):

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

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

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

Committee Membership:

7 Councillors

Quorum:

The quorum for a committee meeting is 4 Councillors.

WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

29 January 2008

To: His Worship The Mayor, Councillor Geoff Rundle, ex-officio
Councillors Keri Huxley (Chair)
 Christopher Dawson
 Tanya Excell
 Wilhelmina Gardner
 Julian Martin (Deputy Chair)
 Isabelle Shapiro
 David Shoebridge

Dear Councillors

Development Control Committee Meeting – 4 February 2008

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 4 February 2008 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 One Parts

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

Items to be Decided by this Committee using its Delegated Authority

D1	Confirmation of Minutes of Meeting held on 21 January 2008	1
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Site Inspection Items - Nil

Other Delegated Items

D2	DA606/2005 part 2 – 54 Kings Road, Vaucluse - Section 96 Application – Addition of plant room and addition of louvered opening – 12/9/2007 *See Recommendation Page 15	2-16
D3	DA259/2007 – 2 Bayview Hill Road, Rose Bay – Alterations & additions including swimming pool & internal modifications – 27/4/2007 *See Recommendation Page 31	17-66
D4	DA150/2007 – 101 Windsor Street, Paddington – 82A Review of Refusal – 28/9/2007 *See Recommendation Page 74	67-115
D5	DA353/2007 – 103 Windsor Street, Paddington – 82A Review of Refusal – 27/9/2007 *See Recommendation Page 123	116-161
D6	Register of Current Land and Environment Court Appeals for Development Applications *See Recommendation Page 162	162-176

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 21 January 2008**
Author: Les Windle, Manager - Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 21 January 2008 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 21 January 2008 be taken as read and confirmed.

Les Windle
Manager - Governance

DEVELOPMENT CONTROL COMMITTEE

Meeting held on

Item No. **D2**

MEMO TO ALL COUNCILLORS

File No. DA 606/2005/2

Address 54 Kings Road VAUCLUSE 2030

Proposal Section 96 Modification: Addition of plant room & addition of
 louvred opening.

Date lodged 12/09/2007

Author MR S TAYLOR – ASSESSMENT OFFICER

Woollahra
Municipal
Council



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Please note that Item D2 was called at the Application Assessment Panel meeting held on 22 January 2008 by Councillor Excell.

Reasons for calling item:

- Privacy and noise issues

Referred to you for action.

Les Windle
Manager – Governance

Annexure: Officer's report 22 January 2008

SECTION 96 APPLICATION ASSESSMENT REPORT

ITEM No.	D2
FILE No.	DA 606/2005/2
ADDRESS:	54 Kings Road, Vaucluse
EXISTING CONSENT:	Demolition of existing dwelling and construction of new dwelling; landscaping and siteworks
TYPE OF CONSENT:	Local Development
DATE OF CONSENT:	23 March 2006 (Land and Environment Court)
ZONING:	Residential 2(a)
PROPOSED MODIFICATION:	Addition of plant room and addition of louvered opening
DATE S96 LODGED:	12 September 2007
CONSENT AUTHORITY:	NSW Land and Environment Court
APPLICANT:	Glen Alpine Properties Pty Ltd
OWNER:	Mr P Bega
AUTHOR:	Mr Simon Taylor

LOCALITY PLAN



1. SUMMARY

Reason for report

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

Issues

- floor space ratio non-compliance
- unauthorised works
- objectors concerns

Objections

One (1).

Recommendation

The application is recommended for approval, subject to **Conditions 59 and 60**.

2. DESCRIPTION OF APPROVED PROPOSAL

The approved development involves the following works: -

- demolition of the existing dwelling house
- construction of a new part two/part three-storey dwelling house comprising: -
 - a gym, guest bedroom and four car garage on the lower ground floor level
 - living spaces on the upper ground floor level
 - four bedrooms on the first floor level
- refurbishment of the existing swimming pool
- landscaping works

3. DESCRIPTION OF PROPOSED MODIFICATION

The Section 96 application involves the addition of an air-conditioning room (17.5m² in area) at the rear of the lower ground floor level with aluminium louvres to the western elevation.

4. DESCRIPTION OF SITE AND LOCALITY

The subject site is located on the southern side of Kings Road and is two properties removed of a sharp and relatively steep bend in the street to the south.

The site is rectangular in shape with a total site area of 641.1m². It has a frontage to Kings Road and a rear boundary of 15.24m and eastern and western side boundaries measuring 42.14m. It rises from the street to the rear of the property by approximately 6.0m.

On the site is a recently constructed part two/part three-storey rendered brick dwelling house, with double garage facing the street and swimming pool within the rear yard. Surrounding properties comprise largely of two-storey dwelling houses.

Due to the topography and alignment of Kings Road, relatively extensive views are achieved across the site from various properties on Kings Road to the south.

5. PROPERTY HISTORY

Council's Team Leader of Compliance, Craig Jenner, provided the following file note following a site inspection of the property on 14 May 2007: -

Mr Dean Constantine of 56 Kings Road contacted me on Friday 11 May 2007 and advised that excavation has occurred contrary to the consent in two critical areas.

1. To create a void located centrally behind the rear (southern) wall at the lower ground floor. This does not appear on the DA or Construction Certificate approved plans.
2. Create an air conditioning plant room as shown on the construction certificate issued by Paul Aramini (PCA) in the south western corner of the lower ground floor. This does not appear on the DA approved plans.

Mr Constantine advised that he would raise a complaint against Me Aramini with the Building Professionals Board.

Upon checking the approved DA and Construction Certificate I can confirm his claim. It is clear to me that the excavation of both areas is contrary to the consent and that the inclusion of the air conditioning plant room on the Construction Certificate plans is inconsistent with the Development Consent. I contacted Mr Aramini at 10am Friday 11 May 2007 and advised him of the above. Mr Aramini responded that he would issue a notice of proposed order to comply with the consent.

On Monday 14 May 2007 I received a facsimile from Mr Aramini including the notice of proposed order (council reference 177/2007). The notice is flawed in its wording in that the terms of the order give no instruction of what is to occur to comply with the consent. It appears the **reasons** for the notice and **terms** of the notice have been placed under the wrong title in the notice. I do not consider that Council can rely on this notice. I have accordingly discussed the departures with Council's Senior Compliance Officer Mr Harley Fee and noted the following inconsistencies between the consent and the Construction Certificate: -

- Reduced level for each floor level
- The layout of the lower ground floor including the
 - depth and width of the garage
 - relocation of stairs to the rear of the garage
 - creation of an electrical room to the rear of the garage
 - reconfiguration of the entry
 - deletion of the internal walls for the guest bed and gym to form a media room
 - addition of the air conditioning plant room to the rear south west of the garage
- That additional excavation has occurred at the rear of the garage contrary to the consent and Construction Certificate

I have requested Mr Fee to commence investigation and issue a breach of consent letter outlining these and any other breaches of the consent. This notice will be finalized upon the issue of the Council's breach letter. See order 178/2007 for further action.

Given the above, Council issued a Notice of Intention to Give an Order on 5 July 2007 detailing the following: -

1. To undertake such works as are necessary to bring the current construction works into compliance with the Development Consent DA606/2005. These will include but not be limited to:
 - a) Bricking up and back fill unauthorised void located at rear of the lower ground level located to the south of the lift shaft.
 - b) Brick up all access doorways to the unauthorised air conditioning plant room (as shown on the Construction Certificate Plans approved by Mr Paul Aramini) located on lower ground level to rear of garage and adjacent to electrical room and backfill this area.
 - c) To undertake a property survey and submit a copy to Council. The survey should clearly indicate boundary setback distances for new construction.
 - d) Demolish any and all structures or part thereof where the structures or part thereof do not comply with the Development Consent DA606/2005 for location or setback or where there is an encroachment not approved by DA 606/2005.

Note: the (new) property survey should indicate the precise location of all structures that these may be compared to the locations approved by the Development Consent DA 606/2005.

Note: It is recommended that all works not associated with the Development Consent DA606/2005 cease immediately to avoid any possible further breaches of the consent.

6. REFERRALS

6.1 Comments from external approval bodies

No comment required.

6.2 Building

No comment required.

6.3 Health

No comment required.

6.4 Heritage

No comment required.

6.5 Urban Design

No comment required.

6.6 Technical Services

No comment required.

6.7 Landscaping/Trees Management

No comment required.

ASSESSMENT UNDER SECTION 96

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

Not applicable.

7.2 S96 (1A) Modification involving minimal environmental impact

Not applicable.

7.3 S96 (2) Other modifications

The proposed modifications have the potential for adverse environmental impacts, including a substantial alteration to the natural landform and issue with regard to acoustic privacy. Accordingly, the subject Section 96 Application is deemed to fall within this category.

7.4 S96AA Modification of a consent granted by the Court

This clause enables Council to modify a development consent granted by the Court providing that:

- (a) *it is satisfied that the development to which the consent as proposed to be modified is substantially the same development as the development for which the consent was originally granted and before the consent as originally granted was modified (if at all).*

The proposed modifications to the development consent are the first and are relatively minor relative to the scope of the development consent. The development consent, as proposed to be modified, is considered to be substantially the same as that originally approved by the Land and Environment Court.

- (b) *it has notified the application in accordance with the regulations and Council's DCP for Advertising and Notification of Development Applications and Applications to Modify Development Consent.*

The proposed modifications were advertised and notified to surrounding properties.

- (c) *it has notified any person who made a submission in respect of the original development application.*

The notification of the proposed modifications included the persons who objected to the original development application.

- (d) *it has considered any submissions made concerning the proposed modifications*

One submission was received, as discussed in Section 14.

7.5 Substantially the same development

The proposed modifications to the development consent are the first and are relatively minor relative to the scope of the development consent. The development consent, as proposed to be modified, is considered to be substantially the same as that originally approved.

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

Not applicable.

7.7 Threatened species

Not applicable.

ENVIRONMENTAL ASSESSMENT UNDER SECTION 79C

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

8. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

8.1 SEPPs

SEPP 55: Remediation of Land

The proposal was considered acceptable with regard to the relevant clauses of SEPP 55 in the assessment of the original development application. The proposed modifications are therefore acceptable with regard to SEPP 55.

SEPP (Building Sustainability Index: BASIX) 2004

BASIX remains applicable to the proposed development through **Condition 36**.

8.2 REPs

SREP (Sydney Harbour Catchment) 2005

The proposal remains acceptable with regard to SREP (Sydney Harbour Catchment) 2005.

8.3 Section 94 contribution

Not applicable.

8.4 Other relevant legislation

None applicable.

9. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

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

The proposal is permissible and is consistent with the aims and objectives of the Residential 2(a) zone. However, it is contrary to objective (2)(j)(i), (ii) and (iii) of Part 2 of WLEP 1995, which state: -

(j) *in relation to global warming -*

- (i) *to promote energy conservation measures*
- (ii) *to promote energy-efficient building development and mass transport systems*
- (iii) *to ensure that new development takes account of global warming effects*

The installation of an air conditioning unit within a new dwelling is not supportive of these objectives, particularly when the property benefits from its northerly aspect during winter and Harbour breezes in summer. Its contribution to global warming, however small, is unacceptable. However, irrespective of this justification, at present there is little basis for the refusal of the application on these grounds.

9.2 Clause 12 Height

	Approved Development	Proposed Modification	Control	Complies
Overall Height	Max 9.5m	Works to 2.6m	9.5m	YES

Under the provisions of Clause 12 of the WLEP 1995, a maximum height control of 9.5m applies to the subject site. The proposal complies in this regard.

9.3 Clause 18 Excavation

Clause 18 of Woollahra LEP 1995 requires Council to give consideration to the impact that any proposed excavation will have on the subject site and adjoining properties with regard to the following: -

- (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*
- (f) *natural water run-off patterns*

The initial proposal required excavation to accommodate the four-car garage, gym, study, foyer and bathroom. The following comment was provided in the original assessment: -

The excavation has a maximum depth of 3.0m and a total area of approximately 70.0m². In reality, the total amount of excavation is considered to be relatively minor due to the following reasons: -

- the eastern side, which comprises the habitable spaces, has a finished floor level that is 1.33m above the RL of the garage level
- the existing dwelling comprises a two car garage (41m²) and a lower ground floor level (86m²) with very similar RL levels as the proposed basement level
- there is an undetermined sub floor level behind the existing garage

The proposed modification seeks to establish an air conditioning room, which will result in an additional 17.55m² or about 70m³ of excavation. Normally this could potentially be considered relatively excessive, if not for the following comments: -

- in *Edgar Allan Planning Pty Limited v Woollahra Municipal Council* [2006] NSWLEC 790, Commissioner Watts found the following in relation to the extent of excavation: -

The proposed excavation would be within the existing building footprint and would not decrease the area of the land available for deep soil planting. I am satisfied that the proposal that would sit over the existing footprint would largely address the site excavation requirements of the RDCP set out in C5.2.15, and C5.2.16 of Section 5.2.

Having considered all the evidence contained in the specialist reports, including geotechnical reports, structural engineering reports, hydrology reports and the need for dilapidation reports, I would not decline to grant consent to the present application despite the breach of the FSR control under the RDCP. Those areas of the proposal in breach of the FSR do not add to the visible bulk. I consider that the matters enumerated in cl 18 of the WLEP have been addressed.

Whilst Council's controls stipulate a need for the minimisation of excavation and reduction to the natural landform, without the presence of a numerical control, it is difficult to reduce the amount of excavation within the scope of Clause 18 of Woollahra LEP 1995.

The additional excavation which forms the basis of the Section 96 application with the lower ground floor level was undertaken without prior consent. Realistically, these unauthorised works cannot be reversed as the natural landform of the site has been permanently altered. Furthermore, the impacts upon the amenity of the neighbourhood have already occurred and there is little basis in requiring the reversal of the works, particularly as this would prolong the impacts associated with construction upon adjoining properties.

With regard to the above heads of consideration, the proposal is considered to be satisfactory in the following manner: -

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

As previously mentioned, any reversal of the works would likely prolong the detrimental impact upon the amenity of the neighbourhood

- (b) *public safety*
- (c) *vehicle and pedestrian movements*

Public safety and vehicle and pedestrian safety is considered to be maintained.

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

The subject site is not located within the vicinity of any heritage items.

- (e) *natural landforms and vegetation*

The natural landform of the subject site has already been altered and is irreversible. Vegetation on the subject site is unaffected as the air-conditioning room is contained wholly within the existing approved building footprint.

(f) *natural water run-off patterns*

No specific objection is raised.

The proposed excavation is therefore acceptable with regard to Clause 18 of Woollahra LEP 1995.

9.4 Clause 25D Acid Sulfate Soils

The subject site is within the Class 5 Acid Sulphate Soil area identified in the Planning NSW Acid Sulphate Soil Risk Map. However, the subject works are not likely to lower the water table below 1 m AHD on any land within 500m with a 1, 2, 3 or 4 land classification and therefore, there is no issue of acid sulphate affectation in this instance.

9. DRAFT AMENDMENTS TO STATUTORY CONTROLS

None applicable.

10. DEVELOPMENT CONTROL PLANS

10.1 Woollahra Residential Development Control Plan 2003

Site Area: 641.1m ²	Approved Development	Proposed Modification	Control	Complies
Floor Space Ratio	0.812:1 (520.6.m ²)	0.839:1 (538.1m ²)	0.55:1 (352.6m ²)	NO
Excavation Piling and Subsurface Wall Setback	1.5m	1.5m	1.5m	YES

* Existing non-compliance

Building size and location performance criteria

The proposal involves non-compliances with the provisions of Part 5.2 of WRDCP 2003 in relation to the floor space ratio.

The objectives of Part 5.2 of Woollahra RDCP 2003 involve:

- the preservation of established tree and vegetation networks and the promotion of new networks by ensuring sufficient areas for deep soil planting and sufficient setbacks between the rear of buildings
- to ensure the size and location of buildings allow for the sharing of views and preserve privacy and sunlight access for neighbouring residents
- to ensure the form and scale of development is not excessive and maintains the continuity of building forms and front setbacks in the street
- 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

Floor space ratio

C5.2.9 limits the floor space ratio for the subject site to a maximum of 0.55:1 or 352.6m². The original approval involved a floor space ratio of 520.6m², which exceeded the maximum floor space ratio by 168.0m² or 47.1%.

Of this, 115.4m² was located within the lower ground floor level and was considered acceptable as “the floor area on the lower ground floor level involves a relatively minor amount of excavation which is confined to the footprint of the existing and proposed dwelling houses...it will not contribute to a significant amount of additional visible bulk when viewed from the street.”

The addition of the air-conditioning room will result in an additional 17.5m² of floor area, which will exacerbate a substantial existing non-compliance. However, for the same reason outlined above, it does not present any issue with regard to bulk and scale as it is located almost entirely below existing ground level.

Furthermore, the acoustic privacy of adjoining properties can be adequately maintained in accordance with **Conditions 59** and **60**. This is discussed further in *acoustic and visual privacy performance criteria*.

Cut and fill

C5.2.17 requires a minimisation in the amount of cut and fill on sloping sites.

However, as outlined with regard to Clause 18 of WLEP 1995, the stance applied in Edgar Allan Planning Pty Limited v Woollahra Municipal Council [2006] NSWLEC 790 makes it difficult for Council to consider the amount of excavation within the air-conditioning room as being excessive, particularly as the excavation has already occurred and is largely irreversible and as the area is a non-habitable space where internal amenity is not an issue. The proposal is therefore acceptable with regard to the relevant objectives and controls of Section 5.2.

Energy efficiency performance criteria

Objective O5.6.1 seeks to minimise fuel use and greenhouse gas emission through the promotion of energy efficiency in the design, construction and use of housing. Objective O5.6.4 also seeks to reduce the necessity for mechanical heating and cooling.

The installation of an air conditioning unit within a new dwelling is not supportive of these objectives, particularly when the property benefits from its northerly aspect during winter and Harbour breezes in summer. However, irrespective of this justification, at present there is little basis for the refusal of the application on these grounds.

The construction of the air conditioning room does not preclude the need for compliance with BASIX. This is reiterated in **Condition 36**.

Acoustic and visual privacy performance criteria

Objective O5.8.1 requires adequate acoustic and visual privacy for occupants and neighbours.

The owner of the adjoining property to the west (56 Kings Road) objected to the proposed development on the basis of a loss of acoustic privacy arising from the air-conditioning room.

The air-conditioning room will have 4.0m long and 0.5m high external louvres along the western elevation, situated 0.6m-1.2m above the ground level, 1.5m from the boundary and 3.0m from the eastern elevation of the adjoining property to the west, an elevation that comprises two bedroom windows.

The location of the ventilation louvres is not entirely unreasonable in a residential context and given the circumstances of the proposed dwelling house. Given its location at or close to ground level and compliance with the setback control of 1.5m from the side boundary, no particular objection is raised, subject to **Conditions 59 and 60**.

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. One submission was received from Dean Constantine of 56 Kings Road, Vacluse. It raised the following issues:

- acoustic privacy

Refer to Section 10.1.

- no A/C specifications provided
- no acoustic report

Documentation provided by the applicant's supplier indicated that the air conditioning unit can be accommodated without exceeding the ambient noise level. Nevertheless, the location of the plant room is not entirely unreasonable, but only when subject to **Conditions 59 and 60**.

- unauthorised works, including those not forming part of the subject Section 96 application

A section of excavation to the immediate south of the lift shaft was also constructed without development consent but does not form part of the subject Section 96 application. An assessment of this work has not been occurred as consent is not sought.

The unauthorised works associated with the air-conditioning room is discussed in Section 14.

- hot air

It is not perceived that any warm air emissions from the plant room will disrupt the habitable spaces of the adjoining property to the west, which is 3.0m away.

15. COUNCIL'S ENFORCEMENT POLICY

An inspection of the subject site indicated that the excavation for the air-conditioning room (and an additional area behind the proposed lift shaft (but not forming part of this application) had already been commenced. Council has three available options with respect to the unauthorised building works - demolition, prosecution or no further action subject to certain conditions being met. Council may take enforcement action or prosecute following consideration of the following issues: -

- the nature and seriousness of the breach
- balancing the public interest and the cost to Council

- available methods of enforcement
- circumstances of the case

The nature and seriousness of the breach

The unauthorised works are relatively extensive and would normally be considered to be substantial. It is argued, however, that there is likely to be greater adverse impact upon the local environment or the amenity of adjoining properties were the natural landform reinstated. Even so, it does demonstrate a blatant disregard to the development consent and Council.

Balancing the public interest and cost to Council

The unauthorised works have not incurred any significant additional cost to Council. It is important, however, to ensure that further action be taken in order to reinforce Council's controls.

Available methods of enforcement

Given the inability to remedy or reverse the unauthorised works, it is not recommended that court action be taken in respect of the illegal works.

The circumstances of the case

The unauthorised works are confined to the building footprint of the approved dwelling and will not contribute to any additional bulk. In line with the stance conveyed in past court judgments, it is considered to be acceptable. Furthermore, reversal of the works is not in the best interests in this particular circumstance.

The amenity of adjoining properties can be maintained in accordance with appropriate noise amelioration measures.

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

It is still recommended, however, that prosecution be undertaken.

16. CONCLUSION - THE PUBLIC INTEREST

The proposal is acceptable against the relevant considerations under Section 79C.

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

- A.** THAT Council, as the consent authority, modify development consent to Development Application No. 606/2005 Part 2 for the demolition of the existing dwelling and construction of new dwelling; landscaping and site works on land at 54 Kings Road Vaucluse, in the following manner:

The modification of Condition Nos 1 and 36: -

1. Approved Section 96 Plans

The development must be carried out in accordance with the plans numbered DA/01, DA/04, DA/06, DA/07, DA/08, DA/09 and DA/10, all Issue C and dated 21 February 2006 and plans numbered DA/02 and DA/03, both issue A and dated 23 September 2006, all of which are drawn by Manolev Associates Pty Limited Architects and the landscape plan numbered 0501, Issue B03, dated 22 February 2006 and drawn by Site Image Landscape Architects, and as amended by the works, shown in colour, on plans numbered Section96/01 and Section96M/02, dated 10 September 2007 and drawn by Manolev Associates Pty Limited Architects, both of which carry a Council stamp "**Approved Section 96 Plans**" and the signature of a Council officer on the plans except where amended by the following conditions.

36. BASIX Commitments

THE BASIX certificate is to be revised so that the development, including the proposed air-conditioning unit(s), complies with the minimum BASIX standards.

The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate No.26797S other than superseded by any further amended consent and BASIX 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,"

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."

Note: For further information please see <http://www.basix.nsw.gov.au>

The addition of Condition Nos. 59 and 60: -

59. Sound Attenuation of the Air Conditioning Plant Room

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 air conditioning plant room to ensure that noise from the plant room does not 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:

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

60. Acoustic Certification of Mechanical Plant

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

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

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

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

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

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

Mr Simon Taylor
SENIOR ASSESSMENT OFFICER

Mr David Waghorn
ACTING TEAM LEADER

ANNEXURES

1. Plans and elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D3
FILE No.	DA 259/2007
PROPERTY DETAILS	2 Bayview Hill Road ROSE BAY 2029
	Lot & DP No.: LOT: B DP: 342292
	Side of Street: Western side
	Site Area (m²): 860m ²
	Zoning: Residential 2(a)
PROPOSAL:	Alterations and additions including swimming pool and internal modifications
TYPE OF CONSENT:	Local development
APPLICANT:	Mr B Teh Howell
OWNER:	Mr W Y Heong
DATE LODGED:	27/04/2007
AUTHOR:	Ms J Askin

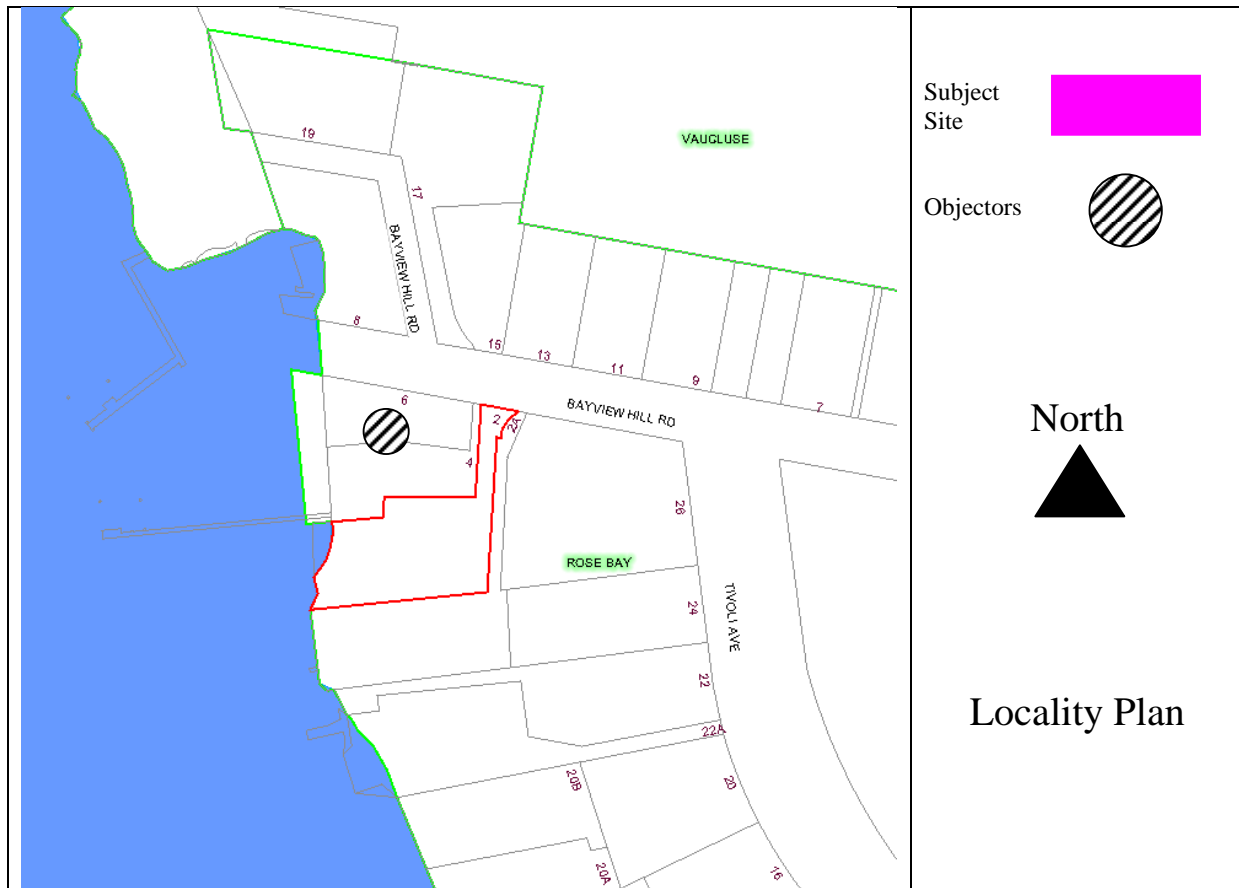
1. RECOMMENDATION PRECIS

Approval, subject to conditions.

2. PROPOSAL PRECIS

The proposal seeks to undertake alterations and additions to the existing dwelling including a new swimming pool.

3. LOCALITY PLAN



4. DESCRIPTION OF PROPOSAL

The proposal seeks to undertake alterations and additions to the existing dwelling. Coloured plans with all the required information were submitted on 18 October 2007 outlining the following works:

- Lower ground floor
 - New pool and pool deck accessed by external stairs along northern boundary from lower ground floor level terrace
 - Extend existing terrace adjoining lower ground floor level
- Ground floor
 - New external stairs along northern boundary to access lower ground floor level terrace
 - New pond adjoining northern boundary
 - New French doors to northern elevation
 - New bi-fold doors to western elevation
 - Storage room to be partly extended with removal of access door to northern elevation
 - New entry to eastern elevation with awning above
 - Removal of existing window to southern elevation and construction of new French doors and windows
 - Extend existing terrace adjoining ground floor level with return around north-western corner to provide connection with existing courtyard within northern side setback area

- First floor
 - New bi-fold doors to western elevation
 - New full height sliders with glass balustrade to western elevation
 - Minor internal reconfiguration

- External
 - New masonry parapet rendered and painted to match existing
 - New driveway wall

5. SUMMARY

Reasons for report	Issues	Submissions
The proposal does not comply with the FSBL	Privacy, floor space ratio, building footprint	One submission was received.

6. ESTIMATED COST OF WORKS

The stated value of works has been checked against Council's process as adopted by the Development Control Committee on 6 June 2005 and in accordance with the Environmental Planning & Assessment Regulation 2000 and is considered to be a genuine estimate of the value of development work calculated in accordance with clauses 25J and 255 of the Environmental Planning and Assessment Regulation 2000.

7. DESCRIPTION OF SITE OF LOCALITY

THE SITE AND LOCALITY	
Physical features	Site on lower southern side of Bay View Hill Road; battle-axe site with driveway access
Topography	Sloping site to adjoining the Harbour at Rose Bay.
Existing buildings and structures	Three storey dwelling with double garage
Environment	Two and three storey substantial dwellings

8. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	Residential
Previous relevant applications	Not relevant
Pre-DA	N/A
Requests for additional information	Construction methodology report – received 4.7.07 Revised SEE – received 5.6.07 Coloured plans – received 31.10.07
Amended plans/ Replacement Application	N/A
Land & Environment Court appeal	N/A

9. REFERRALS

9.1 The following table contains particulars of internal referrals.

INTERNAL REFERRALS		
Referral Officer	Comment	Annexure
Development Engineer	Approval, subject to conditions	2

9.2 The following table contains particulars of external referrals.

EXTERNAL REFERRALS		
External Referral Body	Reason for referral	Comment
NSW Maritime Authority	Part 3A (section 22B) of the <i>Rivers and Foreshores Improvement Act 1948</i>	Approval, subject to general terms of approval (see Condition No. A5).

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") does not apply to the proposed development as the estimated cost of works is less than \$100,000 and the application was submitted prior to 1 July 2007.

State Environmental Planning Policy No. 55

Under clause 7 (1) (a) of State Environmental Planning Policy No. 55 – Remediation of Land, consideration has been given as to whether the land is contaminated. The land has been used for the purposes of residential accommodation since the subdivision of the land and therefore, 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. The objectives of the Plan are established at Clause 2 and include the following:

- (a) To ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected and maintained;
- (b) As an outstanding natural asset, and
- (c) As a public asset of national and heritage significance, for existing and future generations.
- (d) To ensure a healthy, sustainable environment on land and water
- (e) To achieve a high quality urban environment,
- (f) To ensure a prosperous working waterfront and an effective transport corridor,
- (g) To ensure accessibility to and along Sydney Harbour and its foreshores,
- (h) To provide a consolidated, simplified and updated legislative framework for future planning.

The proposal will not have an adverse visual impact on the Harbour foreshore and is consistent with the objectives of the SREP. It is therefore considered that the proposal meets the relevant requirements of the SREP and is acceptable in this regard.

10.3 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 \$88,000, **Condition No. C2** requires the payment of \$880 which will be used for a variety of works as outlined in Schedule 2 of the Section 94A Contributions Plan.

10.4 Other relevant 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 consistent with the aims and objectives of the LEP and the relevant objectives of the Residential 2(a) zone.

11.2 Statutory compliance table

Site Area: 860m ²	Existing	Proposed	Control	Complies
Overall Height	9.8m*	10.3m	9.5m	NO
FSBL	9m*	8m	12m	NO

* Existing non-compliance

11.3 Site area requirements

Not applicable to this assessment.

11.4 Height

The proposal seeks to provide a maximum height of 10.3 metres and therefore does not comply with the 9.5 metre height limit applicable to the site.

A SEPP No. 1 Objection has been submitted by the applicant in relation to this non-compliance, which reads as follows:

“Variation to the building height control is justified in this instance due to acceptable arguments on design and amenity issues which result in the proposal not interfering with the encouragement of promoting the social and economic welfare of the community and a better environment.

The proposal involves increasing the maximum building height from 9.8 metres to 10.2 metres, which represents a variation of 0.7 metres. The height is associated with an increase in the parapet by 400mm around the dwelling’s perimeter.

It is considered that the proposed building height is consistent with the main principles behind the standard as the additional height is considered indiscernible from Sydney Harbour whilst also being consistent with the height of surrounding development either side. The additional height also preserves the amenity of surrounding development while the unobtrusive location of the dwelling ensures that the integrity of the Bayview Hill Road streetscape is maintained.

The proposed variation thereby satisfies the objectives of the standard.

The proposed height is considered acceptable in this instance as the proposal is considered meritorious on the following grounds:

Orderly use of the land – the excess does not contribute or create a disorderly use of the site.

Nature of the non compliance – the development exceeds the 9.5 metre height limit by 0.7 metre, yet the proposal represents an increase of only 400mm given the existing non compliance height of 9.8 metres.

Solar access – the additional height is not responsible for any adverse amenity impacts to surrounding neighbours in regard to overshadowing or loss of daylight. The neighbour to the south is substantially setback from the common boundary and has limited north-facing openings which could be affected by the height increase.

Visual or acoustic privacy – the nature of the additional height (being limited to parapet increase) does not create any additional visual or acoustic privacy issues for neighbouring development).

*Views and vistas – the additional height will have no impact on views across the property from neighbouring dwellings. The proposal is therefore satisfactory under the relevant planning principle *Tenacity v Warringah Council*. The excess in height is limited to the western/lower end of the site due to the sloping nature of the site. The height at the eastern end adjacent to its eastern neighbours is significantly below the height limit being 7 metres.*

Design – the additional height is considered to conceal protruding features of the roof and therefore provides a more attractive and appealing presentation to its surrounds. The parapet increase ensures that the linear style of the upgraded dwelling is achieved.

Context/appearance from Sydney Harbour – It is considered that the proposal respects and takes account of the scale, density, bulk and landscaped character of existing buildings. The photomontage and photo further along the foreshore to the south illustrates that the additional height associated with the parapet increase fits comfortably along the harbour foreshore.

It is considered that the development will not compromise the planning intent for the site or the character and amenity of the surrounding area. This SEPP No. 1 objection has suitably justified that the development standard relating to building height is unreasonable and unnecessary in this instance and that the proposed height should be supported.”

The SEPP 1 Objection is assessed as follows:

Is the planning control in question a development standard?

The maximum building height is a development standard under WLEP 1995.

What is the underlying purpose of the standard?

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

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

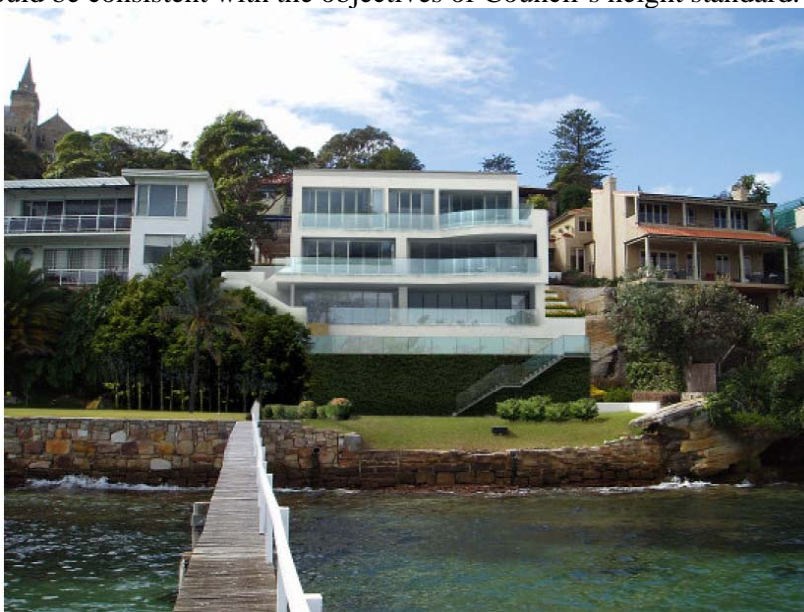
Is non-compliance with the development standard consistent with the aims of the Policy, and in particular, would strict compliance with the development standard tend to hinder the attainment of the objectives specified in S.5(a)(I) and (ii) of the EPA Act?

The non compliance is a result of the proposed increase in parapet height with the exceedance limited to the rear section of the building. This is a result of the slope of the land towards the Harbour. The parapet increase is proposed to hide the existing dome roofs when viewed from a lower height and will not extend beyond the maximum height of this structure.

Having considered the arguments presented by the applicant in his SEPP 1 submission against the relevant objectives of the development standard contained in Woollahra LEP 1995, it is considered that the proposal would uphold the objectives underlying the development standard and the development standard would hinder the attainment of those objectives.

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 proposal would provide a suitably scaled dwelling as viewed from the harbour and will not result in any resultant impact on the amenity of adjoining property or the environment. The proposal would be consistent with the objectives of Council's height standard.



Is the objection well founded?

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

11.5 Floor space ratio

There is no statutory floor space ratio control for the subject site.

11.6 FSBL

The proposal seeks to encroach the 12 metre foreshore building line applicable to the site.

A SEPP No. 1 Objection has been submitted by the applicant in relation to this non-compliance, which reads as follows:

“The subject application proposes alterations and additions to the existing dwelling house, including a swimming pool and extensions to the ground floor (second level) balcony area. A part of the extension of the pool, balcony and stairs encroaches upon the foreshore building line by a maximum of 5.234 metres.

The relevant objectives are satisfied, given that:

- i) There are no adverse impacts to the natural shoreline;*
- ii) There are no adverse impacts upon the visual prominence of the existing built form;*
- iii) There are no impacts upon any existing vegetation or landscape opportunities;*
- iv) No adverse impacts upon adjoining dwelling views, privacy or solar access;*
- v) The development maintains an existing encroachment on the foreshore building line; and*
- vi) The development does not result in impacts on upon rock platforms or intertidal ecology.*

In addition to the development satisfying the objectives of the standard, the proposal has additional positive outcomes that include:

- i) Improvement to the architectural appearance of the dwelling viewed from the harbour;*
- ii) No floor area is to be added forward to the foreshore building line, with there being an overall increase from the foreshore building line will in excess of the minimum 12 metres requirements;*
- iii) The proposed dwelling significantly improves the visual relationship of the building to the harbour and the visual qualities of the development.*

The proposed development is consistent with the relevant objectives for development contained within Woollahra LEP 1995. The proposed works have a negligible impact upon the relationship of adjoining existing dwellings to the foreshore building line.

The assessment that has been undertaken for the dwelling has confirmed that the development not only achieves the relevant LEP objectives but the objectives for the development contained within the Residential DCP 2003.

The non-compliance does not result in any conflicts to any relevant planning objectives.

The proposed encroachment to the foreshore building line does not result in a development that is out of context with the scale and nature of development in the area, results in a development that is a significant improvement to the quality and presentation of the development in the locality and improves the performance and amenity of the existing dwelling by providing a more useable terrace than existing.”

The SEPP 1 Objection is assessed as follows:

Is the planning control in question a development standard?

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

What is the underlying purpose of the standard?

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

- a) To retain Sydney Harbour’s natural shorelines;
- b) To provide larger foreshore setbacks at 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 planted which will not detrimentally impact on views of the harbour and foreshores;
- d) To protect the amenity of adjoining lands in relation to reasonable access to views and sunlight;
- e) To preserve the rights of property owners to maintain an encroachment on the foreshore building line by an existing main building line; and
- f) To protect rock platforms and the intertidal ecology.

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

The proposal seeks to relocate the existing swimming pool from the lower ground floor terrace to a lower level within the site. The existing swimming pool is located at a minimum 9 metres from the mean high water mark. The proposed swimming pool is to be located at a minimum 10 metres from the mean high water mark.

In terms of visibility from the harbour, the existing swimming pool is behind an existing wall with part of the pool for the most northerly section visible. The proposed swimming pool will be a lower level and will be completely behind the proposed sandstone wall.

The following image (source: Google Earth) confirms that the area is already characterised by swimming pools within the foreshore area and this feature would not have a detrimental impact on foreshore along this section of the Rose Bay foreshore.



The relocation of the swimming pool will not affect any significant vegetation and will not impact on adjoining properties, in terms of privacy, solar access and views.

It is also noted that the current location of the swimming pool hinders the usability of the lower ground floor terrace and its relocation will allow for this area to be used safely as private open space.

Having considered the arguments presented by the applicant in his SEPP 1 submission against the relevant objectives of the development standard contained in Woollahra LEP 1995, it is considered that the proposal would uphold the objectives underlying the development standard and the development standard would hinder the attainment of those objectives.

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 proposal will satisfy the objectives of the control. The proposal would be consistent with the objectives of Council's foreshore building line development standard.

Is the objection well founded?

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

11.7 Other special clauses/development standards

Clause 18 Excavation: The proposed excavation 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 Sulfate Soils: The proposed works do not require the need for an assessment of acid Sulfate soils under clause 25D of Woollahra LEP 1995.

12. DRAFT AMENDMENTS TO STATUTORY CONTROLS

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

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

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

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

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

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

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

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

13. DEVELOPMENT CONTROL PLANS

13.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

Site Area (826m ² excluding access handle)	Existing	Proposed	Control	Complies
Ancillary Development (<i>Swimming Pool</i>)				
Rear Setback (West)	10.5m	10.5m	1.5m	YES
Side Setback (North)	2.5m	4.8m	1.5m	YES
Side Setback (South)	3m	5.1m	1.5m	YES
Building Footprint	40.4% (334.5m ²)	45.4% (375.34m ²)	36% (297.36m ²)	NO
Floor Space Ratio	083:1 (687.5m ²)	0.89:1 (739.5m ²)	0.55:1 (473m ²)	NO
Excavation Piling and Subsurface Wall Setback	N/A	>1.5m	1.5m	YES
Deep Soil Landscaping – Dwelling	Approx 190m ²	Approx 190m ²	148m ²	YES
Private Open Space at Ground Level – Total	35m ² +	35m ² +	35m ² Min dimension 3m	YES
Private Open Space at Ground Level – Principal Area	16m ² +	16m ² +	16m ² Min dimension 4m	YES
Private Open Space at Ground Level – Maximum Gradient	<1:10	<1:10	1:10	YES
Location of Swimming Pool	Rear setback	Rear setback	Rear Setback	YES
Swimming Pool Excavation, Piling and Subsurface Wall Setback	>1.5m	>1.5m	1.5m	YES
Swimming Pool Height Above Ground Level Adjacent to the HFSPA	6.2m	3.6m	0.3	NO*

* Improvement on existing

Site analysis performance criteria

Not applicable to this assessment.

Desired future precinct character objectives and performance criteria

The site is located in the Rose Bay precinct. The proposal is considered satisfactory in terms of the performance criteria as it will not alter the existing building envelope as viewed from the street. The existing development provides minimal deep soil landscaping within the frontage of the building and this area is not proposed to be altered.

Streetscape performance criteria

The proposal will not alter the appearance of the dwelling as viewed from Bay View Hill Road.

Building size and location performance criteria

The existing dwelling provides a non compliance with the floor space ratio and building footprint controls applicable to the site.

The proposed works to the dwelling are located to the rear of the site and involve the extension of existing balconies at lower ground and ground floor level. The definition of gross floor area allows for 20m² of balcony area to be excluded from the total gross floor area, with all areas beyond this to be included.

The proposed balcony extensions will therefore have the effect of increasing the floor space ratio from 0.83:1 to 0.89:1. It is noted that the proposal does not seek to floor area of the dwelling as enclosed by external walls.

The proposed balcony extensions also result in an increase in the building footprint at the foreshore. The proposal will increase the existing non-complying building footprint from 40.4% to 45.4%.

The objectives of these controls are to allow for sufficient areas of deep soil landscaping, to allow for the sharing of views, to preserve privacy and sunlight access for neighbouring properties and to ensure the form and scale of development is not excessive. The proposed balcony extension will not impact on views, privacy and solar access to adjoining properties and provides a form and scale that is compatible with surrounding development.

Solar access to the main ground level private open space of adjoining properties will continue to meet the performance criteria of a minimum 2 hours over 50% of the area. Views of the City and Harbour from adjoining properties will not be affected by the proposed balcony extensions.

The merits of the application with regard to privacy are discussed in detail below.

The proposal complies with the requirement for deep soil landscaping.

Open space and landscaping performance criteria

The proposal provides sufficient private open space to the foreshore of the site and complies with the required area for deep soil planting.

Fences and walls performance criteria

Not applicable to this assessment.

Views performance criteria

The proposal does not seek to significantly alter the existing building envelope and will therefore not impact on views from adjoining properties.

Energy efficiency performance criteria

The proposal is satisfactory in terms of solar access as the proposed alteration to the existing building envelope is limited to a increase in height of 500mm with this part of the building envelope located a minimum of 3 metres from the common side boundary.

Stormwater management performance criteria

Council's Development Engineer has advised that no objection is raised, subject to submission of details of how the proposed additions will drain to the existing stormwater system.

Acoustic and visual privacy performance criteria

The proposal seeks to extend the existing lower ground and ground floor balconies beyond the existing foreshore building line to allow for a more useable area for the swimming pool and to provide a more usable balcony at ground floor level. The proposal also includes new reconfigured external access stairs between these levels to replace existing.

The proposed addition to the ground floor balcony is proposed at the north-western corner with the minimum setback from the boundary adjoining 2-4 Bay View Hill Road being 1.2 metres. This does not comply with the minimum required setback of 1.5 metres and as the balcony is elevated above ground level, the setback control is increased to 2.35 metres.

Although extensive vegetation currently exists along the common boundary, this should not be solely relied upon to mitigate privacy concerns. The dwelling as proposed will have more than sufficient private open space and the provision of the return around the north-western corner at ground floor level is not considered imperative for the amenity of the occupants of the dwelling. It is therefore recommended that the following condition be imposed:

- a) The proposed extension to the balcony at ground floor level is not to extend beyond the northern building line and the connection between the existing courtyard and this part of the balcony is to be deleted from the proposal.

Car parking and driveways performance criteria

Not applicable to this assessment.

Site facilities performance criteria

The proposal is satisfactory in this regard.

Harbour foreshore development performance criteria

The proposal is considered satisfactory in terms of the objectives and performance criteria relating to the harbour foreshore area.

The existing swimming pool is located at lower ground floor level and is elevated 6.2 metres above ground level. The proposal seeks to relocate the swimming pool to the lower level to be elevated 3.6 metres above ground level. This is considered a more appropriate design. In addition, the proposed swimming pool is to be located behind a new sandstone wall with suitable landscaping. This complies with C5.11.6.

Access and mobility performance criteria

The proposal satisfies the requirements of Council's Access DCP.

13.2 Woollahra Access

The proposal is for alterations and additions to an existing Class 1 building. The DCP encourages, rather than requires, visitor access to the dwelling. The proposal complies in this regard.

14. APPLICABLE REGULATIONS

Not applicable to this assessment.

15. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts of the development have been addressed elsewhere in the report.

16. THE SUITABILITY OF THE SITE

There is no evidence to suggest that the site is unsuitable for the subject site.

17. SUBMISSIONS

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

- Planning Workshop Australia, on behalf of owners 4 and 6 Bay View Hill Road

The objectors raised the following issues:

- **Loss of acoustic and visual privacy from extension to ground floor terrace to 4 Bay View Hill Road:**

This is acknowledged. Condition No. C1(a) requires that proposed extension to the balcony at ground floor level is to be limited in size and is not to extend beyond the northern building line. The connection between the existing courtyard and this part of the balcony is to be deleted from the proposal.

18. CONCLUSION - THE PUBLIC INTEREST

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

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

THAT the Council, as the consent authority, is of the opinion that the objection under *State Environmental Planning Policy No. 1 – Development Standards* to the height development standard under Clause 12 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 complies with the objectives of the development standard

AND

THAT the Council, as the consent authority, is of the opinion that the objection under *State Environmental Planning Policy No. 1 – Development Standards* to the 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 proposal complies with the objectives of the development standard

AND

THAT the Council, as the consent authority, being satisfied that the objections under SEPP No. 1 are well founded and also being of the opinion that the granting of consent to Development Application No. 259/2007 is consistent with the aims of the Policy, grant development consent to DA No. 259/2007 for alterations and additions to the existing dwelling house on land at 2 Bayview Hill Road 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, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- i. the delivery to or removal from the *site* of any machine, article, material, or thing, or
- j. the occupation of the *site* by any person unless authorised by an *occupation certificate*.

Note: Interpretation of Conditions - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.
Standard Condition: A2

A.3 Approved Plans and supporting documents

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

Reference	Description	Author/Drawn	Date(s)
A:001A A:002B A:003A and A004A & A:200A to A:203A inclusive	Architectural Plans	Level 5 Design	07.08.07
A26740	BASIX Certificate	Department of Planning	13.01.08
	Construction Methodology Report	Northrop Consulting Engineers	28.06.07
Ref 35770	Geotechnical Report	Douglas Partners	

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

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

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

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

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

A.5 General Terms of Approval – *Rivers and Foreshores Improvement Act 1948* (Maritime)

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

Part 3A

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

- i. Any trees that are removed during the works are to be replaced elsewhere on the site with a suitable replacement. Replacement trees are to be locally indigenous species.
- j. In relation to (h) and (i) above, a suitable landscape plan is to be provided to NSW Maritime prior to a Part 3A permit being issued. The plan is to identify the location and species of trees at the site; measures to protect them from damage during the works and details of additional landscaping to be carried out, including species, numbers and location.
- k. It is noted that there are seagrass communities immediately adjacent the site, which are sensitive to disturbance and siltation. The erosion and sediment control system proposed to manage any potential impacts needs to reflect the sensitivity of the receiving waters and demonstrate that there are sufficient measures to prevent impacts to this sensitive habitat. To this effect a suitably prepared management plan is to be provided. The plan should include, but not limited to:
 - a. Measures to contain and reduce the dispersal of sediment and fines;
 - b. Post construction works to restore and stabilise affected areas;
 - c. Measures are in place to audit the environmental performance of the construction management and what approach is to be used for responding to this issue; and
 - d. Measures to prevent any material entering the water from waste receptacles that are to be transported to and from the site.
- l. The foreshore and intertidal area are to be fully protected for the duration of the works. This includes preventing the storage of any materials, equipment, supplies or waste receptacles within the intertidal area.
- m. Limited information has been provided regarding access for the proposed works. If access for construction and materials is to be sought via the foreshore (ie barge) then a comprehensive construction management plan is to be prepared by suitably qualified individuals and submitted to the satisfaction of NSW Maritime. The plan should include, but not limited to, measures that demonstrate:
 - a. The protection of sensitive intertidal areas through access and egress of the barge and associated activities (such as propeller damage, lines and anchor points, length of stay etc).
 - b. The management of disturbed foreshore lands to avoid any sediment entering the waterway.
 - c. Siltation management through the implementation of suitable controls (such as floating boom and silt curtains.
 - d. Post construction works to restore and stabilise the intertidal area.
 - e. Measures are in place to audit the environmental performance of the construction management and what approach is to be used for responding to an issue.
- n. Any works relating to the existing seawall are to be follow the same alignment to the existing wall, with no encroachment onto NSW Maritime land. Seawalls are to be constructed of, or faced with, similar sandstone materials which have been used elsewhere.
- o. Plans to be provided with the Part 3A Permit are to depict the site boundary (and/or MHW) in relation to Rose Bay. No works are to be undertaken on land owned by NSW Maritime without the relevant approvals being granted by NSW Maritime.

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

Standard Condition: A17

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

B.1 Construction Certificate required prior to any demolition

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

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

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

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

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

- a. The proposed extension to the balcony at ground floor level is not to extend beyond the northern building line and the connection between the existing courtyard and this part of the balcony is to be deleted from the proposal.

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

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy Use Calculator: http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation or use their online calculator	No	
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit - Making good any damage caused to any property of the <i>Council</i> as a consequence of the doing of anything to which the consent relates.	\$4000	No	T600
DEVELOPMENT LEVY under Woollahra Section 94A Development Contributions Plan 2005 This plan may be inspected at Woollahra Council or downloaded from our website www.woollahra.nsw.gov.au .			
Development Levy	\$880 + Index Amount	Yes, quarterly	T94

INSPECTION FEES under section 608 of the Local Government Act 1993			
Public Tree Management Inspection Fee	\$363.25	No	T95
Security Administration Fee	\$163	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$5406.25	Plus any relevant indexed amounts and long service levy	

Building & Construction Industry Long Service Payment

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

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

How must the payments be made?

Payments must be made by:

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

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

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

How will the section 94A levy be indexed?

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

Do you need HELP indexing the levy?

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

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

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

- a. the reasons given;
- b. whether any prejudice will be caused to the community deriving benefit from the public facilities;
- c. whether any prejudice will be caused to the efficacy and operation of this plan; and

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

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

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

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

Standard Condition: C5

C.2 BASIX commitments

The *applicant* must submit to the *Certifying Authority* *BASIX Certificate* No. A26740 with any application for a *Construction Certificate*.

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

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

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

Standard Condition: C7

C.3 Soil and Water Management Plan – Submission & Approval

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

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

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

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

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

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

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

C.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 structural is able to support the additional loads proposed.
Standard Condition: C35

C.5 Stormwater discharge to existing Stormwater Drainage System (Clause 25(2) WLEP 1995)

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

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

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

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

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

Note: Stormwater Drainage Systems must not discharge to any Sewer System. It is illegal to connect stormwater pipes and drains to the sewerage system as this can overload the system and cause sewage overflows. See:

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

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

www.woollahra.nsw.gov.au

Standard Condition: C49

C.6 Stormwater Discharge to Harbour (Clause 25(2) WLEP 1995)

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

Standard Condition: C50

C.7 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.8 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

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 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.3 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.4 Site Signs

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

“Erection of signs

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

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

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

D.5 Toilet Facilities

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

Each toilet provided:

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

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

In this condition:

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

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

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

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

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

D.6 Erosion and Sediment Controls – Installation

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

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

Where there is any conflict The Blue Book takes precedence.

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

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

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

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

D.7 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.8 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.9 Establishment of boundary location, building location and datum

Prior to the commencement of any work the principal contractor or owner builder must ensure that a surveyor registered under the *Surveying Act 2002* sets out:

- a. the boundaries of the *site* by permanent marks (including permanent recovery points);
- b. the location and level of foundation excavations, footings, walls and slabs by permanent marks, pegs or profiles relative to the boundaries of the land and relative to Australian Height Datum ("AHD") in compliance with the approved plans;
- c. establishes a permanent datum point (bench mark) within the boundaries of the *site* relative to AHD; and
- d. provides a copy of a survey report by the registered surveyor detailing, the title boundaries, pegs/profiles, recovery points and bench mark locations as established pursuant to this condition to the PCA.

Note: Where the *principal contractor* or *owner builder* notes any discrepancy between the approved development consent and the *Construction Certificate*, especially in relation to the height, location or external configuration of the building (but not limited to these issues) the *principal contractor* or *owner builder* should not proceed until satisfied that the variations as shown are consistent with the consent. Failure to do so may result in a breach of development consent.

Note: On larger developments, or where boundary redefinition is required, the placement of new State Survey Marks as permanent marks should be considered by the registered surveyor.

Standard Condition: D18

E. Conditions which must be satisfied during any development work

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

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

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

This condition does not apply:

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

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

Standard Condition: E1

E.2 Compliance with Australian Standard for Demolition

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

Standard Condition: E2

E.3 Compliance with Construction Management Plan

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

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

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

Standard Condition: E3

E.4 Critical Stage Inspections

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

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

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

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

Standard Condition: E5

E.5 Hours of Work –Amenity of the neighbourhood

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

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

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

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

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

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

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

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

E.6 Maintenance of Vehicular and Pedestrian Safety and Access

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

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

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

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

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

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

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

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

Part C Management of Waste:

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

Part E Public roads:

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

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

E.7 Tree Preservation

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

General Protection Requirements:

- a. There must be no excavation or *work* within the required Tree Protection Zone(s). The Tree Protection Zone(s) must be maintained during all *development work*.

- b. Where excavation encounters tree roots with a diameter exceeding 40mm excavation must cease. The *principal contractor* must procure an inspection of the tree roots exposed by a qualified arborist. Excavation must only recommence with the implementation of the recommendations of the qualified arborist or where specific instructions are given by Council's Tree Management Officer in strict accordance with such Council instructions.
- c. Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the qualified arborist or where specific instructions are given by Council's Tree Management Officer in strict accordance with such Council instructions.

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

E.8 Maintenance of Environmental Controls

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

- a) Erosion and sediment controls,
- b) Dust controls,
- c) Dewatering discharges,
- d) Noise controls;
- e) Vibration monitoring and controls;
- f) Ablutions;
- g) <insert or delete such controls as may be necessary in the circumstances of the consent>

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

E.9 Support of adjoining land and buildings

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

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

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

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

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

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

Note: The encroachment of work or the like is a civil matter of trespass or encroachment and Council does not adjudicate or regulate such trespasses or encroachments except in relation to encroachments upon any road, public place, crown land under Council’s care control or management, or any community or operational land as defined by the *Local Government Act 1993*.
Standard Condition: E13

E.10 Erosion and Sediment Controls – Maintenance

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

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

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



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

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

E.11 Disposal of site water during construction

The principal contractor or owner builder must ensure:

- a) Prior to pumping any water into the road or public stormwater system that approval is obtained from *Council* under section 138(1)(d) of the *Roads Act 1993*;
- b) That *water pollution*, as defined by the *Protection of the Environment Operations Act 1997*, does not occur as the result of the discharge to the road, public stormwater system or other place or any site water;

- c) That stormwater from any roof or other impervious areas is linked, via temporary downpipes and stormwater pipes, to a Council approved stormwater disposal system immediately upon completion of the roof installation or work creating other impervious areas.

Note: This condition has been imposed to ensure that adjoining and neighbouring land is not adversely affected by unreasonable overland flows of stormwater and that site water does not concentrate water such that they cause erosion and water pollution.
Standard Condition: E17

E.12 Check Surveys - boundary location, building location, building height and stormwater drainage system relative to Australian Height Datum

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

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

- a) Upon the completion of foundation walls prior to the laying of any floor or the pouring of any floor slab and generally at damp proof course level;
- b) Upon the completion of formwork for floor slabs prior to the laying of any floor or the pouring of any concrete and generally at each storey;
- c) Upon the completion of formwork or framework for the roof(s) prior to the laying of any roofing or the pouring of any concrete roof;
- d) Upon the completion of formwork and steel fixing prior to pouring of any concrete for any ancillary structures, swimming pool or spa pool or the like;
- e) Driveway transitions and crest thresholds prior to pavement of driveways;
- f) Stormwater Drainage Systems prior to or post construction confirming location, height and capacity of works.

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

E.13 Placement and use of Skip Bins

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

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

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

E.14 Dust Mitigation

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

This generally requires:

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

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

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

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

E.15 Swimming and Spa Pools – Temporary Child Resistant Barriers and other matters

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

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

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

E.16 Existing drainage easement, drainage reserve or stormwater drainage system benefiting Council

Council drainage easement(s) drainage reserve(s) or stormwater system passes through the site. No building or other structure must be placed over the drainage easement or stormwater system or within the zone of influence taken from the invert of any pipe.

The *principal contractor* or *owner builder* must locate all *Stormwater Drainage Systems* without causing any damage to the public system and ensure its protection. The *owner*, *principal contractor* or *owner builder* must not obstruct or otherwise remove, disconnect or render inoperable the *Stormwater Drainage System*.

Works such as fences must not obstruct the natural floodway or alter the natural floodway in such a way as to direct or concentrate stormwater on to neighbouring properties.

Where the relocation or reconstruction of Council's drainage system is approved then 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: The Local Government Act 1993 provides:

"59A Ownership of water supply, sewerage and stormwater drainage works

- (1) *Subject to this Division, a council is the owner of all works of water supply, sewerage and stormwater drainage installed in or on land by the council (whether or not the land is owned by the council).*
- (2) *A council may operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that are necessary or appropriate to any of its works to ensure that, in the opinion of the council, the works are used in an efficient manner for the purposes for which the works were installed."*

Standard Condition: E27

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

F.3 Swimming and Spa Pools – Permanent Child Resistant Barriers and other matters

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

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

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

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

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

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

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. 26740.

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

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

I.1 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. A26740.

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

I.2 Swimming and Spa Pools – Maintenance

Swimming and Spa Pools must be maintained:

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

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

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

I.3 Noise from mechanical plant and equipment

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

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

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

J. Miscellaneous Conditions

Nil

K. Advisings

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

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

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

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

Warnings as to potential maximum penalties

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

Warning as to enforcement and legal costs

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

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

Note: The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of *the Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. You can obtain further information from the following web sites:
<http://www.theshopfront.org/documents/ConvictionsCriminalRecords.pdf> and the Attorney General's www.agd.nsw.gov.au.
Standard Advising: K1

K.2 Dial before you dig



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

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

Standard Advising: K2

K.3 Commonwealth Disability Discrimination Act 1992 (“DDA”)

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

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

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

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

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

Standard Advising: K3

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 appoint a *principal contractor* for residential building work who must be the holder of a contractor licence.

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

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

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

Standard Condition: K5

K.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 down loaded from:

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

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

Standard Condition: K6

K.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.

Standard Condition: K7

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

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

K.8 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.9 Appeal

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

Mr George Fotis, Assessment Officer on (02) 93917089

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.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.

Note: The Application for Refund of Security form can be downloaded from
<http://www.woollahra.nsw.gov.au/pdf/Forms/Planning/RefundofSecurity.pdf>
Standard Condition: K15

K.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

Ms J Askin
CONSULTANT PLANNER

Mr G Fotis
TEAM LEADER

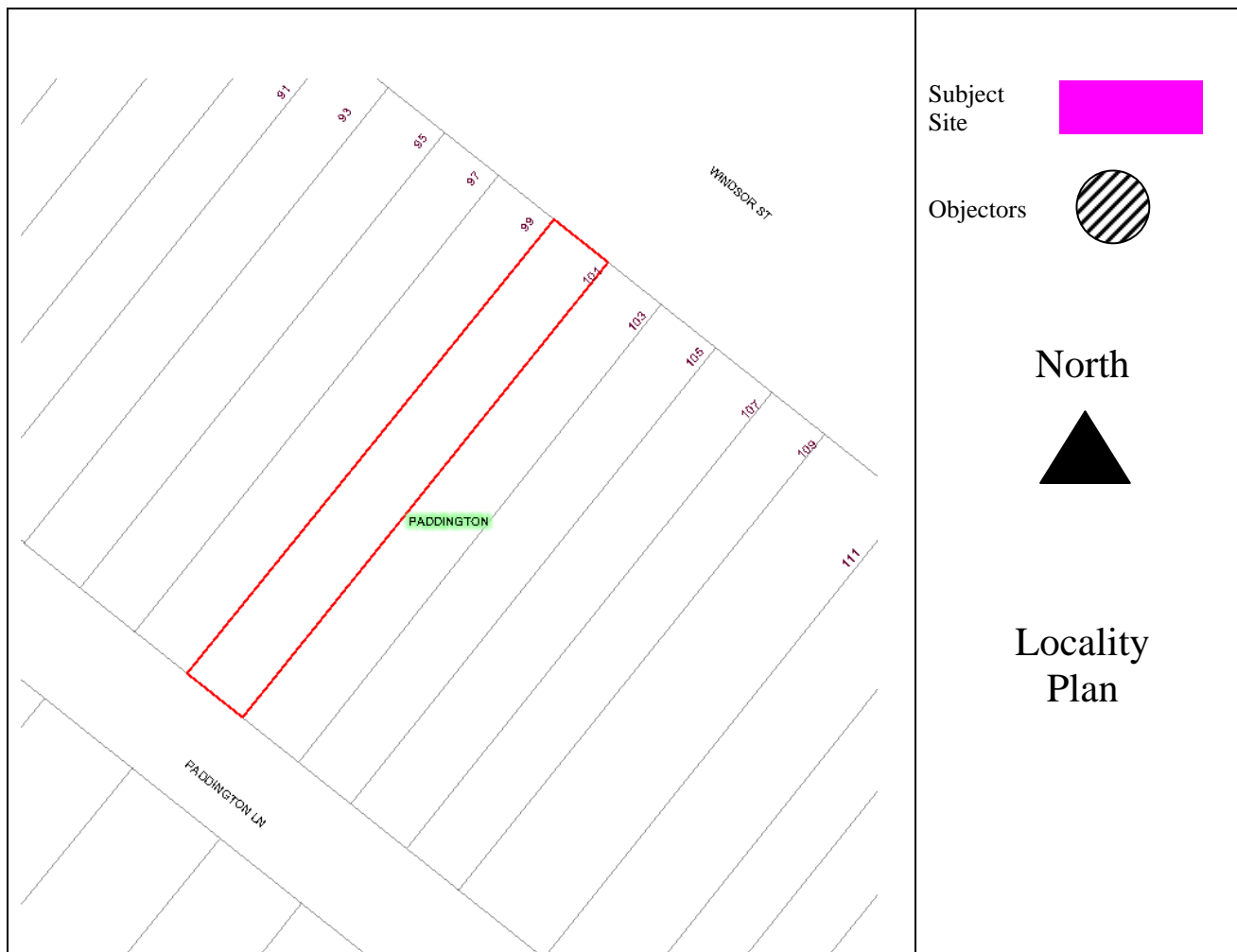
ANNEXURES

1. Plans and elevation
2. Referral response – Technical Services
3. Photomontage

SECTION 82A REVIEW OF DETERMINATION REPORT

ITEM No.	D4
FILE No.	DA 150/2007
ADDRESS:	101 Windsor Street PADDINGTON 2021
PROPOSAL:	Alterations & additions to existing terrace
DATE DA DETERMINED:	04/09/2007
SUBJECT OF REVIEW:	Refusal
DATE S82A REVIEW APPLICATION LODGED:	28/09/2007
APPLICANT:	Mr R E Williams & Mrs K Williams
OWNER:	Mr R E & Mrs K Williams
REVIEW OFFICER:	Ms L Northridge

LOCALITY PLAN



1. SUMMARY

Reason for report

The development application was refused by the Application Assessment Panel on 4 September 2007. Having regard to Council's delegations, this S82A review is referred to the Development Control Committee for determination.

Issues

- Heritage
- Soft Landscaping
- Privacy

Objections

One objection has been received.

Recommendation

Approval.

2. BACKGROUND

DA150/2007 for alterations and additions to the existing terrace at 101 Windsor Street, Paddington was refused by the Application Assessment Panel on the 4 September 2007 for the following reasons:

1. Aims and Objectives of the Woollahra LEP

The proposal does not accord to the general aims and objectives of the LEP with respect to heritage conservation (Clause 28) and does not comply with Clause 8(5) of the LEP.

2. Heritage Conservation

The proposal would have a detrimental impact upon the Heritage Conservation Area and does not comply with Clause 2(2)(g)(ii) of the Woollahra LEP.

3. Rear elevations and yards

The proposal will be contrary to Objectives **O1**, **O2** and Guidelines/controls **G3** of Part 5.1.3 of the Paddington DCP as the works will be excessive and an overdevelopment of the subject site and will be an unsympathetic design and construction within the conservation area.

4. Roofs

The proposal will be contrary to Objectives **O1** and Guidelines/controls **G7** of Part 5.1.4 of the Paddington DCP. The proposal will not reflect appropriate traditional roof forms and will be an unsympathetic design which will not respond to the traditional architectural style and materials found in the area.

5. Landscaping and private open space

The proposal will be contrary to Objectives *O1* and *O2* and Guidelines/controls *G4* of Part 5.1.6 of the Paddington DCP as the works will eliminate soft landscaping at the ground level to the rear of the subject site.

6. Acoustic and visual privacy

The proposal will be contrary to Objectives *O1* and *O2* of Part 5.1.8 of the Paddington DCP as the works will adversely impact on the acoustic and visual privacy currently afforded to the adjoining properties as a result of the rear balcony to the first.

7. Parking, access and servicing facilities

The proposal will be contrary to Table 5.2.6 - Materials of garages to be masonry. The proposed carport structure and in particular the corrugated fibreglass is unsuitable

8. Public Interest

The proposal is not in the public interest.

3. DESCRIPTION OF PROPOSAL SUBJECT OF REVIEW

The original proposal sought to remove the single storey breezeway wing and replace it with a boundary to boundary two storey rear addition including a new carport structure with a pitched roof. Also proposed is works to the rear courtyard including landscaping and boundary walls.

An amended design has been submitted with this Section 82A Application. The proposed amendments are as follows:

- The rear first floor balcony has been setback from the eastern boundary by 0.5m;
- New timber privacy screens to both sides of the rear first floor balcony;
- The materials to the rear first floor balcony roof have been changed from fibre cement sheeting to metal roofing;
- The proposed barrel vaulted roof to the new first floor extension has been changed to a skillion form;
- The balustrade to the rear first floor balcony has been changed to vertically proportioned balustrading;
- The new first floor extension is proposed to have a rendered and paint finish rather than the fibre cement finish;
- New skylight to the rear roof slope of the rear wing;
- The garage is to be constructed from rendered masonry and the roller door was reduced in width and new louvered window to the rear has been proposed.

The application was amended, the following changes were received:

- A flat roof was provided within the existing breezeway;
- A small indent has been provided within the existing breezeway.

4. DESCRIPTION OF PROPOSED REVIEW

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

5. COUNCIL'S STATUTORY RESPONSIBILITIES UNDER S82A

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

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

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

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

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

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

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

6. CONSIDERATION OF REVIEW

1. Heritage

This reasons for refusal relates to the non-compliance with Objective (2)(2)(g)(ii) of the Woollahra LEP.

The proposed development has been sufficiently amended to maintain the character and appearance of the Paddington Heritage Conservation Area. This has been discussed in detail below.

2. Rear elevations and yards

This reason for refusal relates to the non-compliance with Objectives **O1**, **O2** and Guidelines/controls **G3** of Part 5.1.3 of the Paddington DCP as the works were considered to be excessive and an overdevelopment of the subject site and will be an unsympathetic design and construction within the conservation area.

The amended proposal still exceeds the height of the existing gutterline of the main roof of the existing building. This non-compliance results from meeting the minimum BCA floor to ceiling heights. However, the proposed works are considered to be acceptable as these works will not be readily visible from the public domain. Paddington Lane is located at a slightly higher level than Windsor Street and the existing garages facing the laneway mostly obscure views of the rear façade of the subject terrace. Notwithstanding this, the proposal was amended so that only part of the new first floor extension will exceed the height of the gutterline of the main terrace so the integrity of the conservation area as viewed from the private domain can be maintained.

The provision of a full width first floor extension is considered to be acceptable as the subject site is only 3.8 metres wide and currently only contains a single storey rear wing. The provision of a breezeway at first floor level does not allow for satisfactory room sizes to meet current standards and given the limited visibility of the rear wing it is considered unreasonable to insist that a breezeway be provided. However, so that the integrity of the conservation area can be retained from both the public and private domain, the proposed development has been amended and conditioned so that the breezeway can be interrupted. The applicant amended the proposal to provide a flat roof within the breezeway and has provided a small indent in the location of the breezeway. A condition of consent has been recommended to provide a 500mm indent (refer to **Condition C3**) as the proposed indent will allow the breezeway to be sufficiently interpreted. The indent allows for sufficient shadow lines to be created to allow for the indentation to be read.

The proposed development is consistent with surrounding development as a full width first floor extension was constructed within the group of terraces at No. 97 (consent orders for this development were granted on 1 March 2001). Consent was granted to this development on the basis that a 1.15m indent within the breezeway was provided. Whilst, the size of the indent at this property is greater than the proposed indent at the subject property the proposed development also includes a flat roof within the breezeway, which combined will allow for the breezeway to be sufficiently interrupted and retain the integrity of the conservation area. In addition the rear façade of this building (No.97) is more visible from the public domain than the rear façade of the subject terrace.

It should be noted that two additional full width first floor extensions have also been constructed at Nos. 105 & 107. Consent was granted to No.107 prior to the introduction of the Paddington DCP. Even though, consent was granted to No.105 on 22 May 2000 (after the introduction of the Paddington DCP). Consent was only granted to this full width extension to maintain continuity and symmetry of the terrace pair.

O1 of Part 5.1.3 of the PDCP seeks to retain the forms and character of traditional rear facades where they exist in unaltered groups. The above mentioned developments at No. 97, No. 105 and No.107 are located within the same group of terraces (the group extends from No. 97 to 109) as the subject development and has resulted in highly altered group of terraces. This has rendered this type of development, proposed to the subject site as acceptable.

The proposed first and ground floor addition would not adversely affect the solar access of adjoining properties as the subject site has a north- south orientation and will generally overshadow a roof at the adjoining property (No. 99) and an identical two storey addition at No.103 (which is being assessed concurrently with this application).

The proposed development does not extend beyond established building alignments within the group of buildings and does not contain large areas of glazing on the first floor. In this respect, the proposed development is considered to be acceptable in term of Part 5.1.3 of the PDCP.

3. Roofs

This reasons for refusal relates to the non-compliance with Objectives **O1** and Guidelines/controls **G7** of Part 5.1.4 of the Paddington DCP as the proposed roof form did not reflect appropriate traditional roof forms and the unsympathetic design did not to respond the traditional architectural style and materials found in the area.

The amended proposal is considered to be acceptable in terms of O1 and G7 as a traditional skillion roof form has been proposed. The new roof has been pitched from eastern boundary towards to the western boundary to mirror the new roof that has been proposed at No.103 to form a matching pair of rear wings.

The previous development proposed a barrel vaulted roof form. This roof was unsympathetic to the character and appearance of the conservation area and did not respond to the traditional architectural style of the area. Therefore for reasons stated above the proposed development is considered to be acceptable in terms of Part 5.1.4 of the PDCP.

4. Soft Landscaping

One of the reasons for refusal relates to the non compliance with Objectives **O1** and **O2** and Guidelines/controls **G4** of Part 5.1.6 of the Paddington DCP as the works will eliminate soft landscaping at the ground level to the rear of the subject site.

Whilst, this S82A application does not make any changes to the proposed amount of soft landscaping to be provided at the site, the proposed development is considered to be acceptable in terms of Part 5.1.6 of the PDCP as guideline G2 gives special consideration for sites under 130m². The subject site has a total site area of 121m² and 6m² of soft landscaping has been proposed to be provided; currently the site only contains 4.66m² of soft landscaping. This represents a significant improvement to the amount of soft landscaping available at the site.

Therefore, for the reasons stated above the proposed development is considered to be acceptable in terms of Part 5.1.6 of the PDCP.

5. Acoustic and visual privacy

This for refusal relates to the non compliance with Objectives **O1** and **O2** of Part 5.1.8 of the Paddington DCP as the works will adversely impact on the acoustic and visual privacy currently afforded to the adjoining properties as a result of the rear balcony to the first floor.

The amended proposal is considered to be acceptable in terms of O1 and O2 of Part 5.1.8 of the PDCP as the proposed first floor balcony has been setback by 0.5m from the eastern boundary of the site and timber privacy screens have been proposed on both sides of the first floor balcony.

The proposed size of the first floor balcony and its location off a bedroom will also minimise the impact of this balcony on the acoustic and visual privacy of adjoining properties.

Therefore, for the reasons stated above the proposed development is considered to be acceptable in terms of Part 5.1.6 of the PDCP.

6. Parking, access and servicing facilities

This reason for refusal relates to the non-compliance with Part 5.2.6 of the Paddington Development Control as inappropriate materials for the garage have been selected.

The presentation of the garage to the Paddington Lane has been substantially improved by this S82A review. The intrusive corrugated fibreglass gable has been deleted, the new roller door has been reduced in width and the garage is to be finished in rendered brickwork. These changes to the appearance and the materials for the new garage comply with Part 5.2.6 of the PDCP and will make a positive contribution to the character and appearance of Paddington Lane. Therefore, for the reasons stated above the proposed development is considered to be acceptable in terms of 5.2.6 of the PDCP.

7. Public Interest

The final reason for refusal relates to the public interest.

The proposed amended proposal is considered to satisfactorily overcome the reasons for refusal and is considered to be no longer be detrimental to the character and appearance of the conservation area and would no longer adversely affect the amenity of surrounding properties. Therefore, for the reasons stated above the proposed development is not considered to be detrimental to the public interest.

6.1 Substantially the same development

The provisions of Section 82A of the Environmental Planning & Assessment Act, 1979 require Council to be satisfied that the development under review is substantially the same development as the development described in the original development application. It is considered that the development under review is substantially the same development as the proposal seeks to provide alterations and additions to No. 101 Windsor Street.

7. SUBMISSIONS

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

- The Paddington Society, PO Box 99 Paddington

The objections raised the following issues:

- **Heritage- height above gutterline**
Comment: This has been addressed above in issue 2 of this report
- **Heritage- no first floor breezeway**
Comment: This has been addressed above in issue 2 of this report.
- **Overshadowing**

Comment: This has been addressed above in issue 2 of this report

- **Soft Landscaping**

Comment: This has been addressed above in issue 4 of this report.

8. CONCLUSION

Section 82A of the Environmental Planning and Assessment Act 1979 allows Council to review the determination of an application and, as a consequence of its review, may confirm or change the determination.

The original assessment of the development application was conducted with regard to the provisions of Section 79C of the Environmental Planning and Assessment Act 1979 as well as the objectives and controls contained in Council's Local Environmental Plan and Paddington Development Control Plan. The decision was made on the basis of the originally submitted plan, which did not satisfy a number of the provisions of the Woollahra LEP and Paddington DCP. The proposal was therefore refused.

It is considered that the revised proposal subject to the imposition of conditions is considered acceptable in terms of S79C considerations and will satisfy the relevant provisions of the LEP & DCP, such that refusal of the proposal is not justified. It is therefore recommended that Council change its determination and approve the application.

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

THAT Council, as the consent authority, having considered the application for review of its refusal, resolve to change its determination and grant development consent to Development Application No. 150/2007 for alteration and additions to the existing terrace on land at 101 Windsor Street Paddington, for the following reasons:

A. General Conditions

A.1 Conditions

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

Standard Condition: A1

A.2 Definitions

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

Applicant means the applicant for this Consent.

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

AS or *AS/NZS* means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.
BCA means the Building Code of Australia as published by the Australian Building Codes Board as in force at the date of issue of any *Construction Certificate*.

Council means Woollahra Municipal Council

Court means the Land and Environment Court

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

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

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

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

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

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

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

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

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

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

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

Site means the land being developed subject to this consent.

WLEP 1995 means *Woollahra Local Environmental Plan 1995*

Work for the purposes of this consent means:

- a. the use of land in connection with development,
- b. the subdivision of land,
- c. the erection of a building,
- d. the carrying out of any work,
- e. the use of any site crane, machine, article, material, or thing,

- f. the storage of waste, materials, site crane, machine, article, material, or thing,
- g. the demolition of a building,
- h. the piling, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- i. the delivery to or removal from the *site* of any machine, article, material, or thing, or
- j. the occupation of the *site* by any person unless authorised by an *occupation certificate*.

Note: Interpretation of Conditions - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.
Standard Condition: A2

A.3 Approved Plans and supporting documents

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

Reference	Description	Author/Drawn	Date(s)
DA02a to 6a DA07b, DA08b	Architectural Plans	Mc Design Architects	September 2007 January 2008
A7138	BASIX Certificate	Department of Planning	13 February 2007

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

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

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

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

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

A.5 Prescribed Conditions

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

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

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

B.1 Construction Certificate required prior to any demolition

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

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

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

C.1 Materials

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

C.2 Water conservation

To ensure compliance with Part 5.1.11 of the Paddington Development Control Plan, 1999, the use of low flow water regulators on taps, dual flushing toilets and water saving shower heads shall be incorporated into the design of the development. Details shall be submitted with an application for a Construction Certificate.

C.3 Modification of details of the development (s80A(1)(g) of the Act)

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

- To allow for the breezeway at first floor level to be sufficiently interrupted the proposed indent above the proposed flat roof shall be increased to 500mm.

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

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

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

C.4 Payment of Security, Levies and Fees (S80A(6) & S94 of the Act, Section 608 of the Local Government Act 1993)

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

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

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

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy Use Calculator: http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation or use their online calculator	No	
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit - Making good any damage caused to any property of the <i>Council</i> as a consequence of the doing of anything to which the consent relates.	\$6 000	No	T600
DEVELOPMENT LEVY under Woollahra Section 94A Development Contributions Plan 2005 This plan may be inspected at Woollahra Council or downloaded from our website www.woollahra.nsw.gov.au .			
Development Levy	\$2 000 + Index Amount	Yes, quarterly	T94
INSPECTION FEES under section 608 of the Local Government Act 1993			
Security Administration Fee	\$163	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$8 163 Plus any relevant indexed amounts and long service levy		

Building & Construction Industry Long Service Payment

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

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

How must the payments be made?

Payments must be made by:

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

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

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

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.5 BASIX commitments

The *applicant* must submit to the *Certifying Authority BASIX Certificate* No. A7138 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.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 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.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.

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.9 Stormwater discharge to existing *Stormwater Drainage System* (Clause 25(2) WLEP 1995)

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

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

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

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

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

Note: Stormwater Drainage Systems must not discharge to any Sewer System. It is illegal to connect stormwater pipes and drains to the sewerage system as this can overload the system and cause sewage overflows. See:

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

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

www.woollahra.nsw.gov.au

Standard Condition: C49

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

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

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

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

This condition does not apply:

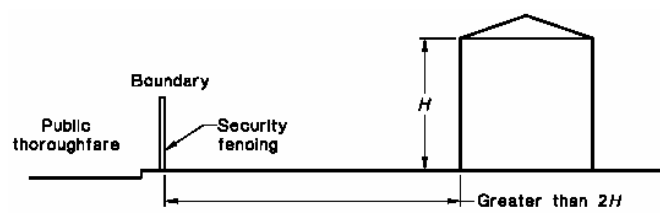
- a. to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4),
- or
- b. to the erection of a temporary building.

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

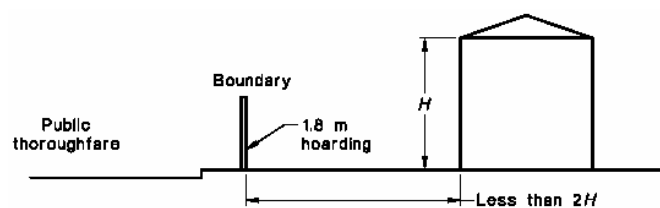
Note: This condition must be satisfied prior to commencement of any work in relation to the contract of insurance under the Home Building Act 1989. This condition also has effect during the carrying out of all building work with respect to compliance with the Building Code of Australia.
Standard Condition: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

D.2 Security Fencing, Hoarding and Overhead Protection

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



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

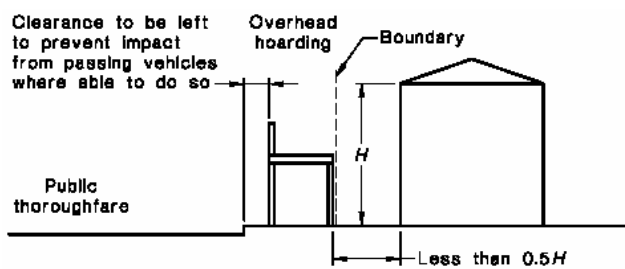


Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an *overhead protective structure* and the facing facade protected by heavy-duty scaffolding, unless either

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

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

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



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

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

<http://www.workcover.nsw.gov.au/Publications/LawAndPolicy/CodesofPractice/ohheadprotstrcuts.htm>.

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

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

Standard Condition: D11

D.3 Site Signs

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

“Erection of signs

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

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

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

D.4 Toilet Facilities

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

Each toilet provided:

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

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

In this condition:

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

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

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

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

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

D.5 Erosion and Sediment Controls – Installation

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

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

Where there is any conflict The Blue Book takes precedence.

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

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

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

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

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

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

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

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

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

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

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

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

D.7 Notification of Home Building Act 1989 requirements

- a. For the purposes of section 80A (11) of the *Act*, the requirements of this condition are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the Home Building Act 1989.
- b. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

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

D.8 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

D.9 Checking Construction Certificate plans & protecting assets owned by the Sydney Water Corporation

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

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/quick_check/building_renovating.cfm

Standard Condition: D19

E. Conditions which must be satisfied during any development work

E.1 Compliance with Australian Standard for Demolition

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

Standard Condition: E2

E.2 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.3 Hours of Work –Amenity of the neighbourhood

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

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

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

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

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

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

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

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

E.4 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.5 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) Noise controls;

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

E.6 Erosion and Sediment Controls – Maintenance

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

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

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



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

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

E.7 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.8 Check Surveys - boundary location, building location, building height and stormwater drainage system relative to Australian Height Datum

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

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

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

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

E.9 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.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 position 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 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.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 down loaded free of charge from Council’s web site www.woollahra.nsw.gov.au or obtained from Council’s office.

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

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

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

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

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

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

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

H.1 Removal of Ancillary Works and Structures

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

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

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

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

I.1 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No.A7138.

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. Advising

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

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

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

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

Warnings as to potential maximum penalties

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

Warning as to enforcement and legal costs

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

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

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

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

Standard Advising: K1

K.2 Dial before you dig



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

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

Standard Advising: K2

K.3 Builders Licences and Owner Builders Permits

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

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

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

Standard Condition: K5

K.4 Building Standards - Guide to Standards and Tolerances

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

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

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

The Guide can be down loaded from:

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

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

Standard Condition: K6

K.5 Workcover requirements

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

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

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

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

Standard Condition: K7

K.6 Asbestos Removal, Repair or Disturbance

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

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

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

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

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

Standard Advising: K8

K.7 Lead Paint

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

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

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

Standard Advising: K9

K.8 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.9 Appeal

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

George Fotis, Team Leader on (02) 9391 7089

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

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

Standard Condition: K14

K.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.

Note: The Application for Refund of Security form can be downloaded from
<http://www.woollahra.nsw.gov.au/pdf/Forms/Planning/RefundofSecurity.pdf>
Standard Condition: K15

K.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.14 Compliance with the Building Code of Australia

Council considers pursuant to clause 94 of the *Regulation* that it is appropriate to require the existing building to be brought into total or partial conformity with the *BCA*.

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:

- a. Housing Provisions, Clause 3.8- Health and amenity,
- b. Housing Provisions, Clause 3.7.2.2 - Requirements for smoke alarms,
- c. Housing Provisions, Clause 3.9.1 - Stair construction,
- d. Housing Provisions, Clause 3.9.2 - Balustrades,

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

Ms L Northridge
REVIEW OFFICER

Mr G Fotis
TEAM LEADER

ANNEXURES

1. Original assessment report
2. Plans & elevations (refusal)
3. Plans & elevations (S82A review)
4. Heritage Officer referral
5. Technical Services referral
6. Photos

SECTION 82A REVIEW OF DETERMINATION REPORT

ITEM No.	D5
FILE No.	DA 353/2007
ADDRESS:	103 Windsor Street PADDINGTON 2021
PROPOSAL:	Alterations and additions to terrace
DATE DA DETERMINED:	04/09/2007
SUBJECT OF REVIEW:	Refusal
DATE S82A REVIEW APPLICATION LODGED:	27/09/2007
APPLICANT:	Mr S J Urquhart
OWNER:	Mr S J Urquhart
REVIEW OFFICER:	Ms L Northridge

LOCALITY PLAN



1. SUMMARY

Reason for report

The development application was refused by Application Assessment Panel on 4 September 2007. Having regard to Council's delegations, this S82A review is referred to the Development Control Committee for determination.

Issues

- Heritage
- Soft Landscaping
- Visual Privacy

Objections

No objections were received.

Recommendation

Approval

2. BACKGROUND

DA353/2007 for alterations and additions to the existing terrace at 103 Windsor Street, Paddington was refused by the Application Assessment Panel on the 4 September 2007 for the following reasons:

1. Aims and Objectives of the Woollahra LEP

The proposal does not accord to the general aims and objectives of the LEP with respect to heritage conservation (Clause 28) and does not comply with Clause 8(5) of the LEP.

2. Heritage Conservation

The proposal would have a detrimental impact upon the Heritage Conservation Area and does not comply with Clause 2(2)(g)(ii) of the Woollahra LEP.

3. Rear elevations and yards

The proposal will be contrary to Objectives *01*, *02* and Guidelines/controls *G3* of Part 5.1.3 of the Paddington DCP as the works will be excessive and an overdevelopment of the subject site and will be an unsympathetic design and construction within the conservation area.

4. Roofs

The proposal will be contrary to Objectives *01*, and Guidelines/controls *G1*, *G3* and *G7* of Part 5.1.4 of the Paddington DCP. The proposal will not reflect appropriate traditional roof forms and will be an unsympathetic design which will not to respond the traditional architectural style and materials found in the area.

5. Landscaping and private open space

The proposal will be contrary to Objectives *01* and *02* and Guidelines/controls *G4* of Part 5.1.6 of the Paddington DCP as the works will eliminate soft landscaping at the ground level to the rear of the subject site.

6. Acoustic and visual privacy

The proposal will be contrary to Objectives *01* and *02* of Part 5.1.8 of the Paddington DCP as the works will adversely impact on the acoustic and visual privacy currently afforded to the adjoining properties as a result of the rear balcony to the first.

7. Dormer windows and skylights

The proposal will be contrary to Objectives *01*, *02*, and *03* of Part 5.2.1 of the Paddington DCP. The proposed dormer is not a traditional Victorian dormer it must be redesigned to comply with the diagram and specification in the DCP

8. Parking, access and servicing facilities

The proposal will be contrary to Table 5.2.6 - Materials of garages to be masonry. The proposed carport structure and in particular the corrugated fibreglass is unsuitable

9. Public Interest

The proposal is not in the public interest.

3. DESCRIPTION OF PROPOSAL SUBJECT OF REVIEW

The original proposal sought to remove the single storey breezeway wing and replace it with a boundary to boundary two storey rear addition including a new carport structure with a pitched roof. Also proposed is works to the rear courtyard including landscaping and boundary walls.

An amended design has been submitted with this Section 82A Application. The proposed amendments are as follows:

- The rear first floor balcony has been setback from the western boundary by 0.5m;
- New timber privacy screens to both sides of the rear first floor balcony;
- The materials to the rear first floor balcony roof have been changed from fibre cement sheeting to metal roofing and the glazing to the rear first floor elevation has been reduced in size;
- The proposed barrel vaulted roof to the new first floor extension has been changed to a skillion form;
- The number of casements to the ground floor glazed doors has been increase from 4 to 5;
- The balustrade to the rear first floor balcony has been changed to vertically proportioned balustrading;
- The new first floor extension is proposed to have a rendered and paint finish rather than the fibre cement finish;
- The design of the proposed dormer window was changed;
- The garage is to be constructed from rendered masonry and the roller door was reduced in width and new louvered window to the rear has been proposed.

The application was amended, the following changes were received:

- A flat roof was provided within the existing breezeway;
- A small indent has been provided within the existing breezeway.
- A rear elevation of the garage was provided.

4. DESCRIPTION OF PROPOSED REVIEW

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

5. COUNCIL'S STATUTORY RESPONSIBILITIES UNDER S82A

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

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

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

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

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

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

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

6. CONSIDERATION OF REVIEW

1. Heritage

This reasons for refusal relates to the non-compliance with Objective (2)(2)(g)(ii) of the Woollahra LEP.

The proposed development has been sufficiently amended to maintain the character and appearance of the Paddington Heritage Conservation Area. This has been discussed in detail below.

2. Rear elevations and yards

This reason for refusal relates to the non-compliance with Objectives **01**, **02** and Guidelines/controls **G3** of Part 5.1.3 of the Paddington DCP as the works were considered to be excessive and an overdevelopment of the subject site and will be an unsympathetic design and construction within the conservation area.

The amended proposal still exceeds the height of the existing gutterline of the main roof of the existing building. This non-compliance results from meeting the minimum BCA floor to ceiling heights. However, the proposed works are considered to be acceptable as these works will not be readily visible from the public domain. Paddington Lane is located at a slightly higher level than Windsor Street and the existing garages facing the laneway mostly obscure views of the rear façade of the subject terrace. Notwithstanding this, the proposal was amended so that only part of the new first floor extension will exceed the height of the gutterline of the main terrace so the integrity of the conservation area as viewed from the private domain can be maintained.

The provision of a full width first floor extension is considered to be acceptable as the subject site is only 3.8 metres wide and currently only contains a single storey rear wing. The provision of a breezeway at first floor level does not allow for satisfactory room sizes to meet current standards and given the limited visibility of the rear wing it is considered unreasonable to insist that a breezeway be provided. However, so that the integrity of the conservation area can be retained from both the public and private domain, the proposed development has been amended and conditioned so that the existing breezeway can be

interrupted. The applicant amended the proposal to provide a flat roof within the former breezeway and has provided a small indent in the location of the breezeway. A condition of consent has been recommended to provide a 500mm indent (refer to **Condition C3**) as the proposed indent will allow the breezeway to be sufficiently interpreted. The indent allows from sufficient shadow lines to be created to allow for the indentation to be read.

The proposed development is consistent with surrounding development as a full width first floor extension was constructed within the group of terraces at No. 97 (consent orders for this development were granted on 1 March 2001). Consent was granted to this development on the basis that a 1.15m indent within the breezeway was provided. Whilst, the size of the indent at this property is greater than the indent at the subject property the proposed development also includes a flat roof within the breezeway, which combined will allow for the breezeway to be sufficiently interrupted and retain the integrity of the conservation area. In addition the rear façade of this building (No.97) is more visible from the public domain than the rear façade of the subject terrace.

It should be noted that two additional full width first floor extensions have also been constructed at Nos. 105 & 107. Consent was granted to No.107 prior to the introduction of the Paddington DCP. Even though, consent was granted to No.105 on 22 May 2000 (after the introduction of the Paddington DCP). Consent was only granted to this full width extension to maintain continuity and symmetry of the terrace pair.

O1 of Part 5.1.3 of the PDCP seeks to retain the forms and character of traditional rear facades where they exist in unaltered groups. The above mentioned developments at No. 97, No. 105 and No.107 are located within the same group of terraces (the group extends from No. 97 to 109) as the subject development and has resulted in highly altered group of terraces. This has rendered this type of development, proposed to the subject site as acceptable.

The proposed first and ground floor addition would not adversely affect the solar access of adjoining properties as the subject site has a north- south orientation and will only overshadow a blank wall to the two storey addition at No. 105 and a blank wall to a proposed identical two storey addition at No.101 (which is being assessed concurrently with this application). The proposed development does not extend beyond established building alignments within the group of buildings and does not contain large areas of glazing on the first floor.

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

3. Roofs

This reason for refusal relates to the non-compliance with Objectives **O1** and Guidelines/controls **G7** of Part 5.1.4 of the Paddington DCP as the proposed roof form did not reflect appropriate traditional roof forms and the unsympathetic design did not to respond the traditional architectural style and materials found in the area.

The amended proposal is considered to be acceptable in terms of O1 and G7 as a traditional skillion roof form has been proposed. The new roof has been pitched from western boundary towards to the eastern boundary to mirror the new roof that has been proposed at No.101 to form a matching pair of rear wings. The previous development proposed a barrel vaulted roof form. This roof was unsympathetic to the character and appearance of the conservation area and did not respond to the traditional architectural style of the area.

Therefore for reasons stated above the proposed development is considered to be acceptable in terms of Part 5.1.4 of the PDCP.

4. Soft Landscaping

This reason for refusal relates to the non compliance with Objectives **O1** and **O2** and Guidelines/controls **G4** of Part 5.1.6 of the Paddington DCP as the works will eliminate soft landscaping at the ground level to the rear of the subject site.

Whilst, this S82A application does not make any changes to the proposed amount of soft landscaping to be provided at the site, the proposed development is considered to be acceptable in terms of Part 5.1.6 of the PDCP as Guideline G2 gives special consideration for sites under 130m². The subject site has a total site area of 121m². 6m² of soft landscaping has been proposed to be provided at No.101 as part of a similar application which is being assessed concurrently. Therefore a condition of consent has been recommended that requires 6m² of soft landscaping to be provided at the subject site (refer to **Condition No. C3**).

For the reasons stated above the proposed development is considered to be acceptable in terms of Part 5.1.6 of the PDCP.

5. Acoustic and visual privacy

This reason for refusal relates to the non compliance with Objectives **O1** and **O2** of Part 5.1.8 of the Paddington DCP as the works will adversely impact on the acoustic and visual privacy currently afforded to the adjoining properties as a result of the rear balcony to the first floor.

The amended proposal is considered to be acceptable in terms of O1 and O2 of Part 5.1.8 of the PDCP as the proposed first floor balcony has been setback by 0.5m from the western boundary of the site and timber privacy screens have been proposed on both sides of the first floor balcony.

The proposed size of the first floor balcony and its location off a bedroom will also minimise the impact of this balcony on the acoustic and visual privacy of adjoining properties.

Therefore, for the reasons stated above the proposed development is considered to be acceptable in terms of Part 5.1.6 of the PDCP.

6. Dormer Window and Skylights

This reason refusal related to the non-compliance with Objectives **O1**, **O2**, and **O3** of Part 5.2.1 of the Paddington DCP as the proposed dormer is not a traditional Victorian dormer.

The previous development proposed a non-traditional rear dormer window. Whilst, a traditional dormer has been proposed as part of this S82A review this dormer window does not comply G5 of Part 5.2.1 of the Paddington Development Control Plan as the dormer window exceeds 1.5m in width (including the eaves overhang). The extent of rear facing eaves overhang should be reduced to 300mm. A condition to this effect has been recommended (refer to **Condition C3**).

No changes to the proposed skylight to the rear of the main roof does have been made. This skylight is considered to be intrusive to the character and appearance of the conservation area.

Therefore a condition of consent has been recommended that requires the skylight to have a low profile and to be flush with the roof surface in accordance with G11 of Part 5.2.1 of the Paddington Development Control Plan refer to **Condition C3**).

7. Parking, access and servicing facilities

This reason for refusal relates to the non-compliance with Part 5.2.6 of the Paddington Development Control as inappropriate materials for the garage have been selected.

The presentation of the garage to the Paddington Lane has been substantially improved by this S82A review. The intrusive corrugated fibreglass gable has been deleted, the new roller door has been reduced in width and the garage is to be finished in rendered brickwork. These changes to the appearance and the materials for the new garage comply with Part 5.2.6 of the PDCP and will make a positive contribution to the character and appearance of Paddington Lane.

Therefore, for the reasons stated above the proposed development is considered to be acceptable in terms of 5.2.6 of the PDCP.

8. Public Interest

The final reason for refusal relates to the public interest.

The proposed amended proposal is considered to satisfactorily overcome the reasons for refusal and is considered to be no longer be detrimental to the character and appearance of the conservation area and would no longer adversely affect the amenity of surrounding properties. Therefore, for the reasons stated above the proposed development is not considered to be detrimental to the public interest.

6.1 Substantially the same development

The provisions of Section 82A of the Environmental Planning & Assessment Act, 1979 require Council to be satisfied that the development under review is substantially the same development as the development described in the original development application.

It is considered that the development under review is substantially the same development as the proposal seeks to provide alterations and additions to No. 103 Windsor Street.

7. SUBMISSIONS

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

7. CONCLUSION

Section 82A of the Environmental Planning and Assessment Act 1979 allows Council to review the determination of an application and, as a consequence of its review, may confirm or change the determination.

The original assessment of the development application was conducted with regard to the provisions of Section 79C of the Environmental Planning and Assessment Act 1979 as well as the objectives and controls contained in Council's Local Environmental Plan and Paddington

Development Control Plan. The decision was made on the basis of the originally submitted plan , which did not satisfy a number of the provisions of the Woollahra LEP and Paddington DCP. The proposal was therefore refused.

It is considered that the revised proposal subject to the imposition of conditions is considered acceptable in terms of S79C considerations and will satisfy the relevant provisions of the LEP & DCP, such that refusal of the proposal is not justified. It is therefore recommended that Council change its determination and approve the application.

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

THAT Council, as the consent authority, having considered the application for review of its refusal, resolve to change its determination and grant development consent to Development Application No. Development Application No. 353/2007 for alteration and additions to the existing terrace on land at 103 Windsor Street Paddington, for the following reasons:

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, piling, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- i. the delivery to or removal from the *site* of any machine, article, material, or thing, or
- j. the occupation of the *site* by any person unless authorised by an *occupation certificate*.

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

Standard Condition: A2

A.3 Approved Plans and supporting documents

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

Reference	Description	Author/Drawn	Date(s)
DA01a, to DA016a DA10a and DA11a	Architectural Plans	Mc Design Architects	May 2007 January 2008
A11105	BASIX Certificate	Department of Planning	11 May 2007

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

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

Standard Condition: A5

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

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

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

Standard Condition: A8

A.5 Prescribed Conditions

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

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

Standard Condition: A30

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

B.1 Construction Certificate required prior to any demolition

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

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

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

C.1 Materials

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

C.2 Water conservation

To ensure compliance with Part 5.1.11 of the Paddington Development Control Plan, 1999, the use of low flow water regulators on taps, dual flushing toilets and water saving shower heads shall be incorporated into the design of the development. Details shall be submitted with an application for a Construction Certificate.

C.3 Modification of details of the development (s80A(1)(g) of the Act)

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

- a. To allow for the breezeway at first floor level to be sufficiently interrupted the proposed indent above the proposed flat roof shall be increased to 500mm.
- b. To assist with the onsite detention of stormwater and to enhance the landscape character of the surrounding area a minimum of 6m² of soft landscaping shall be provided within the rear courtyard.
- c. To protect the character and appearance of the conservation area the proposed dormer window shall be amended to comply with Part 5.2.1 of the Paddington Development Control Plan, 1999 including the reduction of the eaves overhang to a maximum 300mm.
- d. To protect the character and appearance of the conservation area the proposed skylight to the rear roof slope of the main roof shall be low profile and flush with the roof surface. The skylight shall be predominately glass, with simple unobtrusive detailing in accordance with G11 of the Paddington Development Control Plan, 1999.

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

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

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

C.4 Payment of Security, Levies and Fees (S80A(6) & S94 of the Act, Section 608 of the Local Government Act 1993)

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

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

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

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy Use Calculator: http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation or use their online calculator	No	
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit - Making good any damage caused to any property of the <i>Council</i> as a consequence of the doing of anything to which the consent relates.	\$7 000	No	T600
DEVELOPMENT LEVY under Woollahra Section 94A Development Contributions Plan 2005 This plan may be inspected at Woollahra Council or downloaded from our website www.woollahra.nsw.gov.au .			
Development Levy	\$2 500 + Index Amount	Yes, quarterly	T94
INSPECTION FEES under section 608 of the Local Government Act 1993			
Security Administration Fee	\$163	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$9 663 Plus any relevant indexed amounts and long service levy		

Building & Construction Industry Long Service Payment

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

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

How must the payments be made?

Payments must be made by:

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

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

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

How will the section 94A levy be indexed?

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

Do you need HELP indexing the levy?

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

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

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

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

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

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

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

Standard Condition: C5

C.5 BASIX commitments

The *applicant* must submit to the *Certifying Authority* *BASIX Certificate* No.A11105 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.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 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.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.

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.9 Stormwater discharge to existing *Stormwater Drainage System* (Clause 25(2) WLEP 1995)

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

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

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

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

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

Note: Stormwater Drainage Systems must not discharge to any Sewer System. It is illegal to connect stormwater pipes and drains to the sewerage system as this can overload the system and cause sewage overflows. See:

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

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

www.woollahra.nsw.gov.au

Standard Condition: C49

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

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

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

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

This condition does not apply:

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

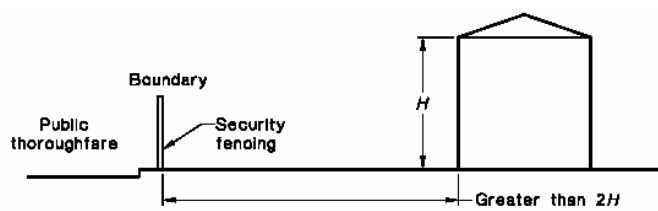
In this condition, a reference to the *BCA* is a reference to that code as in force on the date the application for the relevant construction certificate is made.

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

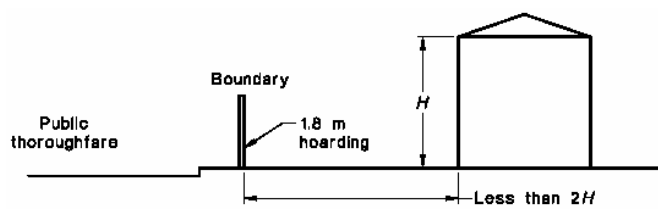
Standard Condition: D1

D.2 Security Fencing, Hoarding and Overhead Protection

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



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

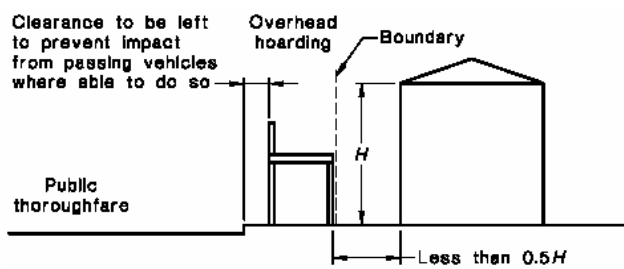


Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an *overhead protective structure* and the facing facade protected by heavy-duty scaffolding, unless either

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

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

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



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

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

This can be downloaded from:

<http://www.workcover.nsw.gov.au/Publications/LawAndPolicy/CodesofPractice/ohedprotstrcuts.htm>.

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

Note: The *principal contractor* or *owner* must allow not less than two (2) weeks from the date of making a hoarding application for determination. Any approval for a hoarding or overhead protection under the *Roads Act 1993* will be subject to its own conditions and fees.
Standard Condition: D11

D.3 Site Signs

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

“Erection of signs

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

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

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

D.4 Toilet Facilities

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

Each toilet provided:

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

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

In this condition:

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

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

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

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

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

D.5 Erosion and Sediment Controls – Installation

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

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

Where there is any conflict The Blue Book takes precedence.

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

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

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

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

Standard Condition: D14

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

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

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

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

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

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

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

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

D.7 Notification of Home Building Act 1989 requirements

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

Standard Condition: D17

D.8 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

D.9 Checking Construction Certificate plans & protecting assets owned by the Sydney Water Corporation

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

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/quick_check/building_renovating.cfm
Standard Condition: D19

E. Conditions which must be satisfied during any development work

E.1 Compliance with Australian Standard for Demolition

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

Standard Condition: E2

E.2 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.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, piercing, cutting, boring, drilling, rock breaking, rock sawing, jack hammering or bulk excavation of land or loading of material to or from trucks must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday.
- e. No rock excavation being cutting, boring, drilling, breaking, sawing, jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

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

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

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

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

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

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

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

E.4 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.5 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) Noise controls;

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

E.6 Erosion and Sediment Controls – Maintenance

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

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

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



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

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

E.7 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.8 Check Surveys - boundary location, building location, building height and stormwater drainage system relative to Australian Height Datum

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

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

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

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

Standard Condition: E20

E.9 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.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 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.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 down loaded free of charge from Council’s web site www.woollahra.nsw.gov.au or obtained from Council’s office.

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

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

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

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

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

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

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

H.1 Removal of Ancillary Works and Structures

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

- a. The site sign;
- b. Hoarding;

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

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

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

I.2 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No.A11105.

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 Criminal Offences – Breach of Development Consent & Environmental laws

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

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

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

Warnings as to potential maximum penalties

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

Warning as to enforcement and legal costs

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

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

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

<http://www.theshopfront.org/documents/ConvictionsCriminalRecords.pdf> and the Attorney General's www.agd.nsw.gov.au.
Standard Advising: K1

K.2 Dial before you dig



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

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

Standard Advising: K2

K.3 Builders Licences and Owner Builders Permits

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

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

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

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

Standard Condition: K5

K.4 Building Standards - Guide to Standards and Tolerances

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

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

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

The Guide can be down loaded from:

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

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

Standard Condition: K6

K.5 Workcover requirements

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

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

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

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

Standard Condition: K7

K.6 Asbestos Removal, Repair or Disturbance

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

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

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

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

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

Standard Advising: K8

K.7 Lead Paint

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

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

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

Standard Advising: K9

K.8 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.9 Appeal

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

George Fotis, Team Leader on (02) 9391 7089

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

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

Standard Condition: K14

K.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.

Note: The Application for Refund of Security form can be downloaded from
<http://www.woollahra.nsw.gov.au/pdf/Forms/Planning/RefundofSecurity.pdf>
Standard Condition: K15

K.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.14 Compliance with the Building Code of Australia

Council considers pursuant to clause 94 of the *Regulation* that it is appropriate to require the existing building to be brought into total or partial conformity with the *BCA*.

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:

- a. Housing Provisions, Clause 3.8- Health and amenity,
- b. Housing Provisions, Clause 3.7.2.2 - Requirements for smoke alarms,
- c. Housing Provisions, Clause 3.9.1 - Stair construction,
- d. Housing Provisions, Clause 3.9.2 - Balustrades,

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

Ms L Northridge
REVIEW OFFICER

Mr G Fotis
TEAM LEADER

ANNEXURES

1. Original assessment report
2. Plans & elevations (refusal)
3. Plans & elevations (S82A review)
4. Heritage Officer referral
5. Photos

Item No: D6 Delegated to Committee
Subject: Register of Current Land and Environment Court Appeals for
Development Applications
Author: Les Windle, Manager - Governance

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.

Les Windle
Manager – Governance