Agenda: Development Control Committee

Date: Monday 4 April 2016

Time: 6.00pm
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.
- 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).

Recommendation only to the Full Council or to the Strategic & Corporate Committee (“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 responsibilities of 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.

Delegated Authority (“D” Items)
To determine all development applications and related applications, which are not required to be determined by the Council under Council’s adopted procedures for the call up of applications except:

a) Applications for review of a determination under section 82A of the Environmental Planning and Assessment Act 1979 (“the Act”) where the DCC determined the original application.

b) Development applications for development on community land which may not be delegated for determination under section 47E of the LG Act.

Committee Membership: 7 Councillors

Quorum: The quorum for a Committee meeting is 4 Councillors.
Woollahra Municipal Council

Notice of Meeting

29 March 2016

To: Her Worship the Mayor, Councillor Toni Zeltzer ex-officio
Councillors: Ted Bennett (Chair)
Luise Elsing
James Keulemans (Deputy Chair)
Anthony Marano
Katherine O’Regan
Matthew Robertson

Dear Councillors

Development Control Committee – 4 April 2016

In accordance with the provisions of the Local Government Act 1993, I request your attendance at Council’s Development Control Committee meeting to be held in the Thornton Room (Committee Room), 536 New South Head Road, Double Bay, on Monday 4 April 2016 at 6.00pm.

Gary James
General Manager
Meeting Agenda
Session One - Commencing at 6.00pm

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

Items to be Decided by this Committee using its Delegated Authority

- D1 Confirmation of Minutes of Meeting held on 21 March 2016 ......................................................... 7
- D2 DA242/2015/1 - 58 Village High Road Vaucluse ................................................................. 8
  *See Recommendation Page 36
- D3 DA626/2015/1 Unit 2/3 Streatfield Road Bellevue Hill ................................................... 105
  *See Recommendation Page 114
- D4 DA53/2015/2 - 49 Drumalbyn Road, Bellevue Hill ................................................................. 145
  *See Recommendation Page 166
- D5 Register of current Land and Environment Court Matters and Register for Court Proceedings for Building Control, Environmental Control and Health Control ................................................................. 185

Items to be Submitted to the Council for Decision with Recommendations from this Committee

Nil ‘R’ items
Item No: D1 Delegated to Committee

Subject: CONFIRMATION OF MINUTES OF MEETING HELD ON 21 MARCH 2016

Author: Sue O'Connor, Secretarial Support - Governance

File No: 16/40454

Reason for Report: The Minutes of the Development Control Committee of 21 March 2016 were previously circulated. In accordance with the guidelines for Committees’ operations it is now necessary that those Minutes be formally taken as read and confirmed.

Recommendation:

That the Minutes of the Development Control Committee Meeting of 21 March 2016 be taken as read and confirmed.
MEMO TO ALL COUNCILLORS

Item No: D2
File No: DA 242/2015/1
Address: 58 Village High Road VAUCLUSE
Proposal: Substantial demolition of the existing building (retaining some internal and external walls to the lower ground floor level) and the construction of a new dwelling with a double garage and swimming pool
Author: Lauren Samuels, Senior Assessment Officer

Please note that Item D3 was called at the Application Assessment Panel meeting held at 29 March 2016 by Councillor Ted Bennett.

Reason for calling item:

• Loss of views

The DA report follows on the next page:
DEVELOPMENT APPLICATION ASSESSMENT REPORT

**ITEM No.** D2
**FILE No.** DA 242/2015/1
**ADDRESS** 58 Village High Road VAUCLUSE
**SITE AREA** 407.7m²
**ZONING** R2 Low Density Residential
**PROPOSAL** Substantial demolition of the existing building (retaining some internal and external walls to the lower ground floor level) and the construction of a new dwelling with a double garage and swimming pool
**TYPE OF CONSENT** Local development
**COST OF WORKS** $1,200,000
**DATE LODGED** 19/05/2015 (original proposal)
25/11/2-15 (amended proposal)
**APPLICANT** Ms N Roppolo
**OWNER** Ms N Roppolo
**AUTHOR** Ms L Samuels
**TEAM LEADER** Ms E Smith

EXECUTIVE SUMMARY

1. LOCALITY PLAN

![Locality Plan Image]

- Subject site
- Objectors
- North
2. **DELEGATIONS SUMMARY**

<table>
<thead>
<tr>
<th>Level of Delegation</th>
<th>Recommendation of Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>The application is to be determined by the Application Assessment Panel because there are four or more objections.</td>
<td>Approval, subject to conditions.</td>
</tr>
</tbody>
</table>

3. **PROPOSAL SUMMARY**

The proposal involves the following works:

- Substantial demolition of the existing building (retaining some internal and external walls to the lower ground floor level) and the construction of a new three storey dwelling with a double garage and swimming pool at the rear of the site.

In response to concerns raised by Council Officers, the proposal was amended on 25/11/2015 in the following manner:

- The maximum building height has been reduced from 10.4m to 9.5m (a reduction of 900mm), by lowering the finished floor level of the ground and first floor levels.
- The north-western side setback of the dwelling has been increased from 1.55m – 1.7m to 1.6m – 2.6m (ground floor level).
- The south-western (rear) setback of the ground floor level has been increased from 5.8m – 7m.
- The south-western (rear) setback of the first floor level has been increased from 11.6m to 13.9m
- The south-western (rear) setback of the swimming pool has been increased from 0.1m to 2.75m.

**PROPERTY DETAILS AND REFERRALS**

4. **SITE AND LOCALITY**

<table>
<thead>
<tr>
<th><strong>Physical features</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The site is located on the south-western side of Village High Road and is generally rectangular in shape. The site has a north-eastern front boundary and a south-western rear boundary of 15.24m, a north-western side boundary of 26.29m and a south-eastern side boundary of 27.255m. The subject site has an area of 407.7m².</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Topography</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The site falls approximately 6m between the north-eastern (front) boundary and the south-western (rear) boundary.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Existing buildings and structures</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The site comprises a two storey dwelling-house and a double garage.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Environment</strong></th>
<th></th>
</tr>
</thead>
</table>
| The site is located within the Vaucluse West precinct under the WRDCP 2003. The following properties adjoin the subject site:  
- To the north-west 60 Village High Road, which is occupied by a two storey dwelling-house.  
- To the south-east is 56 Village High Road, which is occupied by a two storey dwelling-house.  
- To the south-west (rear) is 119 Hopetoun Avenue which is occupied by a two storey dwelling-house. |  |

The locality is predominantly characterised by a mix of two and three storey dwelling houses of various architectural styles.
5. RELEVANT PROPERTY HISTORY

<table>
<thead>
<tr>
<th>Current use</th>
<th>Detached dwelling-house.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Previous Relevant Applications</td>
<td>DA 428/2014 was for substantial alterations and additions to the existing dwelling house. This application was withdrawn to prepare amended plans for a future Development Application.</td>
</tr>
<tr>
<td>Requests for Additional Information</td>
<td>- Council’s Development Engineer requested the provision of a driveway profile and details of overland flow management. The requested information has been submitted with the application. - Council’s Trees and Landscaping Officer requested the submission of an amended Landscape Plan, indicating the proposed plant species on the site and the removal of the Frangipani Tree on Council land. The requested information has been submitted with the application.</td>
</tr>
</tbody>
</table>

6. REFERRALS

<table>
<thead>
<tr>
<th>Referral</th>
<th>Summary of Comment</th>
<th>Annexure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development Engineer</td>
<td>Council’s Technical Services Officer has determined that the proposal is acceptable, subject to conditions.</td>
<td>2</td>
</tr>
<tr>
<td>Landscaping Officer</td>
<td>Council’s Trees and Landscaping Officer has determined that the proposal is acceptable, subject to conditions.</td>
<td>3</td>
</tr>
</tbody>
</table>

ENVIRONMENTAL ASSESSMENT UNDER SECTION 79C

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979 include the following:

1. The provisions of any environmental planning instrument
2. The provisions of any proposed instrument that is/has been the subject of public consultation
3. The provisions of any development control plan
4. Any planning agreement that has been entered into
5. Any draft planning agreement that a developer has offered to enter into
6. The regulations
7. Any coastal zone management plan
8. The likely impacts of that development:
   i) Environmental impacts on the natural and built environments
   ii) Social and economic impacts
9. The suitability of the site
10. Any submissions
11. The public interest

7. ADVERTISING AND NOTIFICATION

7.1. Submissions

In accordance with Parts 3 and 4 of the Woollahra Advertising and Notification DCP, the application was notified and advertised from 24/06/2015 to 08/07/2015. The proposal was re-notified from 02/12/2015 to 16/12/2015. Submissions were received from:

1. Charlie & Joanna Canceri, 56 Village High Road, VAUCLUSE NSW 2030
2. DFP Planning Consultants (on behalf of 56 Village High Road), PO Box 230 PENNANT HILLS NSW 1715
3. Bruce & Irene, Thom 60 Village High Road, VAUCLUSE NSW 2030
4. Janice Wiley, 49 Village High Road, VAUCLUSE NSW 2030
5. John & Ross Clifton, 119 Hopetoun Avenue, VAUCLUSE NSW 2030
6. Rose Bay Residents' Association, PO Box 156 ROSE BAY NSW 2029
7. Lindsay Fletcher Town Planning (on behalf of 119 Hopetoun Avenue), lmfplanner@gmail.com
8. Anthony Steele, steelea85@gmail.com
9. Anthony Warde, wardea53@gmail.com

The submissions raised the following issues:

- **Number of storeys non-compliance/will set a precedent for future development**
  The proposed dwelling is part-two, part-three storeys. The site slopes approximately 6m between the front and the rear boundaries and therefore the lower ground floor level is considered to be an appropriate response to the topography of the site. The proposed dwelling presents as one storey to Village High Road and therefore would not appear unduly prominent within the streetscape.

  Furthermore, the proposed dwelling complies with the height control and provides an appropriate transition between 56 and 60 Village High Road.

- **FSR non-compliance/bulk and scale**
  The proposal attains an FSR of 0.82:1, a non-compliance of 109m². The proposed FSR is comparable with the neighbouring properties and the bulk and scale of the proposed dwelling is consistent with the character of development within the streetscape.

- **Building footprint non-compliance**
  The proposal attains a building footprint of 51% (206m²), a non-compliance of 6m². The non-compliance is considered to be minor and would not result in any adverse amenity impacts. Furthermore, the proposal complies with the requirement for deep soil landscaping on the subject site and is acceptable with regard to stormwater management, subject to conditions.
• **Height non-compliance**
The amended proposal reduced the maximum building height of the dwelling from 10.4m to 9.5m (a reduction of 900mm), which complies with the height control.

• **Insufficient setback from the public path along the side boundary**
The dwelling is setback 0.9m – 3.4m from the side passage which is considered to provide adequate separation from the public thoroughfare.

• **View impact to 56 Village High Road and 49 Village High Road**
The impact on views from 56 Village High Road and 49 Village High Road is discussed in detail under Section 13.7 of the report.

• **Privacy impact**
Subject to **Condition C.1(a)** requiring the lowering of the swimming pool and **Condition C.1(b)** requiring the addition of a privacy screen along the north-western side of the first floor balcony, the proposal is considered to be acceptable with regard to privacy. This is discussed further under Section 13.10 of the report.

• **Amended shadow diagrams have not been provided**
Amended shadow diagrams were provided to Council in February 2016 and have been considered in this assessment (Section 13.4 of the report).

• **Overshadowing to the rear yard at 56 Village High Road and 119 Hopetoun Avenue**
The amended shadow diagrams indicate that the proposal involves minor additional overshadowing to 119 Hopetoun Avenue at 9am on 21 June, but does not result in any change to solar access at 12pm and 3pm.

The proposal retains 2 hours sunlight to more than 35m² of the rear yard at 56 Village High Road and therefore the level of solar access complies with the control. This is discussed further under Section 13.4 of the report.

• **The relationship between the proposed development and the private open space at 119 Hopetoun Avenue is not clear**

The proposed dwelling is setback 6.3m – 10.5m from the boundary of 119 Hopetoun Avenue. Due to the dense vegetation along the boundary (which is not useable private open space), the proposed dwelling achieves a 9m separation from the useable lawn area at 119 Hopetoun Avenue.

It is also noted that the proposed dwelling is setback 2.6m – 5.8m further from the rear boundary than the existing dwelling, thereby providing a greater separation from 119 Hopetoun Avenue.
- **Geotechnical information should be provided to confirm the stability of the cliff face between the site and 119 Hopetoun Avenue. The pool will impact upon the sandstone cliff**
  The amended plans involve increasing the rear setback of the pool from 0.1m to 2.75m from the rear boundary. This ensures that the pool is no longer cantilevered over the rock face and would not adversely impact upon the stability of the rock face, subject to conditions. Given the swimming pool involves excavation to a depth of approximately 1m below existing ground level and the excavation is setback more than 1.5m from the side boundaries, Council’s Technical Services Officer is satisfied that a Geotechnical Report is not required.

- **Structures built on the rear boundary will overhang part of the land at 119 Hopetoun Avenue**
  The amended proposal involves increasing the setback of the swimming pool from 0.1m to 2.75m from the rear boundary. Landscaping will be provided between the pool and the rear boundary. As such, none of the proposed structures will encroach onto 119 Hopetoun Avenue.

- **Dilapidation reports should be prepared**
  While there is limited excavation for the swimming pool, Condition D.9 requires Dilapidation Reports to be prepared for 60 Village High Road and 119 Hopetoun Avenue in order to further protect these properties.

- **Details should be provided of the treatment of the underside of the pool**
  Subject to Condition C.1(a) requiring the finished level of the pool to be lowered by 1m, the pool will only project 1m above existing ground level and therefore will not be unduly prominent when viewed from the neighbouring properties. Furthermore, the south-western elevation of the pool will be screened by a wet edge.

- **Impact on public views from Kings Road near the corner of Village High Road**
  Public views of the city skyline and the Harbour Bridge are obtained from Kings Road. The proposal will have a minor impact on the city skyline views and there will be no impact on the Harbour Bridge views from Kings Road. This is discussed further under Section 13.7 of the report.

- **Inconsistent front setback**
  Due to the differing alignment of the front boundaries between 56 and 60 Village High Road, the average front setback control is 2.5m – 4m. The proposed dwelling attains a front setback of 4m – 4.2m which complies with the control and is considered to achieve an acceptable streetscape presentation.

- **Front fence height non-compliance**
  The proposal involves retaining and rendering the existing front fence (which has a height of 1.4m – 1.7m) and infilling the existing garage opening to match the existing fence height. It is considered that the fence will achieve an acceptable streetscape presentation.

- **Size of first floor level balcony**
  The first floor balcony has an area of 19.25m² which is not considered to be excessive. The proposed first floor balcony is setback 6m from the south-eastern side boundary and will not allow a direct line of sight into the habitable room windows and private open space at 56 Village High Road within a distance of 12m. In order to minimise any overlooking of 60 Village High Road, Condition C.1(b) requires a privacy screen to be provided along the north-western side of the balcony.
• **Unauthorised works have previously been undertaken on the subject site**
  Any previously undertaken unauthorised works are not relevant to the subject Development Application.

• **Stormwater/ground water**
  Council’s Development Engineer has determined that the submitted Stormwater Plan is acceptable, subject to conditions requiring that the stormwater discharge from the site is connected to Council’s existing stormwater pipe adjacent to the south-eastern boundary.

7.2. **Statutory Declaration**

In accordance with Clause 4.5 of the Woollahra Advertising and Notification DCP, the applicant has completed the statutory declaration dated 08/08/2015 declaring that the site notice for DA 242/2015/1 was erected and maintained during the notification period in accordance with the requirements of the DCP.

7.3. **Renotification**

Amended plans were lodged on 25/11/2015. The plans were were renotified to surrounding residents and previous objectors under Clause 5.1 of the Advertising and Notification DCP from 02/12/2016 to 16/12/2016 as the proposed changes potentially brought about additional impacts upon neighbours. Additional submissions have been addressed in Section 9.1 above.

8. **STATE ENVIRONMENTAL PLANNING POLICY 55: REMEDIATION OF LAND**

The aims of SEPP 55 are to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment:

a) By specifying when consent is required, and when it is not required, for a remediation work
b) By specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular
c) By requiring that a remediation work meet certain standards and notification requirements

Under Clause 7(1)(a) of SEPP 55 – Remediation of Land, consideration has been given as to whether the subject site on which the development is occurring is contaminated.

An assessment of the Initial Site Evaluation provided by the applicant indicates the land does not require further consideration under Clause 7 (1) (b) and (c) of SEPP 55. The proposal is therefore acceptable with regard to SEPP 55: Remediation of Land.

9. **STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004**

SEPP (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development and relates to commitments within the proposed development in relation to thermal comfort, water conservation and energy efficiency sustainability measures.

The development application was accompanied by BASIX Certificate No. A179580_02, which commits to environmental sustainability measures relating to thermal comfort, water savings and energy efficiency.
As prescribed by Clause 97A of the Environmental Planning and Assessment Regulation 2000, these requirements have been imposed in Conditions C.3, H.1 and I.1.

10. SYDNEY REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT) 2005

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

11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

WLEP 2014 commenced on 23 May 2015. However, the instrument contains savings provisions (Clause 1.8A) so that an application lodged but not yet determined before 23 May 2015 are to be determined as if the plan had been exhibited but had not commenced.

It is noted that WLEP 2014 does not involve any changes to the zoning and height controls applying to the subject site and the proposal complies with these controls under WLEP 2014.

12. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995


The proposal is consistent with the aims and objectives of the Woollahra LEP 1995.

12.2. Clause 8(5): Aims and Objectives of the Zone

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

12.3. Clause 10: Allotment Sizes for Dwelling Houses

Clause 10 specifies a minimum allotment size of 675m² for a dwelling house.

<table>
<thead>
<tr>
<th>Site Area</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>407.7 m²</td>
<td>675 m²</td>
<td>NO</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Clause 10 (1) prevents the erection of a dwelling-house on an allotment of land that is less than the minimum allotment size as indicated on the density map associated with Woollahra LEP 1995; 675 m² in this instance. The subject site has an area of 407.7 m² and therefore does not comply with this requirement.

However, Clause 10 (2) states that subclause (1) does not operate to prohibit the erection of a dwelling-house on a sub-standard size allotment of land which was in existence as a separate allotment on the day this plan was gazetted (10 March 1995) if a dwelling-house could have been lawfully erected on the allotment immediately before that day.

The previous planning instruments, Woollahra LEP No 27 (gazetted on 15 January 1988) and the Woollahra Planning Scheme Ordinance (gazetted on 15 December 1972) had identical exemption provisions. Prior to the Woollahra Planning Scheme Ordinance, it was lawful to erect a dwelling-house on the subject allotment of land. The subject allotment was created in 1927, prior to the gazetral of the Woollahra Planning Scheme Ordinance.
Accordingly, Clause 10 (1) does not operate to prohibit the erection of a dwelling-house on the subject sized allotment.

12.4. Clause 12: Height of Buildings

Clause 12 limits development to a maximum height of 9.5m.

<table>
<thead>
<tr>
<th>Overall Height</th>
<th>Existing</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.6m</td>
<td>9.5m</td>
<td>9.5m</td>
<td>YES</td>
<td></td>
</tr>
</tbody>
</table>

The proposal complies with the maximum building height prescribed by Clause 12 of Woollahra LEP 1995.

The proposal is also acceptable with regard to the relevant objectives under Clause 12AA of Woollahra LEP 1995 in the following manner:

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

The proposal is consistent with the objectives for the following reasons:
- The height of the development has been minimised to reduce the view impact upon the neighbouring properties. This is discussed further under Section 13.7 of the report.
- The proposed dwelling presents as one storey when viewed from Village High Road and would have an acceptable appearance when viewed within the streetscape and the neighbouring properties.
- The height of the proposed dwelling provides an appropriate transition between 56 and 60 Village High Road and is considered to be compatible with the height of the surrounding development.
- The proposal will maintain satisfactory levels of sunlight, privacy and amenity to the neighbouring properties.

12.5. Clause 18: Excavation of Land

The provisions of Clause 18 require Council, when considering a development application involving excavation, to have regard to how that excavation may temporarily or permanently affect:

(a) the amenity of the neighbourhood by way of noise, vibration, dust or other similar circumstances related to the excavation process
(b) public safety
(c) vehicle and pedestrian movements
(d) the heritage significance of any heritage item that may be affected by the proposed excavation and its setting
(e) natural landforms and vegetation and
(f) natural water run-off patterns
The proposal involves minor excavation for the purpose of footings. Subject to Condition C.1(a) requiring the lowering of the swimming pool, the excavation for the swimming pool will extend to a depth of 1m below existing ground level. Overall the excavation associated with the swimming pool will extend over an area of 20m² and has a volume of approximately 20m³.

Having regard to the above-mentioned heads of consideration, the following comments are made in relation to the impact of the proposed excavation upon the local environment:

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

The maintenance of the amenity of the neighbourhood in terms of minimising noise, vibration and dust is addressed by conditions requiring maintenance of erosion and sediment, dust and noise controls and support for neighbouring buildings. Subject to conditions, the amenity of the adjoining residential properties will be maintained.

(b) *public safety*

(c) *vehicle and pedestrian movements*

Issues relating to public safety and pedestrian movements during the excavation phase are inter-related and are addressed by conditions requiring site fencing, footpath levels to be maintained, safety precautions and structural support of public places during excavation.

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

Any heritage items in the vicinity of the site are located beyond the zone of influence associated with the proposed excavation and will not be adversely affected in this instance.

(e) *natural landforms and vegetation*

The proposed excavation does not significantly alter the existing landform of the site.

Council’s Trees and Landscaping Officer has determined that the proposal is acceptable, subject to the planting of one replacement tree within the front yard and two replacement trees within the rear yard.

(f) *natural water run-off patterns*

Council's Development Engineer has assessed the proposal and considers the stormwater and runoff management to be satisfactory, subject to conditions.

Subject to conditions, the excavation associated with the proposal is considered to be satisfactory with regard to the provisions of Clause 18 of WLEP 1995.

**12.6. Clause 25: Water, Wastewater and Stormwater**

Clause 25 requires Council to take into consideration the provision of adequate stormwater drainage and the provision of adequate water and sewerage services. Council’s Technical Services Officer has determined that the proposal is acceptable in this regard, subject to conditions.
12.7. Clause 25D: Acid Sulphate Soils

Clause 25D requires Council to consider any potential acid sulphate soil affectation where excavation is proposed within the site.

The subject site is within a Class 5 Acid Sulphate Soils Area as identified in the Planning NSW Acid Sulphate Soils Risk Map. However, the subject works are not likely to lower the water table below 1.0m AHD on any land within 500m of a Class 1, 2 and 3 land classifications. Accordingly, preliminary testing is would not be required. Therefore, there is no issue of acid sulphate affectation in this case.

13. WOOLLAHRA RESIDENTIAL DEVELOPMENT CONTROL PLAN 2003

13.1. Part 3.0: Site Analysis

Part 3 requires adequate site analysis documentation for development applications. The application is considered to be satisfactory in this regard.

13.2. Section 4.14 Desired Future Precinct Character

<table>
<thead>
<tr>
<th>Site Area: 407.7m²</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front Setback</td>
<td>4m – 4.2m</td>
<td>2.5m - 4m</td>
<td>YES</td>
</tr>
<tr>
<td>Location of Garages and Car Parking Structures</td>
<td>Within front setback</td>
<td>Behind Front Setback</td>
<td>NO</td>
</tr>
<tr>
<td>Garage Frontage Width</td>
<td>38% (5.8m)</td>
<td>40% (6.1m)</td>
<td>YES</td>
</tr>
<tr>
<td>Front Fence Height</td>
<td>1.4m – 1.7m*</td>
<td>1.2m/1.5m where 50% transparent</td>
<td>NO*</td>
</tr>
<tr>
<td>Deep Soil Landscaping – Front Setback</td>
<td>&gt;40% (&gt;24.3m²)</td>
<td>40% (24.3m²)</td>
<td>YES</td>
</tr>
<tr>
<td>Maximum Number of Storeys – Dwelling</td>
<td>Part 2, part 3</td>
<td>2 Storeys</td>
<td>NO</td>
</tr>
</tbody>
</table>

*Existing fence

Location of Garages

C 4.14.5 requires garages, car parking structures and driveways to be designed so as to not dominate the streetscape, be provided behind the front building line and limited to a width of no greater than 40% (6.1m) of the site frontage. The proposed garage is within the front setback and is considered to be acceptable for the following reasons:

- The neighbouring properties (56 and 58 Village High Road) have garages on the front boundary and therefore the proposed garage would not appear unduly prominent within the streetscape.
- The proposed garage complies with the frontage width control and adequate deep soil landscaping is provided within the front setback area.
Number of Storeys

C 4.14.7.3 stipulates that development is to have a maximum height of two storeys. Where the landform of the site falls more than 2.0m from the street to the rear of the property, an additional basement storey may be permitted provided all other Woollahra RDCP 2003 controls are complied with.

The proposed development is part-two, part-three storeys and is considered to be acceptable for the following reasons:

- The site slopes approximately 6m between the front and the rear boundaries. While the proposal does not comply with all DCP controls, the lower ground floor level is considered to be an appropriate response to the topography of the site.
- The proposed dwelling presents as one storey to Village High Road and therefore would not appear unduly prominent within the streetscape.
- The proposed dwelling is 2.9m lower than the ridge height of the neighbouring dwelling 56 Village High Road and provides an appropriate transition between 56 and 60 Village High Road.
- The proposed number of storeys does not have a significant impact on views (see Section 13.7), privacy and sunlight access to the adjoining properties.

Front Fences

C 4.14.7.4 stipulates that if solid, front fences are to be no greater in height than 1.2m. Front fences to a maximum height of 1.5m may be permitted where no more than 50% of the fence is transparent.

The proposal involves retaining and rendering the existing front fence and infilling the existing garage opening to match the existing fence height. The fence will achieve an acceptable streetscape presentation and is considered to be acceptable.

Conclusion

The proposal is therefore acceptable with regard to Section 4.14 of the Woollahra RDCP 2003.

13.3. Section 5.1: Streetscape performance criteria

The objectives of 5.1 of Woollahra RDCP 2003 state:

- **O 5.1.1** To achieve housing forms of a scale and character in keeping with the desired future character for the locality.
- **O 5.1.2** To ensure development conserves or enhances items and areas of special architectural, social, cultural or historic interest.
- **O 5.1.3** To ensure development contributes to cohesive streetscapes and desirable pedestrian environments.
- **O 5.1.4** To ensure a safe environment by promoting crime prevention through design.
- **O 5.1 5** To ensure that development recognises predominate streetscape qualities.
The amended proposal achieves a scale and built form that is compatible with development in the streetscape. The front elevation presents as single storey to Village High Road and the dwelling is well articulated through the use of varied setbacks and integrated balconies which provides a modern design that is consistent with the desired future character for the locality. Accordingly, the proposal is considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under Part 5.1 of WRDCP 2003.

**Conclusion**

The proposal is therefore acceptable with regard to Section 5.1 of the Woollahra RDCP 2003.

**13.4. Section 5.2: Building Size and Location**

<table>
<thead>
<tr>
<th>Site Area: 407.7m²</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rear Setback</td>
<td>7m</td>
<td>6.6m – 6.8m</td>
<td>YES</td>
</tr>
<tr>
<td>Side Boundary Setbacks (north-west)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lower ground Floor</td>
<td>1.5m</td>
<td>1.5m – 2m</td>
<td>NO (partial)</td>
</tr>
<tr>
<td>Ground Floor</td>
<td>1.7m – 2.6m</td>
<td>1.6m – 3.8m</td>
<td>NO</td>
</tr>
<tr>
<td>First Floor</td>
<td>1.7m</td>
<td>3.1m – 4.5m</td>
<td>NO</td>
</tr>
<tr>
<td>Side Boundary Setbacks (south-east)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lower ground Floor</td>
<td>0.9m*</td>
<td>1.5m – 2.2m</td>
<td>NO*</td>
</tr>
<tr>
<td>Ground Floor</td>
<td>0.9m</td>
<td>1.6m – 3.8m</td>
<td>NO</td>
</tr>
<tr>
<td>First Floor</td>
<td>3.4m</td>
<td>3.1m – 4.5m</td>
<td>NO</td>
</tr>
<tr>
<td>Ancillary Development (swimming pool) Maximum Height</td>
<td>3m</td>
<td>3.6m</td>
<td>YES</td>
</tr>
<tr>
<td>Ancillary Development (swimming pool) North-western (side) setback</td>
<td>2.1m</td>
<td>1.5m</td>
<td>YES</td>
</tr>
<tr>
<td>South-eastern (side) setback</td>
<td>6.6m</td>
<td>1.5m</td>
<td>YES</td>
</tr>
<tr>
<td>South-western (rear) setback</td>
<td>2.8m</td>
<td>1.5m</td>
<td>YES</td>
</tr>
<tr>
<td>Building Footprint – Dwelling</td>
<td>51%</td>
<td>49%</td>
<td>NO</td>
</tr>
<tr>
<td>Dwelling (206m²)</td>
<td>(200m²)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Floor Space Ratio – Dwelling</td>
<td>0.82:1</td>
<td>0.55:1</td>
<td>NO</td>
</tr>
<tr>
<td>Dwelling (333m²)</td>
<td>(224m²)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Floor to Ceiling Height – Habitable Rooms</td>
<td>2.4m - 2.8m</td>
<td>2.7m</td>
<td>NO</td>
</tr>
<tr>
<td>Solar Access to Open Space of Adjacent Properties</td>
<td>35m² for 2 hours</td>
<td>35m² or 50% for 2 hours on 21 June</td>
<td>YES</td>
</tr>
<tr>
<td>Solar Access to Nth Facing Living Areas of Adjacent Properties</td>
<td>Windows not within the definition of north facing</td>
<td>3 hours on 21 June</td>
<td>N/A</td>
</tr>
<tr>
<td>Excavation, Piling and Subsurface Wall Setback</td>
<td>&gt;1.5m</td>
<td>1.5m</td>
<td>YES</td>
</tr>
<tr>
<td>Maximum Volume of Excavation</td>
<td>&lt;130m³</td>
<td>130m³</td>
<td>YES</td>
</tr>
</tbody>
</table>

*Existing non-compliance

**Side Setbacks**

C 5.2.5 requires development to be setback from the side boundaries by 1.5m, increased on a pro rata basis by 0.5m for each metre or part thereof that the building height adjacent to the boundary exceeds 3m.

**North-western side setback**

The dwelling is required to be setback 1.5m – 2m at lower ground floor level, 1.6m – 3.8m at ground floor level and 3.1m – 4.5m at first floor level. The proposal involves the following non-compliances with the south-eastern side setback control:
- The lower ground floor level is setback 1.5m from the north-western side boundary, a non-compliance of 0.5m for a distance of 8.3m (home office and terrace).
- The ground floor level is setback 1.7m – 2.6m from the north-western side boundary, a non-compliance of 1.2m – 1.4m for a distance of 10.1m (bedroom 2, bedroom 3, bathroom and ensuite).
- The first floor level is setback 1.7m from the north-western side boundary, a non-compliance of 1.4m – 2.8m for a distance of 7.5m (lounge and dining room).

South-eastern side setback

The dwelling is required to be setback 1.5m at lower ground floor level, 1.6m – 3.8m at ground floor level and 3.1m – 4.5m at first floor level. The proposal involves the following non-compliances with the northern side setback control:

- The garage is setback 0m from the south-eastern side boundary, which is a non-compliance of 1.5m for a distance of 6.4m.
- The lower ground floor level is setback of 0.9m from the south-eastern side boundary, is a non-compliance of 0.6m - 1.3m for a distance of 9.8m (guest bedroom, laundry, bathroom).
- The ground floor level is setback 0.9m from the south-eastern side boundary, a non-compliance of 0.7m – 2.9m for a distance of 8.8m (ensuite and WIR).
- The first floor level is setback 3.4m from the south-eastern side boundary, a non-compliance of 1.1m for a distance of 7.8m (lift, WC and stair).

The non-compliances with the side setback requirements are considered to be acceptable for the following reasons:

- The proposed side setbacks are considered to provide adequate separation from the neighbouring properties.
- The proposed side setbacks are consistent with the adjoining pattern of development.
- The front, side and rear elevations are well modulated through the inclusion of balconies and varied setbacks. This minimises the overall bulk and scale of the building when viewed from the streetscape and the neighbouring properties.
- As discussed under Section 13.10, the proposal will not have any significant adverse impact on the privacy of the adjoining properties.
- The proposal complies with the solar access controls, as discussed under Section 13.4 of the report.

Building Footprint

C 5.2.8 specifies a maximum building footprint of 49% (200m²). The proposal attains a building footprint of 51% (206m²), a non-compliance of 6m². The non-compliance is considered to be acceptable for the following reasons:

- The non-compliance of 6m² is considered to be minor and would not result in any adverse impacts.
- The proposal complies with the required deep soil landscaping on the site.
- Council’s Development Engineer has determined that the proposal is acceptable with regard to stormwater management, subject to conditions.
Floor Space Ratio

C 5.2.9 specifies a maximum floor space ratio of 0.55:1 (224m²) for the subject site. The proposal attains an FSR of 0.82:1 (333m²), a non-compliance of 109m². The non-compliance is considered to be acceptable for the following reasons:

- The proposed FSR is comparable with the neighbouring properties and the bulk and scale of the proposed dwelling is consistent with the character of development within the streetscape.
- The dwelling is well articulated through the inclusion of balconies and varied setbacks and materials, which ensures that the proposal will not have any unreasonable visual impacts upon the neighbouring properties and the streetscape.
- The dwelling presents as single storey to Village High Road and therefore would not be unduly prominent within the streetscape.
- The proposal will not have a significant adverse impact upon the amenity of the adjoining properties with regard to view loss, acoustic and visual privacy, solar access or sense of enclosure. This is discussed further under Section 13.7 and 13.10 of the report.

Floor to Ceiling Height

C 5.2.10 requires that habitable rooms must have a minimum floor to ceiling height of 2.7m. A lower height is permissible where it is located within a roof space, it does not affect the internal amenity and where there are measurable benefits for neighbouring amenity.

The lower ground and ground floor levels attain a floor to ceiling height of 2.6m and the first floor level attains a floor to ceiling height of 2.4m – 2.8m. The floor to ceiling heights have been reduced in order to minimise any impact upon the views from the neighbouring properties and are considered to be acceptable in this instance.

Solar Access

C 5.2.12 requires that building bulk is distributed to minimise over-shadowing on neighbours, streets and public open space. C 5.2.13 stipulates that sunlight is provided to at least 50% of the main ground level private open space to adjoining properties for a minimum of two hours between 9am and 3pm on June 21. C 5.2.14 also states that north facing windows to habitable rooms of neighbouring dwellings do not have sunlight reduced to less than 3 hours during the same period.

The proposal is considered to be acceptable for the following reasons:

- The side elevation windows at 56 Village High Road do not fall within the definition of north facing. It is also noted that 56 Village High Road has its primary living room and master bedroom windows along the south-western elevation which will not be significantly affected by the proposal.
- The proposal retains 2 hours sunlight to more than 35m² of the rear yard at 56 Village High Road and does not alter the existing overshadowing at 9am and 3pm on 21 June.
- The proposal does not result in any additional overshadowing of 60 Village High Road.
- The proposal involves minor additional overshadowing to 119 Hopetoun Avenue at 9am on 21 June. The proposal does not involve any change to the existing solar access to the rear yard at 12pm and 3pm on 21 June.
Conclusion

The proposal is therefore acceptable with regard to Section 5.2 of the Woollahra RDCP 2003.

13.5. Section 5.3: Open space and landscaping

<table>
<thead>
<tr>
<th>Site Area: 407.7m²</th>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deep Soil Landscaping – Dwelling</td>
<td>53% (111m²)</td>
<td>50% (104m²)</td>
<td>YES</td>
</tr>
<tr>
<td>Private Open Space at Ground Level – Principal Area</td>
<td>&gt;16m²</td>
<td>16m²</td>
<td>4m</td>
</tr>
<tr>
<td>Minimum Dimension</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location of Swimming Pool</td>
<td>Rear setback</td>
<td>Rear Setback</td>
<td>YES</td>
</tr>
</tbody>
</table>

The proposal complies with the requirement for deep soil landscaped area on the subject site and is therefore considered to be acceptable with regard to Section 5.3 of the Woollahra RDCP 2003.

13.6. Section 5.4: Fences and Walls

This is addressed under Section 13.2 of the report.

13.7. Section 5.5: Views

Public Views

The provisions of Part 5.5 of WRDCP 2003 require the protection and enhancement of public views and to encourage view sharing as a means of ensuring equitable access to views from private dwellings.

Public views of the city skyline and the Harbour Bridge are obtained from Kings Road (near the intersection with Village High Road). From the lowest part of Kings Road, the proposal will have some impact on the city skyline views. Overall, there will be a minor impact on the city skyline views and there will be no impact on the Harbour Bridge views from Kings Road.

View from the lowest part of Kings Road
The owners of the following property have raised concerns in relation to loss of views:

- 56 Village High Road, Vaucluse
- 49 Village High Road, Vaucluse

Surveyor certified height poles were erected to reflect the alignment of the ground and first floor levels. Consideration has also been given to the photomontages provided by the owners of 56 Village High Road.

Private Views

Objective O5.5.2 encourages ‘view sharing as a means of ensuring equitable access to views from dwellings’ and C5.5.6 requires that new ‘building forms enable a sharing of views with surrounding residences, particularly from the main habitable rooms of surrounding residences.’


The steps are as follows:
1. The assessment of the views affected
2. Consideration from what part of the property views are obtained
3. The extent of the impact; and
4. The reasonableness of the proposal that is causing the impact
1. What is the value of the view?

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

56 Village High Road

56 Village High Road benefits from views of the city skyline, the Harbour Bridge and Sydney Harbour. The water view is partly obstructed by the roofs of the surrounding dwellings.

49 Village High Road

49 Village High Road benefits from water views and views of the Harbour Bridge. The views are partly obstructed by large trees.

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

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

The views are obtained from the ground floor living room and balcony as well as the first floor level master bedroom, two bedrooms and study. The views are obtained from the rear of the dwelling and across the north-western side boundary and partly over the roof of the dwelling at 58 Village High Road.

49 Village High Road

Water views are obtained from the ground floor living room and oblique Harbour Bridge views are obtained from the ground floor courtyard. Water views and partial Harbour Bridge views are obtained from the first floor bedroom. The applicant has advised that there are more significant Harbour Bridge views from the living room and bedroom however these are currently being obstructed by an overgrown street tree.

3. What is the extent of the impact?

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

56 Village High Road

Ground floor level – living room and balcony

The proposed lower ground and ground floor levels are setback further than the existing dwelling and therefore the views from the ground floor living room and balcony will be slightly increased.
First floor level – Master bedroom

The master bedroom has two large windows; one at the rear (south-western elevation) which provides views of the city skyline and Harbour Bridge and one on the side (north-western elevation) which provides water views.

The proposal will not have any impact on the city skyline and Harbour Bridge views obtained from the rear window and there will be a negligible impact on the water views from this location. The proposal will have a moderate/severe impact upon the water views obtained from the side window. Given that there is no impact on the iconic views and that some of the water views are obtained across the side boundary, the overall impact on the views from the master bedroom is considered to be minor/moderate.

First floor level – Study

The proposal will have no impact on the city skyline and Harbour Bridge views and a negligible impact on the water views from the study.

View from the side and rear windows within the first floor master bedroom
First floor level - two bedrooms

The two bedrooms at first floor level have windows along the north-western elevation, which benefit from water views obtained across the side boundary.
The proposal will have a moderate impact upon the water views obtained from the side window within Bedroom 1 and Bedroom 2, as shown in the images below. It is noted that the water views are obtained across the side boundary and are therefore more difficult to retain.

The bedrooms also benefit from very oblique/angled views towards the Harbour Bridge. Photomontages prepared by the applicant, indicate that this oblique Harbour Bridge view will be maintained.

Overall, the view loss to the property as a whole is considered to be minor/moderate.
49 Village High Road

Much of the Harbour Bridge views and water views from 49 Village High Road are obscured by a street tree. Nevertheless, based on the information available it is considered that the proposal will not have an adverse impact upon the Harbour Bridge and water views obtained from the ground floor terrace, living room and the first floor bedroom and balcony, as shown in the photos below.
View from the ground floor living room

Proposed development in this location (approx)
4. What is the reasonableness of the proposal that is causing the impact?

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

The Court poses two questions in Tenacity Consulting v Warringah (2004) NSWLEC 140 (paragraphs 23-33). The first question relates to whether a non-compliance with one or more planning controls results in view loss. The second question posed by the Court relates to whether a more skilful design could provide the same development potential whilst reducing the impact on views.

The following comments are made with regard to the reasonableness of the proposal:

- The amended proposal reduced the maximum building height of the dwelling from 10.4m to 9.5m (a reduction of 900mm), which complies with the height control. Furthermore, the floor-to-ceiling heights of the development have been minimised.
- The proposed first floor level is only 1.25 – 1.55m higher than the ridge of the existing roof, which indicates that the height of the development has been minimised.
- The view loss is caused by the height of the dwelling (which complies with the control) and therefore full compliance with the FSR control would not necessarily eliminate the view impact.
- The dwelling presents as single storey to Village High Road and therefore the scale of the development is not considered to be excessive.
- The proposed dwelling is 2.9m lower than the ridge height of the neighbouring dwelling 56 Village High Road and provides an appropriate transition between 56 and 60 Village High Road.
- The primary iconic views (Harbour Bridge and city skyline) obtained from the living room, balcony, master bedroom and study at 56 Village High Road will not be affected by the proposal.
- The impacted water views from the first floor master bedroom and secondary bedrooms at 56 Village High Road are obtained across the side boundary and are therefore more difficult to retain.
- The proposal will have a negligible/minor impact on views from 49 Village High Road.
- The subject application adopts a more skilful design when compared with the original proposal (DA 141/2014). This has been achieved by significantly reducing the height of the dwelling and reducing the gross floor area of the first floor level.

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

Conclusion

The proposal is therefore considered to be acceptable with regard to the concept of view sharing and Section 5.5 of the Woollahra RDCP 2003.
13.8. Section 5.6: Energy Efficiency

This is addressed under Section 9 of the report.

13.9. Section 5.7: Stormwater management

This is addressed under Section 11.6 of the report.

13.10. Section 5.8: Acoustic and Visual Privacy

Visual Privacy

C5.8.5 states that windows in habitable rooms with a direct sightline to habitable room windows in an adjacent dwelling within 9.0m are to be screened by (a) being offset, (b) incorporating planter boxes, louvres or other devices, (c) translucent glazing to 1.5m above floor level, (d) using fixed translucent glazing or (e) sill heights above 1.5m in height.

C 5.8.6 requires balconies, terraces, decks, roof terraces and other like areas within a development are suitably screened to prevent direct views into habitable rooms or private open space of adjoining and adjacent dwellings.

The proposal is considered to be acceptable in this regard for the following reasons:

56 Village High Road
- The south-eastern side elevation windows at ground and first floor level have a sil height of 1.6m or are narrow (0.6m wide) windows, which would not have an adverse impact upon the neighbouring property.
- The proposed first floor balcony is setback 6m from the south-eastern side boundary and will not allow a direct line of sight into the habitable room windows and private open space at 56 Village High Road within a distance of 12m.

60 Village High Road
- The north-western side elevation windows at ground and first floor level have a sil height of 1.6m or are narrow (0.3m – 0.8m wide) windows, which would not have an adverse impact upon the neighbouring property.
- In order to minimise any overlooking from the first floor level balcony, Condition C.1(b) requires a privacy screen to be provided along the north-western side of the balcony. The photomontage submitted by the applicant indicates that the privacy screen would not have an additional impact on the views from 56 Village High Road.
- In order to minimise any privacy impacts to the rear yard at 60 Village High Road, Condition C.1(a) requires that the swimming pool is lowered by 1m (reduced from 2m above existing ground level to 1m above existing ground level).

119 Hopetoun Avenue
- The proposed dwelling is setback 6.3m – 10.5m from the rear boundary of the site. Due to the dense vegetation along the rear boundary (which is not useable private open space), the proposed dwelling achieves a 9m separation from the useable lawn area at 119 Hopetoun Avenue.
- The proposed dwelling is setback 2.6m – 5.8m further from the rear boundary than the existing dwelling, which will improve the privacy relationship between the two properties.
• The proposed dwelling is setback 19m – 23.5m from the dwelling at 119 Hopetoun Avenue, which provides adequate separation with regard to visual privacy and overlooking.

• In order to minimise any privacy impacts to 119 Hopetoun Avenue, **Condition C.1(a)** requires that the swimming pool is lowered by 1m (reduced from 2m above existing ground level to 1m above existing ground level). It is also noted that there is no coping along the south-western edge of the pool, so this area is not trafficable.

• The proposal is considered to be acceptable with regard to acoustic privacy, subject to **Condition I.3** limiting any noise from the pool equipment.

**Conclusion**

The proposal is therefore acceptable with regard to Section 5.8 of the Woollahra RDCP 2003.

### 13.11. Section 5.9: Car Parking and Driveways

<table>
<thead>
<tr>
<th>Proposed</th>
<th>Control</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum No of Car Parking Spaces – Dwelling</td>
<td>2 spaces</td>
<td>2 spaces</td>
</tr>
<tr>
<td>Minimum Access Driveway Width</td>
<td>3.4m</td>
<td>3.5m – 6.0m</td>
</tr>
</tbody>
</table>

Subject to conditions, the proposal is considered to be acceptable with regard to Section 5.9 of the Woollahra RDCP 2003.

### 14. SECTION 94 CONTRIBUTION PLANS

**14.1. Section 94A Contributions Plan 2011**

In accordance with Schedule 1, a 1% levy applies with the monies being used for a variety of works as outlined in Schedule 2 of the Section 94A Contributions Plan 2011.

<table>
<thead>
<tr>
<th>Cost of Works</th>
<th>Rate</th>
<th>Contribution Payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,200,000</td>
<td>1%</td>
<td>$12000</td>
</tr>
</tbody>
</table>

Refer to **Condition C.2**.

### 15. APPLICABLE ACTS/REGULATIONS

#### 15.1. Demolition of Structures

Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires Council to consider Australian Standard AS 2601-2004: The demolition of structures. This is required in **Condition E.2**.

#### 15.2. Swimming Pools Act 1992

A swimming pool is at all times to be surrounded by a child-resistant barrier that separates the swimming pool from any residential building and that is designed, constructed, installed and maintained in accordance with the standards prescribed by the regulations. Certain exemptions do apply.
16. **THE LIKELY IMPACTS OF THE PROPOSAL**

All likely impacts have been addressed elsewhere in the report, or are considered to be satisfactory and not warrant further consideration.

17. **THE SUITABILITY OF THE SITE**

The site is suitable for the proposed development.

18. **THE PUBLIC INTEREST**

The proposal is in the public interest.

19. **CONCLUSION**

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

20. **DISCLOSURE STATEMENTS**

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

**RECOMMENDATION: PURSUANT TO SECTION 80(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

THAT the Council, as the consent authority, grant development consent to Development Application No. 242/2015/1 for substantial demolition of the existing building (retaining some internal and external walls to the basement level) and the construction of a new dwelling with a double garage and a new swimming pool at 58 Village High Road Vaucluse, 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 (Autotext AA1)

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:
- The collection of stormwater,
- The retention of stormwater,
- The reuse of stormwater,
- The detention of stormwater,
- The controlled release of stormwater; and
- 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 meaning 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

WLEP 2014 means Woollahra Local Environmental Plan 2014
Work for the purposes of this consent means:

- the use of land in connection with development,
- the subdivision of land,
- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,
- the piling, piering, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the site of any machine, article, material, or thing, or
- 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 (Autotext AA2)

A.3 Approved Plans and supporting documents

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

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Author/Drawn</th>
<th>Date(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>DA.01.1</td>
<td>Architectural Plans</td>
<td>Antonio Caminiti Design</td>
<td>28/09/2015</td>
</tr>
<tr>
<td>DA.03.1</td>
<td></td>
<td></td>
<td>4/2/2016</td>
</tr>
<tr>
<td>DA.03.2(A)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DA.03.3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DA.04.1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DA.05.1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DA.05.2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DA.05.3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DA.05.4</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A179580_02</td>
<td>BASIX Certificate</td>
<td>NSW Department of Planning and Infrastructure</td>
<td>28 Apr 2015</td>
</tr>
<tr>
<td>Project No. 1502, Drawing No. 1502 DA.01.4</td>
<td>Stormwater Disposal Concept Plan</td>
<td>Antonio Caminiti Design</td>
<td>16/06/2015</td>
</tr>
<tr>
<td>unreferenced</td>
<td>Flood Mitigation Diagram V3</td>
<td>unknown</td>
<td>10/12/2015</td>
</tr>
</tbody>
</table>

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

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

Standard Condition: A5 (Autotext AA5)
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 February 2012 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 (Autotext AA8)

A.5 Tree Preservation & Approved Landscaping Works

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

a) The following trees shall be retained

- Trees on Council Land

<table>
<thead>
<tr>
<th>Council Ref No.</th>
<th>Species</th>
<th>Location</th>
<th>Dimension (metres)</th>
<th>Tree Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Agonis flexuosa (Willow Myrtle)</td>
<td>Council walkway – south eastern side of the subject property</td>
<td>5 x 4</td>
<td></td>
</tr>
</tbody>
</table>

Note: The tree/s required to be retained should appear coloured green on the construction certificate plans.

b) The following trees may be removed:

<table>
<thead>
<tr>
<th>Council Ref No.</th>
<th>Species</th>
<th>Location</th>
<th>Dimension (metres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Plumeria acutifolia (Frangipani)</td>
<td>Council walkway – south eastern side of the subject property</td>
<td>5 x 4</td>
</tr>
<tr>
<td>3</td>
<td>Callistemon citrinus (Bottlebrush)</td>
<td>Front boundary</td>
<td>3 x 3</td>
</tr>
<tr>
<td>4</td>
<td>Callistemon viminalis (Weeping Bottlebrush)</td>
<td>Front boundary</td>
<td>4 x 3</td>
</tr>
<tr>
<td>5</td>
<td>Callistemon citrinus (Bottlebrush)</td>
<td>Front boundary</td>
<td>3 x 3</td>
</tr>
<tr>
<td>6</td>
<td>Grevillea cv. 'Honey Gem’ (Grevillea)</td>
<td>Front boundary</td>
<td>3 x 3</td>
</tr>
<tr>
<td>7</td>
<td>Callistemon citrinus (Bottlebrush)</td>
<td>Front boundary</td>
<td>3 x 3</td>
</tr>
</tbody>
</table>

Note: Tree/s to be removed shall appear coloured red on the construction certificate plans.

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 (Autotext BB1)

B.2 Identification of Hazardous Material

In accordance with Australian Standard AS2601- ‘The Demolition of Structures’ the owner shall identify all hazardous substances located on the site including asbestos, Polychlorinated biphenyls (PCBs), lead paint, underground storage tanks, chemicals, etc. per Clause 1.6.1 of the Standard. In this regard, prior to the commencement of any work, Council shall be provided with a written report prepared by a suitably qualified competent person detailing:

- all hazardous materials identified on the site;
- the specific location of all hazardous materials identified;
- whether the hazardous materials are to be removed from the site as part of the works to be undertaken; and
- safety measures to be put in place.

Note: This condition is imposed to protect the health and safety of all persons while works are being undertaken and to ensure all safety measures have been identified and are in place to protect all parties in the immediate vicinity of the site.

Standard Condition: B6

B.3 Public Road Assets prior to any work/demolition

To clarify the condition of the existing public infrastructure prior to the commencement of any development (including prior to any demolition), the Applicant or Owner must submit to Council a full record of the condition of the Public Road infrastructure adjacent to the development site.

The report must be submitted to Council prior to the commencement of any work and include photographs showing current condition and any existing damage fronting and adjoining the site to the:

- road pavement,
- kerb and gutter,
- footway including footpath pavement and driveways,
- retaining walls within the footway or road, and
- drainage structures/pits.

The reports are to be supplied in both paper copy and electronic format in Word. Photographs are to be in colour, digital and date stamped.
If the required report is not submitted then Council will assume there was no damage to any infrastructure in the immediate vicinity of the site prior to the commencement of any work under this consent.

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

Standard Condition: B7

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

C.1 Modification of details of the development (Section 80A(1)(g) of the Act)

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

a) To ensure an adequate level of privacy to the neighbouring properties, the finished level of the swimming pool should be lowered by 1m (from RL 42.82 to RL 41.82).

b) To ensure an adequate level of privacy to the neighbouring property, a privacy screen to a height of 1.5m must be provided along the north-western side of the first floor rear balcony.

c) To ensure adequate pedestrian visibility sightlines, where the vehicular entrance is proposed in conjunction with a fence of over 1.2m high, a 2x2m splay or its equivalent shall be provided on either side of the entrance in accordance with Woollahra DCP Chapter E1 – Parking and Access.

d) To permit access, the height between the floor of a parking space and an overhead obstruction shall be a minimum of 2.2m in accordance with AS2890.1-2004.

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 (Autotext CC4)

C.2 Payment of Long Service Levy, Security, Contributions and Fees

The certifying authority must not issue any Part 4A Certificate until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees prior to the issue of a construction certificate, subdivision certificate or occupation certificate, as will apply.
## LONG SERVICE LEVY

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Indexed</th>
<th>Fee Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Long Service Levy under Building and Construction Industry Long Service Payments Act 1986</td>
<td>Contact LSL Corporation or use online calculator</td>
<td>No</td>
<td>T96</td>
</tr>
</tbody>
</table>

## SECURITY

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Indexed</th>
<th>Fee Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property Damage Security Deposit - making good any damage caused to any property of the Council</td>
<td>$29,561</td>
<td>No</td>
<td>T115</td>
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</tbody>
</table>

## DEVELOPMENT LEVY

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Indexed</th>
<th>Fee Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development Levy (Section 94A)</td>
<td>$12,000</td>
<td>Yes, quarterly</td>
<td>T96</td>
</tr>
</tbody>
</table>

## INSPECTION FEES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Indexed</th>
<th>Fee Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Security Administration Fee</td>
<td>$180</td>
<td>No</td>
<td>T16</td>
</tr>
<tr>
<td>Public Road and Footpath Infrastructure Inspection Fee (S138 Fee)</td>
<td>$430</td>
<td>No</td>
<td>T45</td>
</tr>
</tbody>
</table>

## TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Indexed</th>
</tr>
</thead>
<tbody>
<tr>
<td>$42,171 plus any relevant indexed amounts and long service levy</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Building and Construction Industry Long Service Payment

The Long Service Levy under Section 34 of the Building and 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. The Levy can be paid directly to the Long Services Payments Corporation or to Council. Further information can be obtained from the Long Service Payments Corporation’s website [http://www.lspc.nsw.gov.au/](http://www.lspc.nsw.gov.au/) or the Long Service Payments Corporation on 13 14 41.

### How must the payments be made?

Payments must be made by:
- Cash deposit with Council,
- Credit card payment with Council, or
- Bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:
- The guarantee is by an Australian bank for the amount of the total outstanding contribution;
- The bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable];
- The bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent;
- The bank guarantee is lodged with the Council prior to the issue of the construction certificate; and
- The bank’s obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.
How will 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 2011 sets out the formula and index to be used in adjusting the s.94A levy.

Do you need HELP indexing the levy?

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

Deferred or periodic payment of section 94A levy under the Woollahra Section 94A Development Contributions Plan 2011

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:

- The reasons given;
- Whether any prejudice will be caused to the community deriving benefit from the public facilities;
- Whether any prejudice will be caused to the efficacy and operation of the plan; and
- 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:

- The guarantee is by an Australian bank for the amount of the total outstanding contribution;
- The bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable];
- The bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent;
- The bank guarantee is lodged with the Council prior to the issue of the construction certificate; and
- The bank’s obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

Any deferred or periodic payment 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.

C.3 BASIX commitments

The applicant must submit to the Certifying Authority BASIX Certificate No.A179580_02 with any application for a Construction Certificate.

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

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

Standard Condition: C7

**C.4 Structural Adequacy of Existing Supporting Structures**

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

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

Standard Condition: C35 (Autotext CC35)

**C.5 Professional Engineering Details**

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

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

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

Standard Condition: C36

**C.6 Stormwater discharge to existing Stormwater Drainage System**

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 (See Note Below) required by BASIX commitments including their overflow connection to the *Stormwater Drainage System*, and

h) General compliance with the Council’s Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management
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 February 2012.

**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:** The collection, storage and use of rainwater is to be in accordance with Standards Australia HB230-2008 “Rainwater Tank Design and Installation Handbook”.

**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


**Standard Condition:** C49

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 and the Building Code of Australia.

Approval is not granted for the modification of any boundary fencing beyond what is authorised by the stamped approved plans, as modified by any condition of consent or what is permitted to be carried out as ‘exempt development’ pursuant to *State Environmental Planning Policy (Exempt & Complying Development Codes)* 2008.

**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 (Autotext CC55)

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 (Autotext CC56)
C.9 Tree Management Plan

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

a) Trees to be numbered in accordance with these conditions:
   - shaded green where required to be retained and protected
   - shaded red where authorised to be removed
   - shaded yellow where required to be transplanted
   - shaded blue where required to be pruned

b) References to applicable tree management plan, arborists report, transplant method statement or bush regeneration management plan.

This plan shall be kept on site until the issue of the final occupation certificate.

C.10 Road and Public Domain Works

A separate application under Section 138 of the Roads Act 1993 is to be made to, and be approved by, Council for the following infrastructure works prior to the issuing of any Construction Certificate. The infrastructure works must be carried out at the applicant's expense:

a) The site’s stormwater discharge shall connect to Council’s existing stormwater pipe along the existing pathway adjacent to the sites southern boundary in accordance with Council’s requirements.

b) A standard full width vehicular crossing for a single garage having a width of minimum 3m and maximum 3.5m at the property boundary and perpendicular to the road carriageway in accordance with Council’s standard driveway drawing RF2A. The crossing shall be a minimum of 0.5m away from the existing power pole and existing kerb inlet pit and 1.0m from the existing Telstra pit. Note: Telstra pits are not to remain in driveways unless approved by Telstra in writing and suitable arrangements met. The existing Gas lid/marker can remain in new driveways but must be accessible at all times.

c) A design longitudinal surface profile for the proposed driveway must be submitted for assessment.

d) The proposed square concrete pathway blocks on Council’s road reserve shall be removed.

e) The existing brick strips in front of the existing garage and the existing concrete block in front of the existing front door on Council’s road reserve shall be removed and turfed to Council’s requirements.

f) Removal of any driveway crossings and kerb laybacks which will be no longer required; The existing shared vehicular crossing with No. 60 Village High Road will no longer be operational following the proposed development. The redundant vehicular crossing in front of No. 58 Village High Road shall be removed and replaced with kerb and gutter. The existing vehicular crossing in front of No. 60 Village High Road shall stay intact with layback and splay reinstated.

g) Reinstatement of footpath, kerb and gutter to match existing.
h) Where a grass verge exists, the balance of the area between the footpath and the kerb over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of Couch turf.

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

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

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

Note: The ‘Road Application to Carry out Works in a Public Road’ form can be found at: http://www.woollahra.nsw.gov.au/council/forms_and_publications/forms_and_checklists

Note: See Section K - Advisings of this Consent titled Roads Act Application.

Standard Condition: C13 (Autotext CC13)

C.11 Soil and Water Management Plan – Submission & Approval

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

a) “Do it Right On Site, Soil and Water Management for the Construction Industry” published by the Southern Sydney Regional Organisation of Councils, 2001; and


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

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

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

Note: The “Do it Right On Site, Soil and Water Management for the Construction Industry” publications can be 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.12 Car and Commercial Parking Details


Access levels and grades must comply with access levels and grade required by Council under the Roads Act 1993.
The *Certifying Authority* has no discretion to reduce or increase the number or area of car parking or commercial parking spaces required to be provided and maintained by this consent.  

Standard Condition: C45 (Autotext: CC45)

**C.13 Stormwater management plan (Site greater than 500m²)**

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

The *Stormwater Management Plan* must detail:

a) general design in accordance with Stormwater Disposal Concept Plan, Project No. 1502, Drawing No. 1502 DA.01.4, prepared by Antonio Caminitini Design, dated 16/06/2015 other than amended by this and other conditions;

b) the discharge of stormwater, by direct connection, via outlets to Council’s existing stormwater pipe along the existing pathway adjacent to the sites southern boundary;

c) compliance the objectives and performance requirements of the BCA;

d) any rainwater tank required by BASIX commitments including their overflow connection to the *Stormwater Drainage System*, and

e) general compliance with the Council’s draft Development Control Plan Stormwater Drainage Management (draft version 1.1, public exhibition copy dated 14/12/2006)

The *Stormwater Management Plan* must include the following:

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

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

*Note:* This Condition is imposed to ensure that site stormwater is disposed of in a controlled and sustainable manner.  
Standard Condition: C51

**C.14 Flood protection**

The *Construction Certificate* plans and specifications, required by Clause 139 of the *Regulation*, must include a Flood Risk Management Plan on the basis of a 1:100 year flood, detailing:

a) The applicant is to provide a flood barrier that protects the proposed garage from inundation to 500mm above the garage floor level.

b) The applicant is to flood proof the proposed access way to a minimum of 300mm above natural surface level by providing steps or other Council approved physical barrier.
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 the Home Building Regulation 2004,

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.

**Note:** All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.

**Standard Condition: D1 (Autotext DD1)**

**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;
c) 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
d) Together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa.

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

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

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

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

Standard Condition: D11 (Autotext DD11)

### D.3 Site Signs

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

Clause 98A of the Regulation provides:

**Erection of signs**

- 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.
- 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:
  - showing the name, address and telephone number of the principal certifying authority for the work, and
  - 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
  - stating that unauthorised entry to the work site is prohibited.
- 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.
- 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.
- 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.”

Clause 227A of the Regulation provides:

**Signs on development sites**

If there is a person who is the PCA or the principal contractor for any building work, subdivision work or demolition work authorised to be carried out on a site by a development consent or complying development certificate:

- Each such person MUST ensure that a rigid and durable sign showing the person’s identifying particulars so that they can be read easily by anyone in any public road or other public place adjacent to the site is erected in a prominent position on the site before the commencement of work, and is maintained on the site at all times while this clause applies until the work has been carried out.

**Note:** Clause 227A imposes a penalty exceeding $1,000 if these requirements are not complied with.

**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 and Clause 227A of the *Regulation*.

Standard Condition: D12 (Autotext DD12)
D.4 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 downloaded free of charge from www.woollahra.nsw.gov.au.

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

Note: Section 257 of the Protection of the Environment Operations Act 1997 provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”

Warning: Irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.

D.5 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

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

a) A construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited Certifier, and

b) The person having the benefit of the development consent has:
   • Appointed a principal certifying authority for the building work, and
   • Notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and

c) The principal certifying authority has, no later than 2 days before the building work commences:
   • Notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
   • Notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
d) The person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:

- 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
- Notified the principal certifying authority of any such appointment, and
- 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
- Given at least 2 days’ notice to the council of the person’s intention to commence the erection of the building.

**Note:** The term *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:** The term *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](http://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 (Autotext DD15)**

### D.6 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:

- 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,
- 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 (Autotext DD17)**
D.7 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 (Autotext DD18)

D.8 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 (Autotext DD6)

D.9 Dilapidation Reports for existing buildings

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

These properties must include (but is not limited to)

- 60 Village High Road
- 119 Hopetoun Avenue
The dilapidation reports must be completed and submitted to Council with the Notice of Commencement prior to the commencement of any development work.

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

**Note:** The reasons for this condition are:
- To provide a record of the condition of buildings prior to development being carried out
- To encourage developers and its contractors to use construction techniques that will minimise the risk of damage to buildings on neighbouring land

Also refer to the Dilapidation Report Advising for more information regarding this condition.

Standard Condition: D4

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.

**Note:** All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.

Standard Condition: E1 (Autotext EE1)

E.2 Compliance with Australian Standard for Demolition


Standard Condition: E2 (Autotext EE2)
E.3 **Requirement to notify about new evidence**

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, heritage significance, threatened species or other relevant matters must be immediately notified to Council and the Principal Certifying Authority.

*Standard Condition: E4 (Autotext EE4)*

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 (Autotext EE5)*

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,

d) The following work **must not** take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday:
   i) Piling;
   ii) Piering;
   iii) Rock or concrete cutting, boring or drilling;
   iv) Rock breaking;
   v) Rock sawing;
   vi) Jack hammering; or
   vii) Machine excavation,

e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday

f) No operation of any equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday

g) No rock excavation being cutting, boring, drilling, breaking, sawing, jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

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

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

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

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


Standard Condition: E6 (Autotext EE6)

E.6 Public Footpaths – Safety, Access and Maintenance

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.

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:

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

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 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:
  a. For fee or reward, transport waste over or under a public place
  b. Place waste in a public place
  c. Place a waste storage container in a public place.”
- Part E Public roads:
  a. 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
  b. 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.”
  c. Any work in, on or over the Road or Footway requires Council Approval and in the case of classified roads the NSW Roads and Traffic Authority. Road includes that portion of the road uses as a footway.

E.7 Maintenance of Environmental Controls

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

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


E.8 Support of adjoining land and buildings

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

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

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

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

Note: Section 177 of the Conveyancing Act 1919 creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).
Note: Clause 20 of the Roads (General) Regulation 2000 prohibits excavation in the vicinity of roads as follows: “Excavations adjacent to road - A person must not excavate land in the vicinity of a road if the excavation is capable of causing damage to the road (such as by way of subsidence) or to any work or structure on the road.” Separate approval is required under the Roads Act 1993 for any underpinning, shoring, soil anchoring (temporary)) or the like within or under any road. Council will not give approval to permanent underpinning, shoring, soil anchoring within or under any road.

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

E.9 Placement and use of Skip Bins

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

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

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

E.10 Dust Mitigation

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

This generally requires:

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

Note: “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: 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: 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 (Autotext EE23)
E.11 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 and Building Code of Australia 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 and the Building Code of Australia 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.12 Site waste minimisation and management – Demolition

In order to maximise resource recovery and minimise residual waste from demolition activities:

a) The provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work
b) An area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements)
c) Provide separate collection bins and/or areas for the storage of residual waste
d) Clearly ‘signpost’ the purpose and content of the bins and/or storage areas
e) Implement measures to prevent damage by the elements, odour, health risks and windborne litter
f) Minimise site disturbance, limiting unnecessary excavation

When implementing the SWMMP the applicant must ensure:

a) Footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval
b) Any material moved offsite is transported in accordance with the requirements of the Protection of the Environment Operations Act (1997)
c) Waste is only transported to a place that can lawfully be used as a waste facility
d) Generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by Workcover NSW
e) Evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained

Note: Materials that have an existing reuse or recycling market should not be disposed of in a land fill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.

Standard Condition: E31 (Autotext EE31)
E.13 Site waste minimisation and management – Construction

In order to maximise resource recovery and minimise residual waste from construction activities:

a) The provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work
b) Arrange for the delivery of materials so that materials are delivered ‘as needed’ to prevent the degradation of materials through weathering and moisture damage
c) Consider organising to return excess materials to the supplier or manufacturer
d) Allocate an area for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation)
e) Clearly ‘signpost’ the purpose and content of the storage areas
f) Arrange contractors for the transport, processing and disposal of waste and recycling. Ensure that all contractors are aware of the legal requirements for disposing of waste.
g) Promote separate collection bins or areas for the storage of residual waste
h) Implement measures to prevent damage by the elements, odour and health risks, and windborne litter
i) Minimise site disturbance and limit unnecessary excavation
j) Ensure that all waste is transported to a place that can lawfully be used as a waste facility
k) Retain all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as council, Department of Environment and Climate Change (DECC) or WorkCover NSW

Standard Condition: E32 (Autotext EE32)

E.14 Asbestos Removal

Where hazardous material, including bonded or friable asbestos has been identified in accordance with condition B6 above, and such material must be demolished, disturbed and subsequently removed, all such works must comply with the following criteria:

a) Be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (restricted) Asbestos License,
c) No asbestos products may be reused on the site
d) No asbestos laden skip or bins shall be left in any public place

Note: This condition is imposed to protect the health and safety of persons working on the site and the public

Standard Condition: E39

E.15 Classification of Hazardous Waste

Prior to the exportation of hazardous waste (including hazardous fill or soil) from the site, the waste materials must be classified in accordance with the provision of the Protection of the Environment Operations Act 1997 and the NSW DECC Waste Classification Guidelines, Part1: Classifying Waste (April 2008).

Note: This condition is imposed to ensure that where hazardous waste will be removed from a site an Asbestos Licensed contractor can definitively determine where the waste may be legally taken for disposal.

Standard Condition: E40
E.16 Disposal of Asbestos and Hazardous Waste

Asbestos and hazardous waste, once classified in accordance with condition E 40 above must only be transported to waste facilities licensed to accept asbestos and appropriate classifications of hazardous waste.

Note: This condition is imposed to ensure that asbestos and other Hazardous waste is disposed of lawfully under the Protection of the Environment Operations Act 1997 and relevant EPA requirements.

Standard Condition: E41

E.17 Asbestos Removal Signage

Standard commercially manufactured signs containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm are to be erected in prominent visible positions on the site when asbestos is being removed.

Note: This condition is imposed to ensure awareness of any hazard to the health and safety of persons working on the site and public.

Standard Condition: E42

E.18 Notification of Asbestos Removal

In addition to the requirements for licensed asbestos removalists to give written notice to WorkCover all adjoining properties and those opposite the development site must be notified in writing of the dates and times when asbestos removal is to be conducted. The notification is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone and facsimile numbers and email addresses.

Note: This condition has been imposed to ensure that local residents are informed and have adequate communication facilitated for incidents of asbestos removal.

Standard Condition: E43

E.19 Tree Preservation

All persons must comply with Council’s Development Control Plan (DCP) 2015, Tree Management Chapter E3 other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

General Protection Requirements

a) Excavation must cease where tree roots with a diameter exceeding 30mm are exposed. The principal contractor must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.

b) Where there is damage to any part of a tree the principal contractor must procure an inspection of the tree by a qualified arborist immediately. The principal contractor must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

Note: Trees must be pruned in accordance with Australian Standard AS 4373 “Pruning of Amenity Trees” and WorkCover NSW Code of Practice Amenity Tree Industry.
E.20 Replacement/Supplementary trees which must be planted

Any replacement or supplementary tree shall be grown in accordance with NATSPEC Specifying Trees. The replacement tree shall be maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council’s Development Control Plan (DCP) 2015, Tree Management Chapter E3, it must be replaced with another of the same species which complies with the criteria outlined below.

<table>
<thead>
<tr>
<th>Species/Type</th>
<th>Planting/Location</th>
<th>Container Size/Size of Tree (at planting)</th>
<th>Minimum Dimensions at Maturity (metres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 x Magnolia grandiflora ‘Little gem’ (Magnolia variety)</td>
<td>Front yard of subject property - northern side</td>
<td>100 litre</td>
<td>5 x 3</td>
</tr>
<tr>
<td>2 x Magnolia grandiflora ‘Little gem’ (Magnolia variety)</td>
<td>Rear yard of subject property – southern side</td>
<td>100 litre each</td>
<td>5 x 3 each</td>
</tr>
</tbody>
</table>

The project arborist shall document compliance with the above condition.

E.21 Erosion and Sediment Controls – Maintenance

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

a) The Soil and Water Management Plan required under this consent;
b) “Do it Right On Site, Soil and Water Management for the Construction Industry” published by the Southern Sydney Regional Organisation of Councils, 2001; and

Where there is any conflict The Blue Book takes precedence.

Note: 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 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 (Autotext EE15)
E.22 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 (Autotext EE17)

E.23 Vibration Monitoring

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

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

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

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

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

A copy of any written direction required by this condition must be provided to the Principal Certifying Authority within 24 hours of any event.
Where there is any movement in foundations such that damaged is occasioned to any adjoining building or such that there is any removal of support to supported land the professional engineer, principal contractor and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that supported land and take immediate action under the direction of the professional engineer to prevent any further damage and restore support to the supported land.

Note: Professional engineer has the same meaning as in Clause A1.1 of the BCA.
Note: Building has the same meaning as in section 4 of the Act i.e. “building includes part of a building and any structure or part of a structure”.
Note: Supported land has the same meaning as in section 88K of the Conveyancing Act 1919.

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

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

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

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

F.2 Swimming and Spa Pools – Permanent Child Resistant Barriers and other matters

Prior to filling any swimming pool, as defined by the Swimming Pools Act 1992:

c) The Principal Contractor or owner must either obtain a ‘Certificate of Compliance’ issued pursuant to Section 22D of the Swimming Pools Act 1992 or an appropriate Occupation Certificate authorising use of the swimming pool.
d) 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.
e) 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:

a) 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:
b) 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 downloaded free from: 
Standard Condition: F13 (Autotext FF13)

F.3 Amenity Landscaping

The owner or principal contractor must install all approved amenity landscaping (screen planting, soil stabilisation planting, etc.) prior to any occupation or use of the site.

Note: This condition has been imposed to ensure that the environmental impacts of the development are mitigated by approved landscaping prior to any occupation of the development.

F.4 Commissioning and Certification of Systems and Works

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

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

a) Certification from the supervising professional engineer that the requirement of the Geotechnical/Hydrogeological conditions and report recommendations were implemented and satisfied during development work.

b) All flood protection measures.

c) All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1 – “Off-Street car parking.”

d) All stormwater drainage and storage 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 (Autotext FF7)

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

No applicable conditions.
H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (s109C(1)(c))

H.1 Fulfillment of BASIX commitments – Clause 154B of the Regulation

All BASIX commitments must be effected in accordance with the BASIX Certificate No. A179580_02.

**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 (Autotext HH7)

H.2 Removal of Ancillary Works and Structures

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

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

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

Standard Condition: H12 (Autotext HH12)

H.3 Landscaping

The principal contractor or owner must provide to PCA a works-as-executed landscape plan and certification from a qualified landscape architect/designer, horticulturist and/or arborist as applicable to the effect that the works comply with this consent.

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

H.4 Road Works (including footpaths)

The following works must be completed to the satisfaction of Council, in compliance with Council’s “Specification for Roadworks, Drainage and Miscellaneous Works” dated February 2012 unless expressly provided otherwise by these conditions at the principal contractor’s or owner’s expense:

a) Stormwater pipes, pits and connections to public stormwater systems within the road;
b) Driveways and vehicular crossings within the road;
c) Removal of redundant driveways and vehicular crossings;
d) New footpaths within the road;
e) Relocation of existing power/light pole
f) relocation/provision of street signs
g) New or replacement street trees;
h) New footway verges, where a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street.

i) New or reinstated kerb and guttering within the road; and

j) New or reinstated road surface pavement within the road.

Note: Security held by Council pursuant to section 80A(6) of the Act will not be release by Council until compliance has been achieved with this condition. An application for refund of security must be submitted with the Final Occupation Certificate to Council. This form can be downloaded from Council’s website www.woollahra.nsw.gov.au or obtained from Council’s customer service centre.

Standard Condition: H13 (Autotext HH13)

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

1.1 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No.A179580_02.

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: I24

1.2 Swimming and Spa Pools – Maintenance

Swimming and Spa Pools must be maintained:

a) In compliance with the Swimming Pools Act 1992 and the Building Code of Australia with regard to the provision of child-resistant barriers and resuscitation signs;

b) In compliance with the NSW Health “Public Swimming Pool and Spa Pool Guidelines” in force at that time. Private pools are encouraged to comply with the same standards as applicable;

c) In compliance with AS 1926.3-2003:Swimming pool safety - Water recirculation and filtration systems ;

d) With backwash being discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996, and

e) With a timer that limits the recirculation and filtration systems operation such that it does not emit noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
   • Before 8 am or after 8 pm on any Sunday or public holiday, or
   • Before 7 am or after 8 pm on any other day.

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


Standard Condition: I30
I.3 Noise from mechanical plant and equipment

The noise level measured at any boundary of the site at any time while the mechanical plant and equipment is operating must not exceed the *background noise level*. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed *background noise level* at any time.

The *background noise level* is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the $L_{A90}$, 15 minute level measured by a sound level meter.

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


J. Miscellaneous Conditions

No applicable conditions.

K. Advisings

K.1 Criminal Offences – Breach of Development Consent and 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 is also a criminal offence.

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

a) Issue Penalty Infringement Notices (On-the-spot fines);

b) Issue notices and orders;

c) Prosecute any person breaching this consent; and/or

d) Seek injunctions/orders before the courts to restrain and remedy any breach.

**Warnings as to potential maximum penalties**

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

**Warning as to enforcement and legal costs**

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

This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.
Note: The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of the Crimes (Sentencing Procedure) Act 1999, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. You can obtain further information from the following web sites: http://www.theshopfront.org/documents/ConvictionsCriminalRecords.pdf and the Attorney General’s www.agd.nsw.gov.au.

K.2 Dial before you dig

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

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

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

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

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

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


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

K.4 Builder’s Licences and Owner Builders Permits

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

Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder): http://www.dft.nsw.gov.au/building.html.
The Owner(s) must appoint the PCA. The PCA must check that Home Building Act insurance is in place before the commencement of building work. The Principal Contractor (Builder) must provide the Owners with a certificate of insurance evidencing the contract of insurance under the Home Building Act 1989 for the residential building work.

Standard Condition: K5 (Autotext KK5)

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 (Autotext KK7)

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:

a) The Occupational Health and Safety Act 2000;
b) The Occupational Health and Safety Regulation 2001;

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 (Autotext KK8)

K.7 Lead Paint

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

Lead 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 (Autotext KK9)

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](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/](http://www.cjc.nsw.gov.au/).

Standard Advising: K10 (Autotext KK10)

K.9 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 80A of the Act.

The securities will not be released until a Final Occupation Certificate has lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council’s requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council’s requirements.

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

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

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

Works or structures over, on or under public roads or footpaths are subject to Sections 138, 139 and 218 of the *Roads Act 1993* and specifically:

- Construction of driveways and/or new or alterations to footpath paving
- Alteration and/or extension to Council drainage infrastructure
- Alteration and/or addition of retaining walls
- Pumping of water to Council’s roadway
- Installation of soil/rock anchors under the roadway

An “Application to carry out works in a Public Road” form must be completed and lodged, with the Application fee, at Council’s Customer Services counter. Detailed plans and specifications of all works (including but not limited to structures, road works, driveway crossings, footpaths and stormwater drainage etc) within existing roads, must be attached, submitted to and approved by Council under Section 138 of the *Roads Act 1993*, before the issue of any Construction Certificate.

Detailed engineering plans and specifications of the works required by this Condition must accompany the Application form. The plans must clearly show the following:

- Engineering drawings (plan, sections and elevation views) and specifications of the footpath, driveways, kerb & gutter, new gully pit showing clearly the connection point of site outlet pipe(s). Note, the connection drainage lines must be as direct as possible and generally run perpendicular to the kerb alignment.
- Engineering drawings of the new drainage line to be constructed joining the new and existing drainage pits including services.

All driveways must include a design longitudinal surface profile for the proposed driveway for assessment. The driveway profile is to start from the road centreline and be along the worst case edge of the proposed driveway. Gradients and transitions must be in accordance with Clause 2.5.3, 2.6 of AS 2890.1 – 2004, Part 1 – Off-street car parking. The driveway profile submitted to Council must be to (1:25) scale (for template checking purposes) and contain all relevant details: reduced levels, proposed grades and distances.

The existing footpath level and grade at the street alignment of the property must be maintained unless otherwise specified by Council. Your driveway levels are to comply with AS2890.1 and Council’s Standard Drawings. There may be occasions where these requirements conflict with your development and you are required to carefully check the driveway/garage slab and footpath levels for any variations.

Note: Any adjustments required from the garage slab and the street levels are to be carried out internally on private property

Drainage design works must comply with the Council’s Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management, and
Temporary ground anchors may be permitted, in accordance with Council’s “Rock Anchor Policy”.

Services: Prior to any excavation works, the location and depth of all public utility services (telephone, cable TV, electricity, gas, water, sewer, drainage, etc.) must be ascertained. The applicant shall be responsible for all public utility adjustment/relocation works, necessitated by the development work and as required by the various public utility authorities and/or their agents.

All public domain works must comply with the latest version of Council’s “Specification for Roadworks, Drainage and Miscellaneous Works” unless expressly provided otherwise by these conditions. This specification and the application form can be downloaded from www.woollahra.nsw.gov.au.

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

Note: When a large Roads Act is required, then four (4) weeks is to be allowed for assessment.

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

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

Standard Advising: K24 (Autotext KK24)

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

Woollahra Municipal Council’s Development Control Plan (DCP) 2015, Tree Management Chapter E3 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 DCP from Council's website www.woollahra.nsw.gov.au or you may contact Council on 9391-7000 for further advice.

K.12 Dilapidation Report

Please note the following in relation to the condition for a dilapidation report:

a) The dilapidation report will be made available to affected property owners on requested and may be used by them in the event of a dispute relating to damage allegedly due to the carrying out of the development.

b) This condition cannot prevent neighbouring buildings being damaged by the carrying out of the development.

c) Council will not be held responsible for any damage which may be caused to adjoining buildings as a consequence of the development being carried out.

d) Council will not become directly involved in disputes between the Developer, its contractors and the owners of neighbouring buildings.
e) In the event that access for undertaking the dilapidation survey is denied the applicant is to demonstrate in writing to the satisfaction of the PCA that all reasonable steps were taken to obtain access to the adjoining property. The dilapidation report will need to be based on a survey of what can be observed externally.

Standard Advising: K23 (Autotext KK23)

K.13 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Lauren Samuels, Assessment Officer, on (02) 9391 7075.

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 (Autotext KK14)

Annexures

1. Plans and Elevations
2. Technical Services Referral
3. Trees and Landscaping Referral
Annexure 1  Plans and Elevations
REFERRAL RESPONSE – TECHNICAL SERVICES

FILE NO: Development Applications/242/2015/1
ADDRESS: 58 Village High Road VAUCLUSE 2030
PROPOSAL: Substantial demolition of the existing building (retaining some internal and external walls to the lower ground floor level) and the construction of a new dwelling with a double garage and swimming pool
FROM: Mehrnaz Jamali - Development Engineer
TO: Ms L Samuels

1. ISSUES

• None. Refer to comments and conditions below.

2. DOCUMENTATION

I refer to the following documents received for this report:

• Statement of Environment Effects, prepared by Damian O’Toole Town Planning, dated May 2015.
• Stormwater Disposal Concept Plan, Project No. 1502, Drawing No. 1502 DA.01.4, prepared by Antonio Caminitini Design, dated 16/06/2015.
• Flood Mitigation Diagram V3, unreferenced, unknown author, dated 10/12/2015.
• Sections – Driveway Section Plan, Project No. 1502, Drawing No. 1502 DA.04.2, prepared by Antonio Caminitini Design, dated 04/02/2016.

3. ASSESSMENT

Comments have been prepared on the following. Where Approval is recommended, Conditions of Consent follow at the end of the comments.

a. Site Drainage comments

There are no objections to Stormwater Disposal Concept Plan, Project No. 1502, prepared by Antonio Caminitini Design, dated 16/06/2015.

The site’s stormwater discharge shall connect to Council’s existing stormwater pipe along the existing pathway adjacent to the sites southern boundary. A S138 application shall be submitted to Council for approval – conditions applied.
The concept plan is subject to the submission and approval of Stormwater Management Plan for the site prior to release of the Construction Certificate. Details are to be in accordance with Council’s Chapter E2 “Stormwater and Flood Risk Management” DCP and Local Approvals Policy. This is to ensure that site stormwater is disposed in a controlled and sustainable manner.

Council’s Technical Services Division is satisfied that adequate provision has been made for the disposal of stormwater from the land it is proposed to develop and complies with the provisions Council’s Chapter E2 “Stormwater and Flood Risk Management” DCP.

b. Flooding & Overland Flow comments

Council’s drainage Engineer has determined that the proposal is satisfactory subject to the following:

- The applicant is to provide a flood barrier that protects the proposed garage from inundation to 500mm above the garage floor.
- The applicant is to flood proof the proposed access way to a minimum of 300mm above natural surface by providing steps or other Council approved physical barrier.

c. Impacts on Council Infrastructure comments

- The existing shared vehicular crossing with No. 60 Village High Road will no longer be operational following the proposed development. The redundant vehicular crossing in front of No. 58 Village High Road shall be removed and replaced with kerb and gutter. The existing vehicular crossing in front of No. 60 Village High Road shall stay intact and the layback splay reinstated.
- The existing brick strips in front of the existing garage and the existing concrete block in front of the existing front door on Council’s road reserve shall be removed and turfed to Council’s requirements.
- The application proposes a new vehicular crossing for the proposed single garage adjacent to the sites southern boundary. In this regard a standard vehicular crossing having a width of minimum 3m and maximum 3.5m at the property boundary and perpendicular to the road carriageway is required. The crossing shall be a minimum of 0.5m away from the existing power pole and existing kerb inlet pit and 1.0m from the existing Telstra pit. Please Note: Telstra pits are not to remain in driveways unless approved by Telstra in writing and suitable arrangements met. Gas Markers can remain in new driveways but must be accessible at all times – conditions applied.
- The proposed square concrete pathway blocks on Council’s road reserve shall be removed.
- The site’s stormwater discharge shall connect to Council’s existing stormwater pipe along the existing pathway adjacent to the sites southern boundary in accordance with Council’s requirements.

The remainder of Council's assets are in serviceable condition - conditions applied.

d. Traffic comments

The expected traffic generation from the proposed development is typical for the zoning of the site.
e. Vehicle Access & Accommodation comments

The access and parking layout is generally satisfactory complies with AS 2890.1 subject to the following amendment:

- Where the vehicular entrance is proposed in conjunction with a fence of over 1.2m high, a 2x2m splay or its equivalent shall be provided on either side of the entrance in accordance with Woollahra DCP Chapter E1 – Parking and Access.
- To permit access, the height between the floor of a parking space and an overhead obstruction shall be a minimum of 2.2m in accordance with AS2890.1-2004.

Conditions applied.

f. Geotechnical, Hydrogeological and/or Structural comments

The proposed excavation for the swimming pool will be approximately 1m and well away from the boundary. Hence no Geotechnical Report is required.

Conditions covering these matters as well as others identified by Council have been added to the Referral.

Council’s Technical Services has no objection to the proposed excavation on technical grounds. Notwithstanding this, Council’s Planning Officer is also to undertake an assessment of the proposed excavation against the relevant excavation objectives and controls prescribed under the LEP and RDCP.

4. RECOMMENDATION

Council’s Development Engineer has determined that the proposal is satisfactory, subject to the following conditions:

Please note that the standard conditions of consent are generally modified by the Technical Services Division to suit a particular development application. Please ensure all Technical Services conditions of consent are cut and pasted from this document only, and not inserted as standard conditions using the automatically generated (F3) function.

A. General Conditions

A.5 Approved Plans & Supporting documents

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Author/Drawn</th>
<th>Date(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project No. 1502, Drawing No. 1502 DA.01.4</td>
<td>Stormwater Disposal Concept Plan</td>
<td>Antonio Caminitini Design</td>
<td>16/06/2015</td>
</tr>
<tr>
<td>unreferenced</td>
<td>Flood Mitigation Diagram V3</td>
<td>unknown</td>
<td>10/12/2015</td>
</tr>
</tbody>
</table>

A.8 Ancillary Aspect of the Development (s80A(2) of the Act)
B. Conditions which must be satisfied prior to the demolition of any building or construction

B.7 Public Road Assets Record prior to any work/demolition

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

C.4 Modification of details of the development (s80A(1)(g) of the Act)

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

a) Where the vehicular entrance is proposed in conjunction with a fence of over 1.2m high, a 2x2m splay or its equivalent shall be provided on either side of the entrance in accordance with Woollahra DCP Chapter E1 – Parking and Access.

b) To permit access, the height between the floor of a parking space and an overhead obstruction shall be a minimum of 2.2m in accordance with AS2890.1-2004.

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.5 Payment of Long Service Levy, Security, Contributions and Fees

<table>
<thead>
<tr>
<th>Property Damage Security Deposit (S138)</th>
<th>$13,521</th>
<th>No</th>
<th>T113</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Road and Footpath Infrastructure Inspection Fee (S138 Fee)</td>
<td>$430</td>
<td>No</td>
<td>T45</td>
</tr>
</tbody>
</table>

C.13 Road and Public Domain Works

A separate application under Section 138 of the Roads Act 1993 is to be made to, and be approved by, Council for the following infrastructure works prior to the issuing of any Construction Certificate. The infrastructure works must be carried out at the applicant's expense:

a) The site’s stormwater discharge shall connect to Council’s existing stormwater pipe along the existing pathway adjacent to the sites southern boundary in accordance with Council’s requirements.

b) A standard full width vehicular crossing for a single garage having a width of minimum 3m and maximum 3.5m at the property boundary and perpendicular to the road carriageway in accordance with Council’s standard driveway drawing RF2A. The crossing shall be a minimum of 0.5m away from the existing power pole and existing kerb inlet pit and 1.0m from the existing Telstra pit. Note: Telstra pits are not to remain in driveways unless approved by Telstra in writing and suitable arrangements met. The existing Gas lid/marker can remain in new driveways but must be accessible at all times.
c) A design longitudinal surface profile for the proposed driveway must be submitted for assessment.

d) The proposed square concrete pathway blocks on Council’s road reserve shall be removed.

e) The existing brick strips in front of the existing garage and the existing concrete block in front of the existing front door on Council’s road reserve shall be removed and turfed to Council’s requirements.

f) Removal of any driveway crossings and kerb laybacks which will be no longer required; The existing shared vehicular crossing with No. 60 Village High Road will no longer be operational following the proposed development. The redundant vehicular crossing in front of No. 58 Village High Road shall be removed and replaced with kerb and gutter. The existing vehicular crossing in front of No. 60 Village High Road shall stay intact and the layback splay reinstated.

g) Reinstatement of footpath, kerb and gutter to match existing.

h) Where a grass verge exists, the balance of the area between the footpath and the kerb over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of Couch turf.

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

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

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

Note: The ‘Road Application to Carry out Works in a Public Road’ form can be found at:

Note: See Section K - Advisings of this Consent titled Roads Act Application.

C.25 Soil and Water Management Plan – Submissions & Approval

C.35 Structural Adequacy of Existing Supporting Structures

C.45 Parking Facilities

C.51 Stormwater management plan

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

The Stormwater Management Plan must detail:

a) general design in accordance with Stormwater Disposal Concept Plan, Project No. 1502, Drawing No. 1502 DA.01.4, prepared by Antonio Caminitini Design, dated 16/06/2015 other than amended by this and other conditions;

b) the discharge of stormwater, by direct connection, via outlets to Council’s existing stormwater pipe along the existing pathway adjacent to the sites southern boundary;

c) compliance the objectives and performance requirements of the BCA;
d) any rainwater tank required by BASIX commitments including their overflow connection to the Stormwater Drainage System, and
e) general compliance with the Council’s draft Development Control Plan Stormwater Drainage Management (draft version 1.1, public exhibition copy dated 14/12/2006)

The Stormwater Management Plan must include the following:

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

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

**Note:** This Condition is imposed to ensure that site stormwater is disposed of in a controlled and sustainable manner.  
Standard Condition: C51

### C.54 Flood protection

The Construction Certificate plans and specifications, required by Clause 139 of the Regulation, must include a Flood Risk Management Plan on the basis of a 1:100 year flood, detailing:

a) The applicant is to provide a flood barrier that protects the proposed garage from inundation to 500mm above the garage floor level.
b) The applicant is to flood proof the proposed access way to a minimum of 300mm above natural surface level by providing steps or other Council approved physical barrier.

**Note:** The revised driveway profile, gradients and transitions must be in accordance with Australian Standard 2890.1 – 2004, Part 1 (Off-street car parking). The driveway profile submitted to Council must contain all relevant details: reduced levels, proposed grades and distances. Council will not allow alteration to existing reduced levels within the road or any other public place to achieve flood protection.  
Standard Condition C.54 (autotext CC54)

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

#### D.4 Dilapidation Reports for existing buildings

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

These properties must include (but is not limited to)
• 60 Village High Road
• 119 Hopetoun Avenue

The dilapidation reports must be completed and submitted to Council with the Notice of Commencement prior to the commencement of any development work.

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

Note: The reasons for this condition are:
• To provide a record of the condition of buildings prior to development being carried out
• To encourage developers and its contractors to use construction techniques that will minimise the risk of damage to buildings on neighbouring land

Also refer to the Dilapidation Report Advising for more information regarding this condition

Standard Condition: D4

D.6 Adjoining buildings founded on loose foundation materials

D.14 Erosion and Sediment Controls – Installation

E. Conditions which must be satisfied during any development work

E.7 Public Footpaths – Safety, Access and Maintenance

E.11 Maintenance of Environmental Controls

E.13 Support of adjoining land and buildings

E.14 Vibration Monitoring

E.15 Erosion and Sediment Controls – Maintenance

E.17 Disposal of Site Water during Construction

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.7 Commissioning and Certification of Systems and Works

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.13 Road Works (including footpaths)
I. Conditions which must be satisfied during the ongoing use of the development
   Nil

J. Miscellaneous Conditions
   Nil

K. Advisings

K.23 Dilapidation Report Condition

K.24 Roads Act Application
REFERRAL RESPONSE – TECHNICAL SERVICES

FILE NO: DA 242/2015/1
ADDRESS: 58 Village High Road VAUCLUSE 2030
PROPOSAL: Substantial demolition of the existing building (retaining some internal and external walls to the basement level) and the construction of a new three level dwelling with a double garage and pool to the rear of the site
FROM: N Tomkins
TO: Mr A Gilderdale

2. ISSUES
   • Flood study
   • Driveway profile

2. DOCUMENTATION

I refer to the following documents received for this report:
   • Statement of Environment Effects, prepared by DOTP P/L dated May 2015
   • Architectural Plans prepared by Antonio Caminiti Design P/L Dwg No. 1502 DA.01.1 to DA.07.2 dated 16/06/2-15.
   • Survey prepared by Kevin Brown & Assoc dated 26-072011.

3. ASSESSMENT

Comments have been prepared on the following.

Flooding Study – Protection of Property

During large storm events, there may be potential for both mainstream and overland flows to occur. Under provisions made in the State Government Floodplain Development Manual, an assessment of these flows must be undertaken so that suitable flooding protection measures can be incorporated in the proposed development. To this end, the applicant is to engage a suitably qualified hydraulic engineer to determine the likely 1 in 100 year flow level and flooding impacts.

It is expected that a hydrological (hydrograph model), and hydraulic analysis of the upstream catchment will be required (see Notes below). The existing in-ground drainage capacity in the catchment must be considered. The extent of Councils drainage infrastructure in the subject catchment may be ascertained by visual inspection of drainage plans at Councils Customer Services Counter. A registered surveyor shall provide levels within the adjacent roadway, and as necessary.
To protect the development from potential flooding, the property vehicular and pedestrian access threshold levels must be designed to provide a minimum freeboard protection in accordance with Clause E2.3.3 Flood Planning Levels in the Woollahra DCP Chapter E2 – Stormwater Flood Risk Management. The hydraulic engineer must certify that the levels, or alternative protection measures, proposed in the architectural details are satisfactory to protect the property from inundation. Adjoining properties must not be affected by proposed flood protection measures. Details of all proposed flood protection measures must be submitted with the overland flow assessment.

Notes:
1. In most cases, suitable flood protection (eg crest up before descent on an access driveway) must be provided within the subject site. Council will generally not allow alteration to existing reduced levels on its property to achieve flood protection. Where the flood study undertaken determines that the levels of off–street parking areas and/or access ramps must be altered, the revised parking layout and access ramps must be designed in accordance with current Australian Standard 2890.1 "Off Street car-parking". Potential scraping issues must be investigated.

2. Flood Studies are available for the following catchments:
   (a) Rushcutters Bay
   (b) Double Bay
   (c) Rose Bay
   (d) Watsons Bay

   These studies are available from Council’s web site [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) except for (d)

3. For other flows a “Drains” model has been undertaken for the whole Council area which may assist producing the Flood Study. For this information and for enquiries on the above studies please contact Council’s Drainage Engineer on 93917000.

Driveway Profile – Prevention of Vehicle Scraping /Flood Protection

Australian Standard 2890.1 – 2004, Part 1 (Off-street car parking) has a requirement to prevent vehicles scraping or bottoming. Changes in grade in excess of 12.5% algebraically (1 in 8) for summit changes or 15% algebraically (1 in 6.7) for sag grade changes require the introduction of a transition between the main grade lines. Before approval can be granted, it must be ascertained whether the proposed driveway in this development meets all the requirement of Australian Standard 2890.1 - 2004 "Off Street car-parking".

A longitudinal surface profile for the proposed driveway must be submitted for assessment. The driveway profile is to start from the road centreline and include the kerb and be along the worst case edge of the proposed driveway. Gradients and transitions must be in accordance with Clause 2.5.3 of Australian Standard 2890.1 – 2004, Part 1 – Off-street car parking. The driveway profile submitted to Council must be to (1:25) scale (for template checking purposes) and contain all relevant details: reduced levels, proposed design, grades, natural surface levels, distances and compliance with any flood protection measures to prevent possible inundation from floodwater.

The layback, crossing and street levels (where practicable) are to comply with Council’s Standard Drawing RF2 “Standard Crossing & Layback”
The existing footpath levels are to be maintained wherever possible and cannot be altered without Council’s approval

4. **RECOMMENDATION**

Council’s Development Engineer has determined that insufficient information has been submitted to enable an assessment of the proposal. The following information is required as detailed above before any further assessment of the application can be undertaken:

- Flood study
- Driveway profile
REFERRAL RESPONSE – TREES & LANDSCAPING

FILE NO: DA 242/2015/1
ADDRESS: 58 Village High Road VAUCLUSE 2030
PROPOSAL: Substantial demolition of the existing building (retaining some internal and external walls to the basement level) and the construction of a new three level dwelling with a double garage and pool to the rear of the site
FROM: Simone Woodman - Tree and Landscape Officer
TO: Ms L Samuels

I refer to the following documents received for this report:

- Architectural Drawing No.1502 DA.03.2/A, drawn by Antonio Caminiti Design Pty Ltd, dated 04/02/2016
- Landscape Plan No. 1502 DA.01.5/A, designed by Antonio Caminiti Design Pty Ltd, dated 04/02/2016

Relevant Control:

- Woollahra Local Environment Plan 2014
- Woollahra Residential Development Control Plan 2015
- The comments and recommendations within this Referral Response have taken into consideration the guidelines established within Australian Standard AS 4373 – Pruning of amenity trees and Australian Standard AS 4970 – Protection of trees on development sites

COMMENTS

The submitted landscape plan is still not in accordance with Council’s DA Guide. A replacement tree planting condition specifying pot size at time of planting should be included to ensure replacement trees are of a satisfactory size at the time of planting.

The submitted architectural plans show the Frangipani located on the Council walkway to be removed as requested in my initial referral dated 07/09/2015.

RECOMMENDATIONS

Council’s Tree and Landscape Officer has determined that the development proposal is satisfactory in terms of tree preservation and landscaping, subject to compliance with the following Conditions of Consent.

CONDITIONS OF CONSENT

Please note that the standard conditions of consent are generally modified by the Technical Services Department to suit a particular development application. Please ensure all Technical Services conditions of consent are cut and pasted from this document only, and not inserted as standard conditions using the automatically generated (F3) function.
A. **General Conditions**

A.1 **Tree Preservation & Approved Landscaping Works**

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

a) The following trees shall be retained

- **Trees on Council Land**

<table>
<thead>
<tr>
<th>Council Ref No.</th>
<th>Species</th>
<th>Location</th>
<th>Dimension (metres)</th>
<th>Tree Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><em>Agonis flexuosa</em> (Willow Myrtle)</td>
<td>Council walkway – south eastern side of the subject property</td>
<td>5 x 4</td>
<td></td>
</tr>
</tbody>
</table>

Note: The tree/s required to be retained should appear coloured green on the construction certificate plans.

b) The following trees may be removed:

<table>
<thead>
<tr>
<th>Council Ref No.</th>
<th>Species</th>
<th>Location</th>
<th>Dimension (metres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td><em>Plumeria acutifolia</em> (Frangipani)</td>
<td>Council walkway – south eastern side of the subject property</td>
<td>5 x 4</td>
</tr>
<tr>
<td>3</td>
<td><em>Callistemon citrinus</em> (Bottlebrush)</td>
<td>Front boundary</td>
<td>3 x 3</td>
</tr>
<tr>
<td>4</td>
<td><em>Callistemon viminalis</em> (Weeping Bottlebrush)</td>
<td>Front boundary</td>
<td>4 x 3</td>
</tr>
<tr>
<td>5</td>
<td><em>Callistemon citrinus</em> (Bottlebrush)</td>
<td>Front boundary</td>
<td>3 x 3</td>
</tr>
<tr>
<td>6</td>
<td><em>Grevillea cv. ‘Honey Gem’</em> (Grevillea)</td>
<td>Front boundary</td>
<td>3 x 3</td>
</tr>
<tr>
<td>7</td>
<td><em>Callistemon citrinus</em> (Bottlebrush)</td>
<td>Front boundary</td>
<td>3 x 3</td>
</tr>
</tbody>
</table>

Note: Tree/s to be removed shall appear coloured red on the construction certificate plans.

A.2 **Approved Plans and supporting documents**

Nil

A.3 **Approved Amended (s96) Plans and supporting documents**

Nil

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

B.1 **Establishment of Tree Protection Zones (TPZ)**

Nil

B.2 **Permissible work within Tree Protection Zones**

Nil
B.3 Demolition and Construction Management Plan
Nil

B.4 Arborists Documentation and Compliance Checklist
Nil

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

C.1 Tree Management Plan

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

a) Trees to be numbered in accordance with these conditions:
   • shaded green where required to be retained and protected
   • shaded red where authorised to be removed
   • shaded yellow where required to be transplanted
   • shaded blue where required to be pruned

b) References to applicable tree management plan, arborists report, transplant method statement or bush regeneration management plan.

This plan shall be kept on site until the issue of the final occupation certificate.

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

C.3 Amended Landscape Plan
Nil

C.4 Amended Stormwater Drainage Plan
Nil

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

E. Conditions which must be satisfied during any development work

E.1 Tree Preservation

All persons must comply with Council’s Development Control Plan (DCP) 2015, Tree Management Chapter E3 other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.
General Protection Requirements

a) Excavation must cease where tree roots with a diameter exceeding 30mm are exposed. The principal contractor must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.

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 arborist. The arborist is to supply a detailed report to the appointed certifier.

*Note:* Trees must be pruned in accordance with *Australian Standard AS 4373 “Pruning of Amenity Trees”* and *WorkCover NSW Code of Practice Amenity Tree Industry*.

**E.2 Replacement/Supplementary trees which must be planted**

Any replacement or supplementary tree shall be grown in accordance with NATSPEC Specifying Trees. The replacement tree shall be maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council’s Development Control Plan (DCP) 2015, Tree Management Chapter E3, it must be replaced with another of the same species which complies with the criteria outlined below.

<table>
<thead>
<tr>
<th>Species/Type</th>
<th>Planting/Location</th>
<th>Container Size/Size of Tree (at planting)</th>
<th>Minimum Dimensions at Maturity (metres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 x <em>Magnolia grandiflora ‘Little gem’</em> (Magnolia variety)</td>
<td>Front yard of subject property - northern side</td>
<td>100 litre</td>
<td>5 x 3</td>
</tr>
<tr>
<td>2 x <em>Magnolia grandiflora ‘Little gem’</em> (Magnolia variety)</td>
<td>Rear yard of subject property – southern side</td>
<td>100 litre each</td>
<td>5 x 3 each</td>
</tr>
</tbody>
</table>

The project arborist shall document compliance with the above condition.

**E.3 Paving in the vicinity of trees**

Nil

**E.4 Level changes in the vicinity of trees**

Nil

**E.5 Hand excavation within tree root zones**

Nil

**E.6 Footings in the vicinity of trees**

Nil

**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 Amenity Landscaping

The owner or principal contractor must install all approved amenity landscaping (screen planting, soil stabilisation planting, etc.) prior to any occupation or use of the site.

Note: This condition has been imposed to ensure that the environmental impacts of the development are mitigated by approved landscaping prior to any occupation of the development.

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 Landscaping

The principal contractor or owner must provide to PCA a works-as-executed landscape plan and certification from a qualified landscape architect/designer, horticulturist and/or arborist as applicable to the effect that the works comply with this consent.

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

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

Nil

J. Miscellaneous Conditions

Nil

K. Advisings

K.1 Pruning or Removing a Tree Growing on Private Property

Woollahra Municipal Council’s Development Control Plan (DCP) 2015, Tree Management Chapter E3 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 DCP from Council's website www.woollahra.nsw.gov.au or you may contact Council on 9391-7000 for further advice.

Simone Woodman
Tree and landscape Officer
REFERRAL RESPONSE – TREES & LANDSCAPING

FILE NO: DA 242/2015/1
ADDRESS: 58 Village High Road VAUCLUSE 2030
PROPOSAL: Substantial demolition of the existing building (retaining some internal and external walls to the basement level) and the construction of a new three level dwelling with a double garage and pool to the rear of the site

FROM: Simone Woodman - Tree and Landscape Officer
TO: Mr A Gilderdale

I refer to the following documents received for this report:

- Architectural Drawing No.s DA.03.01, DA.03.02, DA.04.1, DA.05.2, drawn by Antonio Caminiti Design, dated 16/06/2015
- Landscape Plan No.DA.01.05, designed by Antonio Caminiti Design, dated 16/06/2015

A site inspection was carried out on: 2 September 2015.

Relevant Control:

- Woollahra Local Environment Plan 2014
- Woollahra Residential Development Control Plan 2015
- Woollahra Street Tree Master Plan 2014 – Part 1, Part 2 (Precinct Plans), Part 3 (appendices)
- The comments and recommendations within this Referral Response have taken into consideration the guidelines established within Australian Standard AS 4373 – Pruning of amenity trees and Australian Standard AS 4970 – Protection of trees on development sites

COMMENTS

Located along Council verge at the front of the subject property is a hedge of mixed tree species proposed for removal. The hedge of mixed tree species is the only vegetation of significance associated with the subject property. Additionally located along the south eastern side of the property is a walkway with two existing trees on Council managed land, a Frangipani and Willow Myrtle. Plan No. DA.03.2 of the architectural plans indicates that both trees are to be retained. I do not believe the retention of the Frangipani is possible because there are two areas of the trees canopy where the branches have grown over and moulded to the shape of the top of the existing side boundary wall. Additionally the canopy of the Frangipani is heavy skewed over the subject property. The side boundary wall is proposed to be demolished. Accordingly retention of the tree is not possible. Plan No. DA.03.2 of the submitted architectural plans should be amended to show the Frangipani as being removed.

The submitted landscape plan is not in accordance with Council’s DA Guide. All proposed plant species are not indicated on the plan nor is there a plant schedule. Accordingly the submitted landscape plan is unsatisfactory and should be amended and submitted for further assessment.
RECOMMENDATIONS

Council’s Tree and Landscape Officer has determined that the proposal is not satisfactory in its current form. The following information is required before further assessment of the application can be undertaken:

Amended Landscape Plan

An amended Landscape Plan shall be prepared in accordance with Council’s DA Guide. This plan must be submitted to Council for further assessment. The amended landscape plan must include the following:

- A completed plant schedule
- All proposed plant species to be identified

Amended Architectural Plan

An amended Architectural Plan No. DA.03.2 shall be prepared and submitted to Council. The amended Architectural Plan No. DA.03.2 must include the following:

- Deletion of the Frangipani tree located in the Council walkway as being retained.

Simone Woodman
Tree and Landscape Officer
## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<table>
<thead>
<tr>
<th>ITEM No.</th>
<th>D3</th>
</tr>
</thead>
<tbody>
<tr>
<td>FILE No.</td>
<td>DA626/2015/1</td>
</tr>
<tr>
<td>ADDRESS</td>
<td>Unit 2, 3 Streatfield Road BELLEVUE HILL</td>
</tr>
<tr>
<td>SITE AREA</td>
<td>682.9m²</td>
</tr>
<tr>
<td>ZONING</td>
<td>R2 Low Density Residential</td>
</tr>
<tr>
<td>PROPOSAL</td>
<td>Alterations and additions to unit 2, including a new upper level addition</td>
</tr>
<tr>
<td>TYPE OF CONSENT</td>
<td>Local development</td>
</tr>
<tr>
<td>COST OF WORKS</td>
<td>$328,922.00</td>
</tr>
<tr>
<td>DATE LODGED</td>
<td>10/12/2015</td>
</tr>
<tr>
<td>APPLICANT</td>
<td>Cape Cod Australia Pty Ltd</td>
</tr>
<tr>
<td>OWNER</td>
<td>Megalong Flats Pty Ltd</td>
</tr>
<tr>
<td>AUTHOR</td>
<td>Ms N Pindar</td>
</tr>
<tr>
<td>TEAM LEADER</td>
<td>Mr G Fotis</td>
</tr>
<tr>
<td>SUBMISSIONS</td>
<td>One (1)</td>
</tr>
<tr>
<td>RECOMMENDATION</td>
<td>Approval</td>
</tr>
</tbody>
</table>

### EXECUTIVE SUMMARY

1. **LOCALITY PLAN**

![Local Plan Diagram]

Subject site

Objectors

North
2. **DELEGATIONS SUMMARY**

<table>
<thead>
<tr>
<th>Level of Delegation</th>
<th>Recommendation of Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>The application is referred to the Development Control Committee as it involves a departure of more than 10% with the statutory height planning control (maximum building height control of 9.5m).</td>
<td>Approval</td>
</tr>
</tbody>
</table>

*Note: The existing overall height of the building already exceeds the building height development standard and will remain unchanged. This is an existing non-compliance. The proposal will not further exceed the height of the existing building.*

3. **PROPOSAL SUMMARY**

The proposed works can be summarised as follows:

**Ground Floor**
- New stairs to the first floor above;
- Demolish the existing fire place in the living area;
- New window, including shading device, to north-west elevation; and
- Reglaze two window panels to north-west elevation.

**First Floor**
- New first floor addition, including new windows along the north-west elevation, doors to the rear and a new deck.

BASIX Certificate no. A234633 was submitted.

4. **ISSUES SUMMARY**

4.1. **Primary issues**

<table>
<thead>
<tr>
<th>Issue</th>
<th>Conclusion</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Visual privacy from 1 Streatfield Road, Bellevue Hill (objector)</td>
<td>Acceptable</td>
<td>7.1</td>
</tr>
</tbody>
</table>

4.2. **Submissions**

<table>
<thead>
<tr>
<th>Issue</th>
<th>Conclusion</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Neighbour concerned about loss of privacy</td>
<td>Acceptable</td>
<td>7.1</td>
</tr>
</tbody>
</table>

**PROPERTY DETAILS AND REFERRALS**

5. **SITE AND LOCALITY**

**Physical features**
The site is located on the south-western side of Streatfield Road. It has a site area of 682.9m². While it has an irregular shape, its frontage is measured 15.85m and its average site length is 50.2m.

**Topography**
The site slopes down from the front towards the rear. The existing building (comprising two storeys) presents as a one storey building from Streatfield Road due to the ground floor level being set below street level.

**Existing buildings and structures**
The subject site contains a two-storey residential flat building with 4 units (constructed in 1926).

**Environment**
Development in the locality is typified by a combination of single dwelling houses and medium density buildings.
Figure 1 – Aerial Photo

- Subject Site
- Proposed First Floor Addition to Unit 2
- Unit 2 - (Ground Floor Level)
6. RELEVANT PROPERTY HISTORY

<table>
<thead>
<tr>
<th>Current use</th>
<th>Residential flat building</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-DA</td>
<td></td>
</tr>
<tr>
<td></td>
<td>DA13/2013 – Alterations and additions to Unit 2, including:</td>
</tr>
<tr>
<td></td>
<td>- internal alterations to the ground floor level;</td>
</tr>
<tr>
<td></td>
<td>- reconfiguration of the kitchen, dining and living area and inclusion of a new stairwell to the attic space; and</td>
</tr>
<tr>
<td></td>
<td>- new attic dormer window and conversion of the attic level.</td>
</tr>
</tbody>
</table>

ENvironmental Assessment Under Section 79C

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979 include the following:

1. The provisions of any environmental planning instrument
2. The provisions of any proposed instrument that is/has been the subject of public consultation
3. The provisions of any development control plan
4. Any planning agreement that has been entered into
5. Any draft planning agreement that a developer has offered to enter into
6. The regulations
7. Any coastal zone management plan
8. The likely impacts of that development:
   i) Environmental impacts on the natural and built environments
   ii) Social and economic impacts
9. The suitability of the site
10. Any submissions
11. The public interest

7. ADVERTISING AND NOTIFICATION

7.1. Submissions

The application was advertised and notified from 20 January 2016 to 3 February 2016 in accordance with Chapters A2.2.1, A2.3.1 and A2.8 of the Woollahra DCP 2015. One submission was received from:

1. The neighbour at 1 Streatfield Road, Bellevue Hill

The submission raised the following issues:

- Loss of privacy to the bathroom at the first floor level, resulting from the windows along the western elevation.
Comment:

The neighbour is concerned about overlooking from the proposed windows to Bedroom 1 and Bedroom 2 into their bathroom, at the first floor level.

Notwithstanding the concern expressed by the neighbour at 1 Streatfield Road, the proposal is considered to be satisfactory for the following reasons:

- the windows of Bedroom 1 and 2 are offset from the objector’s bathroom window; and
- there is a sufficient separation distance of approx. 6m between the neighbour’s bathroom window and the nearest proposed window, adjoining Bedroom 2.

The proposal is acceptable, and will achieve the relevant objectives O1, O2 and O3 of Part B3.5 of the Woollahra DCP 2015.

7.2. Statutory Declaration

The applicant has completed the statutory declaration dated 4 February 2016 declaring that the site notice for DA626/2015/1 was erected and maintained during the notification period in accordance with Chapter A2.3.5 of the Woollahra DCP 2015.

EXISTING USE RIGHTS ASSESSMENT


The use of the subject land as a residential flat building is prohibited under the R2 Low Density Residential zone. The application therefore relies upon the site benefiting from existing use rights regulated under Sections 107 and 108 of the Environmental Planning and Assessment Act 1979 and Clauses 40-46 of the Environmental Planning and Assessment Regulation 2000.

8.1 Section 107: Continuance of and Limitations on Existing Use

In relation to establishing existing use rights, there are three key aspects to be established as follows:-

- The use was lawfully commenced
- The use was made prohibited by a subsequent LEP
- The use has been continuous and not been abandoned for more than 12 months.

Existing use rights have been adequately established due to the following:

- Council's earliest record relating to the subject site is a Building Application, BA61/1926 to erect a residential flat building comprising four units. BA61/1926 was approved on 13/02/1926.
- There is no evidence to suggest that the use as a residential flat building has been abandoned for more than 12 months.
8.2 Section 108: Regulations Respecting Existing Use

Section 108(3) of the Environmental Planning and Assessment Act 1979 states that the provisions of any environmental planning instrument that derogate (detract) from the existing use rights provisions have no force or effect whilst existing rights remain. Established case law has held that the provisions of environmental planning instruments do not apply to the assessment of applications on sites with existing use rights.

Therefore planning objectives and controls that limit the size of a proposal such as height, setbacks, building footprint, number of storeys, minimum allotment size, minimum site frontage and floor space ratio cannot be applied to the proposal. The Land and Environment Court judgment in the Stromness P/L v Woollahra Municipal Council handed down in October 2006 underscores this.

As such, the following environmental assessment of the proposal under the provisions of Section 79C of the Environmental Planning and Assessment Act does not refer to statutory and policy building envelope controls and objectives which derogate from the existing use rights provisions.

8.3 Clause 41: Certain Development Allowed

Clause 41(1) of the Environmental Planning and Assessment Regulations 2000 states that:

An existing use may:

a) be enlarged, expanded or intensified; or
b) be altered or extended; or
C) be rebuilt; or
D) be changed to another use, including a use that would otherwise be prohibited under the Act

The changes can be facilitated under Clause 41(1)(b) and (c) of the Environmental Planning and Assessment Regulation 2000.

9. EXISTING USE RIGHTS PLANNING PRINCIPLE

The following planning principle (in relation to the environmental assessment of proposals on land with existing use rights) was established in the Fodor Investments vs Hornsby Shire Council Land and Environment Court case. These principles are applied to the subject development in light of the Land and Environment Court judgment in the Stromness P/L vs Woollahra Municipal Council handed down in October 2006. The consideration of the impact of a proposed development benefiting from existing use rights upon the amenity of the public domain and adjoining properties was central to the judgment.

9.1 How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessment.
The proposal involves a new upper level addition to unit 2.

The bulk and scale of the proposed addition is satisfactory for the following reasons:

- The bulk and scale of the proposal, as viewed from the public domain (along Streatfield Road), is minimised by:
  - the existing building presenting as a one storey building from Streatfield Road, due to the ground floor level being set below street level; and
  - the proposed first floor addition being setback 3.2m from the existing front setback of the building and 1m from the existing side setback of the building;
- The proposed new upper level addition is sympathetic to the architectural design of the existing building;
- There is no change proposed to the existing overall building height;
- The proposal will not result in a loss of deep soil landscaping at the subject site;
- The bulk and scale is consistent with other developments in the locality; and
- The proposal will maintain the height of the existing building with a scale that is consistent with the desired character of the neighbourhood.

9.2 What is the relevance of the building in which the existing use takes place?

*Where the change of use is proposed within an existing building, the bulk and scale of that building is likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.*

The proposal does not result in the total demolition of the existing building. The bulk and scale of the proposed addition is considered to be acceptable for the reasons set out above.

9.3 What are the impacts on adjoining land?

*The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.*

Visual Privacy

The neighbour at 1 Streatfield Road, Bellevue Hill raised concern regarding loss of privacy resulting from the proposal.

The neighbour is concerned that there will be overlooking from the proposed windows adjoining Bedroom 1 and Bedroom 2 into their bathroom at the first floor level.

The proposal is considered acceptable however, given that:

- the windows of Bedroom 1 and 2 are offset from the objector’s bathroom window; and
- there is a sufficient separation distance of approx. 6m between the neighbour’s bathroom window and the nearest proposed window, adjoining Bedroom 2.
Views

There is no evidence to suggest the proposal would unreasonably impact upon any public or private views.

Visual Impact

The bulk and scale of the proposal is satisfactory, as discussed in Section 9.1.

The proposal maintains the evolution of residential building styles through the introduction of a well-designed contemporary first floor addition, incorporating modulation and a varied palette of materials.

The skillion roof form to the first floor addition is considered to be acceptable in terms of maintaining the presentation of the existing roofscape along Streatfield Road. Despite the roof not being pitched at a 45 degree angle, it maintains the gable roof form presentation upon the streetscape.

Solar Access

According to the shadow diagrams provided by the applicant, there will be minimal and negligible impact on the adjoining property at No. 5 Streatfield Road in terms of solar access.

9.4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

The proposal will improve the internal amenity of unit 2 by:

- creating a new window opening to the rear at the ground floor level; and
- providing a usable area of private open space to the rear, new windows along the north-west elevation and a new window along the north-east elevation, at the first floor level.

OTHER MATTERS

10. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

The Woollahra Local Environmental Plan 2014 is not applicable under the principle of existing use rights but is nonetheless addressed for comparative purposes.

10.1 Part 1.2: Aims of Plan

The proposal is generally consistent with the aims in Part 1.2(2) of the Woollahra LEP 2014.
11. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

The Woollahra Development Control Plan 2015 is not applicable under the principle of existing use rights but is nonetheless addressed for comparative purposes.

The proposal is generally acceptable with regard to the aims and objectives of the Woollahra DCP 2015.

12. SECTION 94 CONTRIBUTION PLANS

12.1 Section 94A Contributions Plan 2011

In accordance with Schedule 1, a 1% levy applies with the monies being used for a variety of works as outlined in Schedule 2 of the Section 94A Contributions Plan 2011. Refer to Condition C.1.

<table>
<thead>
<tr>
<th>Cost of Works</th>
<th>Rate</th>
<th>Contribution Payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>$328,922</td>
<td>1%</td>
<td>$3,289</td>
</tr>
</tbody>
</table>

13. APPLICABLE ACTS/REGULATIONS

13.1 Environmental Planning and Assessment Regulation 2000

Clause 92: What Additional Matters Must a Consent Authority Take Into Consideration in Determining a Development Application?

Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires Council to consider Australian Standard AS 2601-2004: The demolition of structures. The proposal is considered to be acceptable, subject to Condition E.2.

14. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts have been addressed elsewhere in the report, or are considered to be satisfactory and not warrant further consideration.

15. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

16. THE PUBLIC INTEREST

The proposal is considered to be in the public interest.

17. CONCLUSION

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

18. DISCLOSURE STATEMENTS

There have been no disclosure statements regarding political donations or gifts made to any Councillor or to any council employee associated with this development application by the applicant or any person who made a submission.
19. **RECOMMENDATION: PURSUANT TO SECTION 80(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

THAT the Council, as the consent authority, grant development consent to DA626/2015/1 for alterations and additions to unit 2, including a new upper level addition on land at 3 Streatfield Road BELLEVUE HILL, subject to the following conditions:

A. **General Conditions**

A.1 **Conditions**

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

Standard Condition: A1 (Autotext AA1)

A.2 **Approved Plans and supporting documents**

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

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Author/Drawn</th>
<th>Date(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>7662/15 F</td>
<td>Site Plan</td>
<td>Cape Cod Australia</td>
<td>Undated</td>
</tr>
<tr>
<td>7662/15 F</td>
<td>Ground Floor Plan</td>
<td>Cape Cod Australia</td>
<td>Undated</td>
</tr>
<tr>
<td>7662/15 F</td>
<td>North East Elevation/ North West Elevation</td>
<td>Cape Cod Australia</td>
<td>Undated</td>
</tr>
<tr>
<td>7662/15 F</td>
<td>Proposed First Floor Addition</td>
<td>Cape Cod Australia</td>
<td>Undated</td>
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<tr>
<td>7662/15 F</td>
<td>Section-AA/Section B-B</td>
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<tr>
<td>7662/15 F</td>
<td>South West Elevation</td>
<td>Cape Cod Australia</td>
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<tr>
<td>7662/15 F</td>
<td>South East Elevation</td>
<td>Cape Cod Australia</td>
<td>Undated</td>
</tr>
<tr>
<td>A234633</td>
<td>BASIX Certificate</td>
<td>NSW Department of Planning and Infrastructure</td>
<td>9 Nov 2015</td>
</tr>
<tr>
<td>None provided</td>
<td>Waste Management Report</td>
<td>Cape Cod Australia</td>
<td>9-11-15</td>
</tr>
</tbody>
</table>

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

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

Standard Condition: A5 (Autotext AA5)

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 (Autotext BB1)**

B.2 Identification of Hazardous Material

In accordance with AustralianStandard AS2601 - ‘The Demolition of Structures’ the owner shall identify all hazardous substances located on the site including asbestos, Polychlorinated biphenyls (PCBs), lead paint, underground storage tanks, chemicals, etc. per Clause 1.6.1 of the Standard. In this regard, **prior to the commencement of any work**, Council shall be provided with a written report prepared by a suitably qualified competent person detailing;

- all hazardous materials identified on the site;
- the specific location of all hazardous materials identified;
- whether the hazardous materials are to be removed from the site as part of the works to be undertaken; and
- safety measures to be put in place.

**Note:** This condition is imposed to protect the health and safety of all persons while works are being undertaken and to ensure all safety measures have been identified and are in place to protect all parties in the immediate vicinity of the site.

**Standard Condition: B6**

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

C.1 Payment of Long Service Levy, Security, Contributions and Fees

The certifying authority must not issue any *Part 4A Certificate* until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees prior to the issue of a *construction certificate, subdivision certificate or occupation certificate*, as will apply.
### Description | Amount | Indexed | Council Fee Code
--- | --- | --- | ---
**LONG SERVICE LEVY**
under Building and Construction Industry Long Service Payments Act 1986
Long Service Levy
Contact LSL Corporation or use 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 Council
$11,980
No
T115
**DEVELOPMENT LEVY**
under Woollahra Section 94A Development Contributions Plan 2011
This plan may be inspected at Woollahra Council or downloaded at [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au).
Development Levy (Section 94A)
$3,289 + Index Amount
Yes, quarterly
T96
**INSPECTION FEES**
under Section 608 of the Local Government Act 1993
Security Administration Fee
$185
No
T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES
$15,454 plus any relevant indexed amounts and long service levy

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**Building and Construction Industry Long Service Payment**

The Long Service Levy under Section 34 of the *Building and 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. The Levy can be paid directly to the Long Services Payments Corporation or to Council. Further information can be obtained from the Long Service Payments Corporation’s website [http://www.lspc.nsw.gov.au/](http://www.lspc.nsw.gov.au/) or the Long Service Payments Corporation on 13 14 41.

**How must the payments be made?**

Payments must be made by:
- Cash deposit with Council,
- Credit card payment with Council, or
- Bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:
- The guarantee is by an Australian bank for the amount of the total outstanding contribution;
- The bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable];
- The bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent;
- The bank guarantee is lodged with the Council prior to the issue of the construction certificate; and
- The bank’s obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

**How will 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 2011 sets out the formula and index to be used in adjusting the s.94A levy.
Do you need HELP indexing the levy?

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

Deferred or periodic payment of section 94A levy under the Woollahra Section 94A Development Contributions Plan 2011

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:

- The reasons given;
- Whether any prejudice will be caused to the community deriving benefit from the public facilities;
- Whether any prejudice will be caused to the efficacy and operation of the plan; and
- 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:

- The guarantee is by an Australian bank for the amount of the total outstanding contribution;
- The bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable];
- The bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent;
- The bank guarantee is lodged with the Council prior to the issue of the construction certificate; and
- The bank’s obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

Any deferred or periodic payment 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. A234633 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 is 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  **Structural Adequacy of Existing Supporting Structures**

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

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

Standard Condition: C35 (Autotext CC35)

C.4  **Professional Engineering Details**

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

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

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

Standard Condition: C36

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 the *Home Building Regulation 2004*,

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.
Note: All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia. Standard Condition: D1 (Autotext DD1)

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.

![Security Fencing Diagram](image)

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.

![Hoarding Diagram](image)

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;
c) 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
d) 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/formspublications/publications/Pages/WC00017_OverheadProtectiveStructuresCodeofPractice.aspx

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

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

Standard Condition: D11 (Autotext DD11)

### D.3 Site Signs

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

Clause 98A of the Regulation provides:

**Erection of signs**

- 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.
- 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:
  - showing the name, address and telephone number of the principal certifying authority for the work, and
  - 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
  - stating that unauthorised entry to the work site is prohibited.
- 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.
- 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.
- 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."
Clause 227A of the Regulation provides:

Signs on development sites

If there is a person who is the PCA or the principal contractor for any building work, subdivision work or demolition work authorised to be carried out on a site by a development consent or complying development certificate:

- Each such person MUST ensure that a rigid and durable sign showing the person’s identifying particulars so that they can be read easily by anyone in any public road or other public place adjacent to the site is erected in a prominent position on the site before the commencement of work, and is maintained on the site at all times while this clause applies until the work has been carried out.

Note: Clause 227A imposes a penalty exceeding $1,000 if these requirements are not complied with.

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 and Clause 227A of the Regulation.

Standard Condition: D12 (Autotext DD12)

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 (Autotext DD13)
D.5 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

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

a) A construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited Certifier, and

b) The person having the benefit of the development consent has:
   • Appointed a principal certifying authority for the building work, and
   • Notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and

c) The principal certifying authority has, no later than 2 days before the building work commences:
   • Notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
   • Notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and

d) The person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
   • 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
   • Notified the principal certifying authority of any such appointment, and
   • 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
   • 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 (Autotext DD15)
D.6 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:
   - 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,
   - 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 (Autotext DD17)

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.

Note: All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.

Standard Condition: E1 (Autotext EE1)

E.2 Compliance with Australian Standard for Demolition


Standard Condition: E2 (Autotext EE2)

E.3 Requirement to notify about new evidence

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, heritage significance, threatened species or other relevant matters must be immediately notified to Council and the Principal Certifying Authority.

Standard Condition: E4 (Autotext EE4)

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 (Autotext EE5)

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,

d) The following work must not take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday;

i) Piling;

ii) Piering;

iii) Rock or concrete cutting, boring or drilling;

iv) Rock breaking;

v) Rock sawing;

vi) Jack hammering; or

vii) Machine excavation,
e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.

f) No operation of any equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.

g) No rock excavation being cutting, boring, drilling, breaking, sawing, jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

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

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

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

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

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


Standard Condition: E6 (Autotext EE6)

E.6 Public Footpaths – Safety, Access and Maintenance

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.

f) Provide a clear safe pedestrian route a minimum of 1.5m wide.

g) Protect street name inlays in the footpath which are not to be removed or damaged during development.

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:
- erect a structure or carry out a work in, on or over a public road, or
- dig up or disturb the surface of a public road, or
- remove or interfere with a structure, work or tree on a public road, or
- pump water into a public road from any land adjoining the road, or
- 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:
  a. For fee or reward, transport waste over or under a public place
  b. Place waste in a public place
  c. Place a waste storage container in a public place.”
- Part E Public roads:
  a. 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
  b. 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.”
  c. Any work in, on or over the Road or Footway requires Council Approval and in the case of classified roads the NSW Roads and Traffic Authority. Road includes that portion of the road uses as a footway.

**E.7 Maintenance of Environmental Controls**

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

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


**E.8 Support of adjoining land and buildings**

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

For the purposes of this condition, supporting land includes the natural surface of the site, the subsoil of the site, any water beneath the site, and any part of the site that has been reclaimed.
Note: This condition does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is considered necessary upon any adjoining or supported land by any person the principal contractor or owner builder must obtain:

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

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

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

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

E.9 Disposal of site water during construction

The principal contractor or owner builder must ensure:

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

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

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 (Autotext EE21)

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 (Autotext EE22)

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: “Dust Control - Do it right on site” can be downloaded free of charge from Council’s web site www.woollahra.nsw.gov.au or obtained from Council’s office.
Note: 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: 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 (Autotext EE23)

E.13 Site waste minimisation and management – Demolition

In order to maximise resource recovery and minimise residual waste from demolition activities:

a) The provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work.
b) An area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements).
c) Provide separate collection bins and/or areas for the storage of residual waste.
d) Clearly ‘signpost’ the purpose and content of the bins and/or storage areas.
e) Implement measures to prevent damage by the elements, odour, health risks and windborne litter
f) Minimise site disturbance, limiting unnecessary excavation

When implementing the SWMMP the applicant must ensure:

a) Footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval
b) Any material moved offsite is transported in accordance with the requirements of the Protection of the Environment Operations Act (1997)
c) Waste is only transported to a place that can lawfully be used as a waste facility
d) Generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by Workcover NSW
e) Evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained

**Note:** Materials that have an existing reuse or recycling market should not be disposed of in a land fill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.

Standard Condition: E31 (Autotext EE31)

### E.14 Site waste minimisation and management – Construction

In order to maximise resource recovery and minimise residual waste from construction activities:

a) The provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work
b) Arrange for the delivery of materials so that materials are delivered ‘as needed’ to prevent the degradation of materials through weathering and moisture damage
c) Consider organising to return excess materials to the supplier or manufacturer
d) Allocate an area for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation)
e) Clearly ‘signpost’ the purpose and content of the storage areas
f) Arrange contractors for the transport, processing and disposal of waste and recycling. Ensure that all contractors are aware of the legal requirements for disposing of waste.
g) Promote separate collection bins or areas for the storage of residual waste
h) Implement measures to prevent damage by the elements, odour and health risks, and windborne litter
i) Minimise site disturbance and limit unnecessary excavation
j) Ensure that all waste is transported to a place that can lawfully be used as a waste facility
k) Retain all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as council, Department of Environment and Climate Change (DECC) or WorkCover NSW

Standard Condition: E32 (Autotext EE32)
E.15 Asbestos Removal

Where hazardous material, including bonded or friable asbestos has been identified in accordance with condition B.2 above, and such material must be demolished, disturbed and subsequently removed, all such works must comply with the following criteria:

a) Be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (restricted) Asbestos License,


c) No asbestos products may be reused on the site

d) No asbestos laden skip or bins shall be left in any public place

Note: This condition is imposed to protect the health and safety of persons working on the site and the public

E.16 Classification of Hazardous Waste

Prior to the exportation of hazardous waste (including hazardous fill or soil) from the site, the waste materials must be classified in accordance with the provision of the Protection of the Environment Operations Act 1997 and the NSW DECC Waste Classification Guidelines, Part1: Classifying Waste (April 2008).

Note: This condition is imposed to ensure that where hazardous waste will be removed from a site an Asbestos Licensed contractor can definitively determine where the waste may be legally taken for disposal.

E.17 Disposal of Asbestos and Hazardous Waste

Asbestos and hazardous waste, once classified in accordance with condition E.16 above must only be transported to waste facilities licensed to accept asbestos and appropriate classifications of hazardous waste.

Note: This condition is imposed to ensure that asbestos and other Hazardous waste is disposed of lawfully under the Protection of the Environment Operations Act 1997 and relevant EPA requirements.

E.18 Asbestos Removal Signage

Standard commercially manufactured signs containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm are to be erected in prominent visible positions on the site when asbestos is being removed.

Note: This condition is imposed to ensure awareness of any hazard to the health and safety of persons working on the site and public.

E.19 Notification of Asbestos Removal

In addition to the requirements for licensed asbestos removalists to give written notice to WorkCover all adjoining properties and those opposite the development site must be notified in writing of the dates and times when asbestos removal is to be conducted. The notification is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone and facsimile numbers and email addresses.
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 (Autotext FF1)

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

No conditions.

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

H.1 Fulfillment of BASIX commitments – Clause 154B of the Regulation

All BASIX commitments must be effected in accordance with the BASIX Certificate No. A234633.

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 (Autotext HH7)

H.2 Removal of Ancillary Works and Structures

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

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

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

Standard Condition: H12 (Autotext HH12)

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. A234633.

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: I24

J. Miscellaneous Conditions

No conditions.

K. Advisings

K.1 Criminal Offences – Breach of Development Consent and 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 is also a criminal offence.

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

a) Issue Penalty Infringement Notices (On-the-spot fines);

b) Issue notices and orders;

c) Prosecute any person breaching this consent; and/or

d) 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:


Standard Advising: K1 (Autotext KK1)
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 (Autotext KK2)

K.3 Builder’s Licences and Owner Builders Permits

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

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

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

Standard Condition: K5 (Autotext KK5)

K.4 Building Standards - Guide to Standards and Tolerances

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

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

The NSW Office of Fair Trading have published a “Guide to Standards and Tolerances©” ISBN 0 7347 6010 8. The guide can be obtained from the Office of Fair Trading by calling 13 32 20 or by Fax: 9619 8618 or by post to: Marketing Branch, PO Box 972, Parramatta NSW 2124.
Council, as the PCA or otherwise, does not adjudicate building contract disputes between the principal contractor, contractors and the owner.

Standard Condition: K6 (Autotext KK6)

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 (Autotext KK7)

K.6 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Natasha Pindar, Assessment Officer, on (02) 9391 7063.

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 (Autotext KK14)

K.7 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 80A of the Act.

The securities will not be released until a Final Occupation Certificate has lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council’s requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council’s requirements.

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

Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed.
Upon completion of each section of road, drainage and landscape work to Council's satisfaction, 90% of the Bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.


K.8 Recycling of Demolition and Building Material

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

K.9 Owner Builders

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

Annexures

1. Plans and elevations
<table>
<thead>
<tr>
<th>Annexure 1</th>
<th>Plans and elevations</th>
<th>Page 136</th>
<th>Woollahra Municipal Council</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Development Control Committee Agenda</td>
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### SECTION 96 APPLICATION ASSESSMENT REPORT

<table>
<thead>
<tr>
<th>ITEM No.</th>
<th>D4</th>
</tr>
</thead>
<tbody>
<tr>
<td>FILE No.</td>
<td>DA53/2015/2</td>
</tr>
<tr>
<td>ADDRESS</td>
<td>49 Drumalbyn Road Bellevue Hill</td>
</tr>
<tr>
<td>SITE AREA</td>
<td>837.5m²</td>
</tr>
<tr>
<td>ZONING</td>
<td>R2 Low Density Residential</td>
</tr>
<tr>
<td>EXISTING CONSENT</td>
<td>Alterations and additions to a residential flat building under existing use rights</td>
</tr>
<tr>
<td>DATE OF CONSENT</td>
<td>31 August 2015</td>
</tr>
<tr>
<td>CONSENT AUTHORITY</td>
<td>Woollahra Council</td>
</tr>
<tr>
<td>PROPOSED MODIFICATION</td>
<td>Internal and external modifications</td>
</tr>
<tr>
<td>DATE S96 LODGED</td>
<td>07/12/2015</td>
</tr>
<tr>
<td>APPLICANT</td>
<td>Mr D Bond</td>
</tr>
<tr>
<td>OWNER</td>
<td>Mr A &amp; Mrs A Stavrianos</td>
</tr>
<tr>
<td>AUTHOR</td>
<td>Mr D Booth</td>
</tr>
<tr>
<td>TEAM LEADER</td>
<td>Ms E Smith</td>
</tr>
<tr>
<td>SUBMISSIONS</td>
<td>Two</td>
</tr>
<tr>
<td>RECOMMENDATION</td>
<td>Conditional approval</td>
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</table>

#### 1. LOCALITY PLAN

[Diagram showing the location of the subject site and objectors with North orientation]
2. LEVEL OF DELEGATION

The application is to be determined by the Development Control Committee as it includes the modification of part of **Condition C.1b** of consent which was amended from the staff recommendation by the Committee.

3. DESCRIPTION OF APPROVED DEVELOPMENT

The approved development involved the following alterations and additions to convert an existing residential flat building from 6 x 2 bedroom units and 6 car spaces to 7 x 3 bedroom units and 8 car spaces:

- The demolition of 2 triple garages adjacent to the street frontage, the rear elevation and internal floors and walls of the existing building;
- The construction of a substantial rear addition with mansard roof containing a third floor (Level 3). The approved rear addition is 10.5m long (in terms of the extension beyond the main section of the existing rear elevation) x 13.8m wide x 12.4m high (max.) and constitutes 4 storeys including the mansard roof level. The rear addition, including the mansard roof, is externally clad with bronze metallic Alucobond;
- A predominantly excavated basement level at street grade providing 8 car spaces including 1 visitor space and storage/mechanical plant areas;
- Landscaped gardens and terraces to the front section of the roof to the basement level which is at approximately the same level as the existing front deep soil landscaped area and garage roof terraces;
- New internal floors and walls;
- Fenestration alterations to the front and side elevations of the existing building;
- The removal of the majority of the existing concrete driveway crossings to the 2 triple garages and the landscaping of Council's nature strip either side of the centralised driveway entrance with grass and trees. This will result in a net gain of 2 on-street car spaces and an increased length of Council’s nature strip in front of the site by approximately 16m;
- The installation of air conditioning plant to the south-eastern section of the ground floor level front common terrace; and
- The re-tiling of the existing roof to match the existing terracotta tiles.

The development was approved subject to the following modifying requirements specified under **Condition C.1** of the consent which was partially amended from the staff recommendation by the Committee.

**Modification of details of the development (s80A(1)(g) of the Act)**

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

a) **In order to mitigate reflective glare impacts upon adjoining properties, the bronze metallic Alucobond metal external cladding to the rear addition shall have a matt finish.**

b) **In order to maintain the visual privacy of the adjoining properties, the following privacy mitigation measures shall be implemented:**
North-western elevation:

- The windows to the north-western elevation of the existing building at Level 2 (to the kitchen and WC of Unit 5) shall consist of fixed translucent glazing to a height of 1.5m above floor level;
- The installation of translucent glazing to the openings to the north-western elevation of the front balcony of the existing building at Level 1 and 2. The glazing shall be detailed in accordance with the photograph below;

![Photograph of window](image)

- The 3 juliette balconies to the north-western elevation of the proposed rear addition at Level 2 shall be deleted and the associated doors altered to fixed translucent glazing to a height of 1.5m above floor level;
- The window to the north-western elevation of the proposed rear addition at Level 2 (W46) shall consist of fixed translucent glazing to a height of 1.5m above floor level; and
- The north-western setbacks of the trafficable areas to the 3 north-west facing balconies at Level 3 shall be increased by 700mm. The design shall be amended to ensure that the roof edge to the north-western extremities of the trafficable areas has a minimum height of 1.7m, in accordance with the section below:
South-eastern elevation:

- The windows to the south-eastern elevation of the existing building at Levels 1 & 2 (to the kitchen and WC of Units 4 & 6) shall consist of fixed translucent glazing to a height of 1.5m above floor level;
- The installation of translucent glazing to the openings to the south-eastern elevation of the front balconies of the existing building at Levels 1 & 2. The glazing shall be detailed in accordance with the photograph below;
- The 3 juliette balconies to the south-eastern elevation of the proposed rear addition at Levels 1 & 2 shall be deleted and the associated doors altered to fixed translucent glazing to a height of 1.5m above floor level;
- The windows to the south-eastern elevation of the proposed rear addition at Levels 1 & 2 (W36 & 56) shall consist of fixed translucent glazing to a height of 1.5m above floor level;
The north-western (sic) setbacks of the trafficable areas to the 3 north-west (sic) facing balconies at Level 3 shall be increased by 700mm. The design shall be amended to ensure that the roof edge to the north-western (sic) extremities of the trafficable areas has a minimum height of 1.7m, in accordance with the section below:

- The installation of a 1.5m high privacy screen to the south-eastern side of the Unit 2 terrace and garden.

c) The deletion of the masonry south-eastern boundary wall located to the north-east of Tree 1 for a distance of 12 m from Tree 1.

d) The basement car parking layout shall be amended as follow:
   - The length of all parking spaces is to be minimum 5.4m. An exception to have ‘spaces for small cars’ as defined in Section 2.4.1 (a) (iii) of AS2890.1 is not permitted;
   - The width of all parking spaces is to be designed in accordance with Figure 2.2 of AS2890.1. An exception to have ‘spaces for small cars’ as defined in Section 2.4.1 (a) (iii) of AS2890.1 is not permitted;
   - The aisle should be extended by 1m beyond the last parking space in accordance with Section 2.4 2. (c) of AS2890.1; and
   - The driveway entrance to the parking area is to be 5.5m wide.

e) With regard to the stormwater management plans:
   - The volume and Permissible Site Discharge (PSD) of OSD system is to be reviewed to comply with the requirements in Section E2.2.4 of Woollahra DCP 2015
• No subsoil drainage lines are to be permitted. All below-ground structures are fully waterproofed and “tanked”.
• Emergency overflow weir is to be provided in lieu of overflow pipe. The size of the weir should have capacity to convey 1% AEP flow.

f) With regard to the front façade:

The proposed colonnades to the front elevation shall be amended to delete four of the colonnade openings (the colonnade openings to be deleted are highlighted in red in the photomontage below). The amended design shall provide two sets of three colonnades to each balcony.

4. SUMMARY OF PROPOSED MODIFICATIONS

The subject S.96 application involves the following modifications to the development consent:

• An additional 650m³ of excavation associated with the extension of the approved rear addition to accommodate additional car parking;
• The total number of car spaces is proposed to be increased from 8 car spaces including 1 visitor/wheelchair accessible space to 16 car spaces including 1 visitor/wheelchair accessible space;
• The extension of the central 5.1m section of the rear elevation by 600mm toward the rear boundary at Ground Floor Level, Level 1, Level 2 & Penthouse (Attic) Level and the associated relocation of the rainwater storage tanks from a central position adjacent to the rear boundary to either side of the rear extension (11.5m² of additional gross floor area);
• The extension of a 9.1m long section of the north-western elevation of the approved rear addition at Ground Floor Level, Level 1, Level 2 and the roof thereto by 600mm toward the
north-western side boundary \((15.8\text{m}^2\text{ of additional gross floor area})\). This modification increases the sizes of bedrooms;

- The extension of a 9.1m long section of the of the south-eastern elevation of the approved rear addition at Level 1, Level 2 and the roof thereto by 600mm toward the south-eastern side boundary \((10.6\text{m}^2\text{ of additional gross floor area})\). This modification increases the sizes of bedrooms;

- The modification of Condition C.1b in terms of reducing the required additional 700mm side setbacks to the Penthouse (Attic) Level balconies and the associated 1.7m high screening required to the outer edges, by 600mm. Consequently, the approved trafficable depth of the Penthouse (Attic) Level balconies, are proposed to be increased from 840mm to 1.44m; and

- Internal modifications.

In summary, the proposed modifications involve approximately:

- The proposed modifications involve an additional 37.9m\(^2\) of gross floor area (WLEP 2014 definition). The proposed modifications involve an increase in gross floor area/floor space ratio (as per the WLEP 1995 definition for consistency sake) of 39.5m\(^2\) from 1362m\(^2\)/1.63:1 to 1401.5m\(^2\)/1.67:1;

- An additional 13.4m\(^2\) of building footprint;

- A 600mm reduction to the north-western side boundary setback to a 9.1m long section to the north-western elevation to the approved rear addition at Ground Floor Level, Level 1, Level 2 and the roof thereto from 4.1m as approved to 3.5m;

- A 600mm reduction to the south-eastern side boundary setback to a 9.1m long section to the south-eastern elevation to the approved rear addition at Level 1, Level 2 and the roof thereto from 4.2m as approved to 3.6m;

- A 600mm reduction to both side boundary setbacks to the Penthouse (Attic) Level balconies and the associated 1.7m high screening required to the outer edges from 5m as approved to 4.4m;

- A 600mm reduction to the south-western rear boundary setback to a 5.1m long section to the rear elevation to the approved rear addition from 1.4m as approved to 800mm;

- A reduction in deep soil landscaped area of 4.8m\(^2\) to 138.2m\(^2\) (16.5\% of the site area); and

- A reduction in the total general landscaped area of 8.7m\(^2\) to 456.8m\(^2\) (54.5\% of the site area).

- An additional 650m\(^3\) of excavation resulting in an increase to the approved volume of excavation from 980m\(^3\) to 1630m\(^3\); and

- An increase in the number of car parking spaces provided from 8 to 16.

Whilst the proposal also demonstrates compliance with the other requirements of Condition C.1, it is not the purpose of a S.96 application to demonstrate compliance with conditions of consent. Accordingly, these aspects of the proposal have not been described in detail, considered as part of this assessment or facilitated in the recommendation.
5. DESCRIPTION OF SITE OF LOCALITY

<table>
<thead>
<tr>
<th>Physical features</th>
<th>The site has a north-eastern frontage to Drumalbyn Road 23.8m in length, a south-western rear boundary 22.55m in length, a south-eastern side boundary 33.1m in length and a north-western side boundary 41.4m in length. The site has a site area of 837.5m².</th>
</tr>
</thead>
<tbody>
<tr>
<td>Topography</td>
<td>The site rises approximately 8m from the street frontage to the rear boundary.</td>
</tr>
<tr>
<td>Existing buildings and structures</td>
<td>The site is currently occupied by a 3 storey inter-war Spanish Mission residential flat building named Palomar consisting of 6 x 2 bedroom units and 2 detached triple garages located on the street alignment.</td>
</tr>
<tr>
<td>Environment</td>
<td>The locality is characterised by a mixture of 2-4 storey detached dwelling-houses and residential flat buildings. The adjoining site to the north-west (45 Drumalbyn Road) is occupied by a 2 storey dwelling-house. The adjoining site to the south-east (51 Drumalbyn Road) is also occupied by a 2 storey dwelling-house. The adjoining site to the rear (47 Drumalbyn Road) is occupied by a 3 storey dwelling-house. The adjoining site to the rear/west (47A Drumalbyn Road) is occupied by a 4 storey dwelling-house.</td>
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6. ISSUES SUMMARY

<table>
<thead>
<tr>
<th>Issue</th>
<th>Conclusion</th>
<th>Section</th>
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<td>Objectors’ concerns</td>
<td>Satisfactory</td>
<td>8.2</td>
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Subject site

Item No. D4 Page 152
7. REFERRALS

<table>
<thead>
<tr>
<th>Referral</th>
<th>Summary of Comment</th>
<th>Annexure</th>
</tr>
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<tr>
<td>Development Engineer</td>
<td>Satisfactory, subject to a modification to Condition C.1d to achieve adequate flood protection.</td>
<td>2</td>
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</table>

8. ASSESSMENT UNDER S.96(2)

The proposed modification, as amended, is considered to fall under the ambit of S.96(2). The provisions of S.96(2) require Council to consider the following:

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

b) *It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent.*

c) *It has notified the application in accordance with:*

   i) The regulations, if the regulations so require, or

   ii) A development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent.

d) *It has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

8.1 Substantially the same assessment

Case law emphasises that each case must be considered on its own facts, and therefore the Court has not provided a definitive formula which is universally applicable to test if development is substantially the same. However it is possible to distill from the case law the following questions that need to be asked when determining whether proposals are properly dealt with under section 96 of the EPA Act.

Question one: *Is the proposal a modification of the original proposal, in that it does not radically transform the original proposal?*

Question two: *Is the proposed development essentially or materially the same development as the development for which consent was originally granted?*

Question three: *Is the way in which the development is to be carried out essentially or materially the same?*

Question four: *Does the proposed modification affect an aspect of the development that was important, material or essential to the development when it was originally approved?*
In summary, the proposed modifications involve approximately:

- The proposed modifications involve an additional 37.9m² of gross floor area (WLEP 2014 definition). The proposed modifications involve an increase in gross floor area/floor space ratio (as per the WLEP 1995 definition for consistency sake) of 39.5m² from 1362m²/1.63:1 to 1401.5m²/1.67:1;
- An additional 13.4m² of building footprint;
- A 600mm reduction to the north-western side boundary setback to a 9.1m long section to the north-western elevation to the approved rear addition at Ground Floor Level, Level 1, Level 2 and the roof thereto from 4.1m as approved to 3.5m;
- A 600mm reduction to the south-eastern side boundary setback to a 9.1m long section to the south-eastern elevation to the approved rear addition at Level 1, Level 2 and the roof thereto from 4.2m as approved to 3.6m;
- A 600mm reduction to both side boundary setbacks to the Penthouse (Attic) Level balconies and the associated 1.7m high screening required to the outer edges from 5m as approved to 4.4m;
- A 600mm reduction to the south-western rear boundary setback to a 5.1m long section to the rear elevation to the approved rear addition from 1.4m as approved to 800mm;
- A reduction in deep soil landscaped area of 4.8m² to 138.2m² (16.5% of the site area); and
- A reduction in the total general landscaped area of 8.7m² to 456.8m² (54.5% of the site area).
- An additional 650m³ of excavation resulting in an increase to the approved volume of excavation from 980m³ to 1630m³; and
- An increase in the number of car parking spaces provided from 8 to 16.

It is considered the proposed modifications to the development consent do not:

- Increase the number of units, bedrooms or the potential population of the development;
- Significantly increase the approved external building envelope;
- Significantly increase the potential for visual and acoustic privacy impacts upon adjoining properties from balconies and windows;
- Significantly increase traffic and car parking impacts upon the locality; and
- Significantly increase the potential for geotechnical/hydrogeological or tree impacts notwithstanding the substantial increase to the proposed volume of excavation.

Accordingly, it is considered that the approved development as proposed to be modified by the subject S.96 application:

- Does not radically transform the approved development;
- Is essentially and materially the same development;
- Does not materially change the way in which the development will be carried out; and
- Does not affect an aspect of the development that was important, material or essential to the development when it was originally approved.

The proposed modifications, as conditioned, are considered to be satisfactory in terms of relevant environmental impacts, including residential amenity, parking, traffic and tree impacts and the provision of landscaping, identified in the assessment of the original development application.

As such, the approved development, as proposed to be modified, is considered to be substantially the same.
8.2 Submissions

The subject S.96 application was notified and advertised from 16/12/2015 to 13/01/2016. In response, objections were received from:

1. J Comino of Comino Prassas PO Box 1390 Bondi Junction 1355 on behalf of S & P Madden owners of 45 Drumalbyn Road Bellevue Hill and S Palmer owner of 51 Drumalbyn Road Bellevue Hill.

The objections raised the following concerns:

*Excessive excavation and associated geotechnical and impact upon an existing significant Port Jackson fig tree adjacent to the south-eastern side boundary*

The proposed modifications involve an additional 650m$^3$ of excavation, increasing the volume of excavation from 980m$^3$, as approved to 1630m$^3$. The additional excavation facilitates the provision of additional car parking. Council's Development Engineer has reviewed a revised geotechnical report submitted with the subject application and has raised no objection to the proposed additional excavation being satisfied that existing conditions of consent together with the terms of the geotechnical report (adopted by the recommended additional Condition A.3a) are adequate in terms of addressing potential geotechnical/hydrogeological impacts associated with the scope of the proposed additional excavation.

Council's Tree and Landscape Officer has raised no objection to the proposed modifications in terms of the proposed additional excavation upon the significant Port Jackson fig tree adjacent to the south-eastern side boundary being satisfied that existing conditions of consent will adequately protect the tree.

*Flood protection of basement car park*

Council's Development Engineer has advised that whilst the proposed modified basement vehicular entry is satisfactory in terms of providing adequate freeboard flood protection, a modified Condition C.1d requiring the provision of adequate freeboard flood protection of the pedestrian egress passage at basement floor level is recommended.

*Reduced side setbacks, increased building footprint, enlarged front (sic) balconies and associated adverse privacy and visual impacts upon the adjoining properties 45 & 51 Drumalbyn Road*

The front balconies are not proposed to be increased in size from that as approved.

Whilst the proposed modifications reduce the approved side setbacks to 9.1m long sections of both side elevations and the Penthouse (Attic) Level balconies by 600mm and increase the trafficable depth of the Penthouse (Attic) Level side balconies from 840mm as approved to 1.44m, privacy impacts upon adjoining properties are considered to be satisfactory for the following reasons:

- The remainder of the visual privacy mitigation measures required by Condition C.1b are maintained including requirements for 1.7m high screening to the outer edges of the side balconies at Penthouse (Attic) Level, the deletion of specific julliette balconies to both side elevations and the provision of 1.5m high fixed translucent glazing to specific windows; and
The side balconies at Penthouse (Attic) Level are accessed from bedrooms, a study/media room and an ensuite and so no significant additional acoustic impacts are envisaged by the proposed 600mm extension from that as approved.

With regard to potential additional visual impacts upon the adjoining properties either side of the development the following analysis is provided:

**North-western side elevation**

The following external modifications are proposed to the north-western side elevation of the approved rear addition:

- A 600mm reduction to the north-western side boundary setback to a 9.1m long section to the north-western elevation of the approved rear addition at Ground Floor Level, Level 1, Level 2 and the roof thereto from 4.1m as approved to 3.5m; and
- A 600mm reduction to north-western side boundary setbacks to the 3 north-west facing Penthouse (Attic) Level balconies and the associated 1.7m high screening required to the outer edges, from 5m as approved to 4.4m.

Additional visual impacts upon the adjoining properties to the north-west (45 & 47A Drumalbyn Road) are considered to be satisfactory due to the following:

- The proposed extended section of the north-western side elevation is limited to dimensions of 9.1m (length) x 5.9-7.6m (height) above the ground level at the north-western side boundary;
- The proposed reduced setback distances of 3.5-4.4m will be complemented by a 3.6m wide driveway adjacent to the north-western side boundary. The combined distances of separation of 7.1-8m from the adjoining properties to the north-west (45 & 47A Drumalbyn Road) is considered to be adequate;
- A 3.4-5.1m drop in the land form adjacent to the north-western side boundary will screen the lower 1-1.5 storeys from the adjoining properties to the north-west such that only the upper 2.5-3 levels including the Penthouse (Attic) Level will be significantly discernible; and
- The substantial landscaping approved adjacent to the north-western side boundary consisting of 8 Coastal Banksia will grow to a mature height of approximately 6m which will screen the majority of the proposed modifications to the north-western elevation.

**South-eastern side elevation**

The following external modifications are proposed to the south-eastern side elevation of the approved rear addition:

- A 600mm reduction to the south-eastern side boundary setback to a 9.1m long section to the south-eastern elevation of the approved rear addition at Level 1, Level 2 and the roof thereto from 4.2m as approved to 3.6m; and
- A 600mm reduction to south-eastern side boundary setbacks to the 3 south-east facing Penthouse (Attic) Level balconies and the associated 1.7m high screening required to the outer edges, from 5m as approved to 4.4m.

Additional visual impacts upon the adjoining property to the south-east (51 Drumalbyn Road) are considered to be satisfactory due to the following:
The proposed extended section of the south-eastern side elevation is limited to dimensions of 9.1m (length) x 5.5-8m (height) above the ground level at the south-eastern side boundary; and

The residual 3.6-4.4m setback from the south-eastern side boundary is considered to be adequate in terms of separation distances in conjunction with the extensive screening provided by the large, evergreen Port Jackson fig tree adjacent to the south-eastern side boundary that is protected by existing conditions of consent and will not be compromised by the proposed modifications.

The additional 6 (sic) car spaces is contrary to the claims of the applicant that the original application provided sufficient off-street car parking

The proposal provides for 8 additional car spaces. The original development application was considered to be satisfactory in terms of car parking impacts by Council’s Traffic engineer. Council’s Traffic and Development Engineers have raised no objection to the proposed modifications on traffic generation or car parking grounds.

The approved development, as proposed to be modified, is not substantially the same

As discussed above under the section 8.1 Substantially the same assessment, the approved development, as proposed to be modified, is considered to be substantially the same.

The original application relied upon existing use rights to exceed Council's floor space ratio, height and other controls are not Woollahra LEP 1995. The proposed modifications substantially exceed Council’s excavation controls and also further increase the floor space ratio.

Council's excavation and floor space ratio controls do not apply to applications involving existing use rights.

The proposed modifications involve an additional 37.9m$^2$ of gross floor area (WLEP 2014 definition). The proposed modifications involve an increase in gross floor area/floor space ratio (as per the WLEP 1995 definition for consistency sake) of 39.5m$^2$ from 1362m$^2$/1.63:1 to 1401.5m$^2$/1.67:1. The additional floor space occurs at the rear of the development and will have no adverse visual impact upon the public domain. The proposed additional floor space to the rear section of development is considered to be satisfactory in terms of privacy and visual amenity impacts upon the adjoining properties as discussed above. Further, there will be no significant additional overshadowing of view loss impacts upon adjoining properties from that as approved.

As discussed previously, Council's Development Engineer and Tree and Landscape Officer have raised no objection to the proposed additional excavation and are satisfied that existing conditions of consent are adequate in terms of addressing potential environmental impacts associated with the scope of the proposed additional excavation including geotechnical impacts and impacts upon the significant Port Jackson fig tree adjacent to the south-eastern side boundary.

6.3 Statutory Declaration

In accordance with Clause 4.5 of the Woollahra Advertising and Notification DCP, the applicant has completed the statutory declaration declaring that the site notice was erected and maintained during the notification period in accordance with the requirements of the DCP.
9. EXISTING USE RIGHTS/SECTION 79C ASSESSMENT

Does the existing use satisfy the definition of "existing use" under the Act?

Section 106 provides:

"106 Definition of “existing use”

In this Division, existing use means:

(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and
(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."

This necessarily requires the following questions to be answered.

Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Was the use of the building, work or land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Has the use of the building, work or land been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

In approving the original development application, Council accepted that existing use rights prevailed on this land, protected under Division 10 of Part 4 of the Act.

What is “the land on which the existing use was carried out” for the purposes of cl 42(2)(b) of the Environmental Planning and Assessment Regulation 2000 (“the EP&A Regulation”)?

Meagher JA in Steedman v Baulkham Hills Shire Council [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Having regard to the above case law, it is considered that, as the residential flat building is the sole use of the subject land, the existing use rights apply to the whole of the site.
The judgement in Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The four principles adopted by the court in this case will have general application in dealing with DAs that rely on existing use rights.

The four principles are:

1. **How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?**

   *While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.*

2. **What is the relevance of the building in which the existing use takes place?**

   *Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.*

Note that this principle was clarified in the Stromness case. The following is a quote from the Chief Judge.

*In Stromness Pty Ltd v Woollahra Municipal Council [2006] NSWLEC 587 the planning principles in Fodor were considered and confirmed by Pain J at pars 83-89. Principle 2 was specifically supported in paragraph 87 and principles 1, 3 and 4 were specifically supported in paragraph 89. Her Honour states in para 89 that care must be exercised in the application of the principles to ensure that there is not a de facto application of standards in environmental planning instruments as that is prohibited by s 108(3) of the Environmental Planning and Assessment Act.*

The consideration of the bulk and scale of the proposal must be made without any reference to Council's building envelope controls including the height development standard as well as site coverage and boundary setback policy controls as to do so would be unlawful in light of the above-mentioned case law.

The subject S.96 application involves the following external modifications to the above-ground building envelope of the approved development:

- A 600mm reduction to the north-western side boundary setback to a 9.1m long section to the north-western elevation to the approved rear addition at Ground Floor Level, Level 1, Level 2 and the roof thereto from 4.1m as approved to 3.5m;
- A 600mm reduction to the south-eastern side boundary setback to a 9.1m long section to the south-eastern elevation to the approved rear addition at Level 1, Level 2 and the roof thereto from 4.2m as approved to 3.6m;
• A 600mm reduction to both side boundary setbacks to the Penthouse (Attic) Level balconies and the associated 1.7m high screening required to the outer edges from 5m as approved to 4.4m;
• A 600mm reduction to the south-western rear boundary setback to a 5.1m long section to the rear elevation to the approved rear addition from 1.4m as approved to 800mm.

The proposed modifications involve an additional 37.9m\(^2\) of gross floor area (WLEP 2014 definition). The proposed modifications involve an increase in gross floor area/floor space ratio (as per the WLEP 1995 definition for consistency sake) of 39.5m\(^2\) from 1362m\(^2\)/1.63:1 to 1401.5m\(^2\)/1.67:1 and an additional 13.4m\(^2\) of building footprint.

**Streetscape visual impact**

The additional floor space/building footprint/reduced side setbacks occur at the rear of the development and will have no additional adverse visual impacts upon the public domain.

**Visual impact upon adjoining properties**

In terms of visual impacts upon the adjoining properties, potential additional impacts are limited to the proposed modifications to the approved rear addition.

The image below indicates the relationship of adjoining development relative to the subject site. Adjoining properties are primarily orientated towards the north to take advantage of high quality harbour views. This orientation also ensures excellent winter solar access to the front sections/elevations of development within the locality. Adjoining development to both sides of the subject site extend the full length of the common side boundaries. Accordingly, even though the proposed modified rear addition extends to within approximately 800mm from the rear boundary, it is considered to remain consistent with the local built context.
North-western side elevation

The following external modifications are proposed to the north-western side elevation of the approved rear addition:

- A 600mm reduction to the north-western side boundary setback to a 9.1m long section to the north-western elevation of the approved rear addition at Ground Floor Level, Level 1, Level 2 and the roof thereto from 4.1m as approved to 3.5m; and
- A 600mm reduction to north-western side boundary setbacks to the 3 north-west facing Penthouse (Attic) Level balconies and the associated 1.7m high screening required to the outer edges, from 5m as approved to 4.4m.

Additional visual impacts upon the adjoining properties to the north-west (45 & 47A Drumlbyn Road) are considered to be satisfactory due to the following:

- The proposed extended section of the north-western side elevation is limited to dimensions of 9.1m (length) x 5.9-7.6m (height) above the ground level at the north-western side boundary;
- The proposed reduced setback distances of 3.5-4.4m will be complemented by a 3.6m wide driveway adjacent to the north-western side boundary. The combined distances of separation of 7.1-8m from the adjoining properties to the north-west (45 & 47A Drumlbyn Road) is considered to be adequate;
- A 3.4-5.1m drop in the land form adjacent to the north-western side boundary will screen the lower 1-1.5 storeys from the adjoining properties to the north-west such that only the upper 2.5-3 levels including the Penthouse (Attic) Level will be significantly discernible; and
- The substantial landscaping approved adjacent to the north-western side boundary consisting of 8 Coastal Banksia will grow to a mature height of approximately 6m which will screen the majority of the proposed modifications to the north-western elevation.
South-eastern side elevation

The following external modifications are proposed to the south-eastern side elevation of the approved rear addition:

- A 600mm reduction to the south-eastern side boundary setback to a 9.1m long section to the south-eastern elevation of the approved rear addition at Level 1, Level 2 and the roof thereto from 4.2m as approved to 3.6m;
- A 600mm reduction to south-eastern side boundary setbacks to the 3 south-east facing Penthouse (Attic) Level balconies and the associated 1.7m high screening required to the outer edges, from 5m as approved to 4.4m.

Additional visual impacts upon the adjoining property to the south-east (51 Drumalbyn Road) are considered to be satisfactory due to the following:

- The proposed extended section of the south-eastern side elevation is limited to dimensions of 9.1m (length) x 5.5-8m (height) above the ground level at the south-eastern side boundary; and
- The residual 3.6-4.4m setback from the south-eastern side boundary is considered to be adequate in terms of separation distances in conjunction with the extensive screening provided by the large, evergreen Port Jackson fig tree adjacent to the south-eastern side boundary that is protected by existing conditions of consent and will not be compromised by the proposed modifications.

South-western (rear) elevation

The following external modification is proposed to the south-western (rear) elevation of the approved rear addition:

- A 600mm reduction to the south-western rear boundary setback to a 5.1m long section to the rear elevation to the approved rear addition from 1.4m to 800mm.

Additional visual impacts upon the adjoining property to the rear (47B Drumalbyn Road) are considered to be satisfactory due to the following:

- The proposed extended section of the south-western (rear) elevation is limited to dimensions of 5.1m (length) x 8.4m (height) above the ground level at the south-western rear boundary;
- The rear elevation will be adequately screened from the adjoining property to the rear by a row of 7-8m high Leighton Green pine trees; and
- The subject site is located at a significantly lower level (in excess of 5m) than the adjoining property to the rear.

Traffic generation and car parking provision

The proposed modifications increase the number of car parking spaces provided from 8 to 16. Council’s Traffic and Development Engineers have raised no objection to the proposed modifications on traffic generation or car parking grounds.
3. **What are the impacts on adjoining land?**

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

**Visual impacts/bulk and scale**

As discussed above, it is considered that the proposed modifications do not result in any significant increase to the bulk and scale of the approved development as presented to adjoining properties and the public domain.

**Overshadowing and loss of views**

It is considered that the proposed modifications will not result in any significant impact upon the amenity of adjoining properties in terms of overshadowing or loss of views.

**Visual and acoustic privacy**

Whilst the proposed modifications reduce the approved side setbacks to 9.1m long sections of both side elevations and the Penthouse (Attic) Level balconies by 600mm and increase the trafficable depth of the Penthouse (Attic) Level side balconies from 840mm as approved to 1.44m, privacy impacts upon adjoining properties are considered to be satisfactory for the following reasons:

- The remainder of the visual privacy mitigation measures required by **Condition C.1b** are maintained including requirements for 1.7m high screening to the outer edges of the side balconies at Penthouse (Attic) Level, the deletion of specific julliette balconies to both side elevations and the provision of 1.5m high fixed translucent glazing to specific windows; and
- The side balconies at Penthouse (Attic) Level are accessed from bedrooms, a study/media room and an ensuite and so no significant additional acoustic impacts are envisaged by the proposed 600mm extension from that as approved.

**Car Parking/Traffic Impacts**

The proposed modifications increase the number of car parking spaces provided from 8 to 16. Council’s Traffic and Development Engineers have raised no objection to the proposed modifications on traffic generation or car parking grounds.

**Excavation**

The proposed modifications involve an additional 650m$^3$ of excavation, increasing the volume of excavation from 980m$^3$, as approved to 1630m$^3$. The additional excavation facilitates the provision of additional car parking. Council's Development Engineer has reviewed a revised geotechnical report submitted with the subject application and has raised no objection to the proposed additional excavation being satisfied that existing conditions of consent together with the terms of the geotechnical report (adopted by the recommended additional **Condition A.3a** are adequate in terms of addressing potential geotechnical/hydrogeological impacts associated with the scope of the proposed additional excavation.
Council's Tree and Landscape Officer has raised no objection to the proposed modifications in terms of the proposed additional excavation upon the significant Port Jackson fig tree adjacent to the south-eastern side boundary being satisfied that existing conditions of consent will adequately protect the tree.

**Landscaped open space provision /significant tree impacts**

The proposed modifications involve a reduction in the approved deep soil landscaped area of approximately 4.8m² and a reduction in the general landscaped area of approximately 8.7m² which are considered to be minor reductions. The 138.2m² (16.5% of the site area) of deep soil landscaped area and 456.8m² (54.5% of the site area) of total landscape area maintained by the proposed modifications is considered to be adequate. The approved private and communal private open space areas are not reduced by the proposed modifications.

Council's Tree and Landscape Officer has not raised any objection to the proposed modifications including impacts upon the significant Port Jackson fig tree adjacent to the south-eastern side boundary.

4. **What is the internal amenity?**

*Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.*

The internal amenity of the dwellings is considered to be improved by the proposed modifications due to increased balconies sizes at Penthouse (Attic) Level, increased bedroom sizes and increased car parking provision.

**OTHER CONSIDERATIONS**

The following matters for consideration are based on the provisions of environmental planning instruments and policies that do not derogate (detract) from the existing use rights provisions.

10. **SEPP 55-REMEDIATION OF LAND**

Under Clause 7 (1) (a) of SEPP 55-Remediation of Land, consideration has been given as to whether the land is contaminated. An assessment of this issue in relation to the original development application concluded that the land did not require further consideration under Clause 7(1) (b) and (c) of the SEPP.

11. **SEPP (BUILDING SUSTAINABILITY INDEX: BASIX) 2004**

SEPP (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed modifications. The subject S.96 application is accompanied by a new BASIX Certificate 603418M_02 committing to adequate environmental sustainability measures. These requirements have been imposed by modified conditions as required by clause 97A of the Environmental Planning & Assessment Regulation 2000.
12. SEPP 65: DESIGN QUALITY OF RESIDENTIAL FLAT BUILDINGS

This SEPP applies to buildings which comprise 3 or more storeys and 4 or more self-contained dwellings. The subject development consists of 4 storeys and 7 self-contained dwellings.

The proposed modifications are considered to be satisfactory with regard to the design quality principles described under the SEPP and the provisions of the associated Apartment Design Code:

13. SREP (SYDNEY HARBOUR CATCHMENT) 2005

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

14. WOOLLAHRA LEP 2014/ WOOLLAHRA DCP 2015

The provisions of Woollahra LEP 2014 and DCP 2015, that do not derogate (detract) from the existing use rights provisions, aim to mitigate adverse environmental impacts including, geotechnical/hydrogeological impacts, tree and landscaping impacts, stormwater drainage impacts and amenity impacts upon adjoining residential properties and the public domain.

Council's Development Engineer has recommended a modified Condition C.1d which requires the adequate flood protection to the basement car park level.

Modified stormwater management diagrams submitted with the development application have been assessed by Council's Development Engineer, are considered to be satisfactory and are adopted by the recommended additional Condition A.3a.

Council's Tree and Landscape Officer has raised no objection to the proposed modifications in terms of the proposed additional excavation upon the significant Port Jackson fig tree adjacent to the south-eastern side boundary being satisfied that existing conditions of consent will adequately protect the tree.

The proposed modifications involve an additional 650m$^3$ of excavation, increasing the volume of excavation from 980m$^3$, as approved to 1630m$^3$. Council's Development Engineer has reviewed a revised geotechnical report submitted with the subject application and has raised no objection to the proposed additional excavation being satisfied that existing conditions of consent together with the terms of the geotechnical report (adopted by the recommended additional Condition A.3a) are adequate in terms of addressing potential geotechnical/hydrogeological impacts associated with the scope of the proposed additional excavation.

Council’s Traffic and Development Engineers have raised no objection to the proposed modifications on traffic generation or car parking grounds.

As discussed above, the proposed modifications are considered to be satisfactory in terms of amenity impacts upon adjoining properties and the public domain notwithstanding increases to the approved gross floor area, building footprint and reduced side and rear boundaries setbacks to the approved rear addition.
The proposed modifications involve a reduction in the approved deep soil landscaped area of approximately 4.8m$^2$ and a reduction in the general landscaped area of approximately 8.7m$^2$ which are considered to be minor reductions. The 138.2m$^2$ (16.5% of the site area) of deep soil landscaped area and 456.8m$^2$ (54.5% of the site area) of total landscape area maintained by the proposed modifications is considered to be adequate. The approved private and communal private open space areas are not reduced by the proposed modifications.

As such, the proposed modifications as conditioned are considered to be satisfactory with regard to the relevant provisions of Woollahra LEP 2014 and Woollahra DCP 2015.

15. CONCLUSION

The proposed modifications, as conditioned, are considered to be acceptable against the relevant considerations under s79C and s96.

16. DISCLOSURE STATEMENTS

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

RECOMMENDATION: PURSUANT TO SECTION 96 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

THAT Council, as the consent authority, modify development consent to Development Application No. 53/2015 for alterations and additions to a residential flat building under existing use rights on land at 49 Drumalbyn Road Bellevue Hill, as follows:

The addition of the following condition:

A.3a Approved Amended (s96) Plans and Supporting Documents

Those acting upon or under this amended consent must carry out all work and maintain the use and works in accordance with the approved plans and supporting documents listed in the original consent, as amended by the amended approved plans and supporting documents as submitted by the Applicant and to which is affixed a Council stamp “Approved S96 Plans” listed below otherwise than modified by further condition(s). Where the plans relate to amendments, alterations or additions only those works shown in colour or highlighted are approved.

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

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

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

a) In order to mitigate reflective glare impacts upon adjoining properties, the bronze metallic Alucobond metal external cladding to the rear addition shall have a matt finish.

b) In order to maintain the visual privacy of the adjoining properties, the following privacy mitigation measures shall be implemented:

North-western elevation:

• The windows to the north-western elevation of the existing building at Level 2 (to the kitchen and WC of Unit 5) shall consist of fixed translucent glazing to a height of 1.5m above floor level;

• The installation of translucent glazing to the openings to the north-western elevation of the front balcony of the existing building at Level 1 and 2. The glazing shall be detailed in accordance with the photograph below;

• The 3 juliette balconies to the north-western elevation of the proposed rear addition at Level 2 shall be deleted and the associated doors altered to fixed translucent glazing to a height of 1.5m above floor level;

• The window to the north-western elevation of the proposed rear addition at Level 2 (W46) shall consist of fixed translucent glazing to a height of 1.5m above floor level; and

• Deleted under DA53/2015/2.

South-eastern elevation:

• The windows to the south-eastern elevation of the existing building at Levels 1 & 2 (to the kitchen and WC of Units 4 & 6) shall consist of fixed translucent glazing to a height of 1.5m above floor level;

• The installation of translucent glazing to the openings to the south-eastern elevation of the front balconies of the existing building at Levels 1 & 2. The glazing shall be detailed in accordance with the photograph below;
The 3 juliette balconies to the south-eastern elevation of the proposed rear addition at Levels 1 & 2 shall be deleted and the associated doors altered to fixed translucent glazing to a height of 1.5m above floor level;

The windows to the south-eastern elevation of the proposed rear addition at Levels 1 & 2 (W36 & 56) shall consist of fixed translucent glazing to a height of 1.5m above floor level;

Deleted under DA53/2015/2.

The installation of a 1.5m high privacy screen to the south-eastern side of the Unit 2 terrace and garden.

c) The deletion of the masonry south-eastern boundary wall located to the north-east of Tree 1 for a distance of 12 m from Tree 1.

d) The basement car parking layout shall be amended as follows:

- The length of all parking spaces is to be minimum 5.4m. An exception to have ‘spaces for small cars’ as defined in Section 2.4.1 (a) (iii) of AS2890.1 is not permitted;
- The width of all parking spaces is to be designed in accordance with Figure 2.2 of AS2890.1. An exception to have ‘spaces for small cars’ as defined in Section 2.4.1 (a) (iii) of AS2890.1 is not permitted;
- The aisle should be extended by 1m beyond the last parking space in accordance with Section 2.4 2. (c) of AS2890.1;
- The driveway entrance to the parking area is to be 5.5m wide; and
- The finished level of the proposed egress passage should be raised from RL40.19 to RL40.35 in order to avoid the ingress of flood water.

e) With regard to the stormwater management plans:

- The volume and Permissible Site Discharge (PSD) of OSD system is to be reviewed to comply with the requirements in Section E2.2.4 of Woollahra DCP 2015
- No subsoil drainage lines are to be permitted. All below-ground structures are fully waterproofed and “tanked”.
- Emergency overflow weir is to be provided in lieu of overflow pipe. The size of the weir should have capacity to convey 1% AEP flow.
f) With regard to the front façade:

The proposed colonnades to the front elevation shall be amended to delete four of the colonnade openings (the colonnade openings to be deleted are highlighted in red in the photomontage below). The amended design shall provide two sets of three colonnades to each balcony.

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.

C.3 BASIX commitments

The applicant must submit to the Certifying Authority BASIX Certificate No. 603418M_02 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,"

### H.1 Fulfillment of BASIX commitments – Clause 154B of the Regulation

All BASIX commitments must be effected in accordance with the BASIX Certificate No. 603418M_02.

**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."

### I.1 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. 603418M_02.

**Annexures**

1. Plans and elevations
2. Development Engineer referral response
Completion Date: 14 March 2016

REFERRAL RESPONSE – TECHNICAL SERVICES

FILE NO: Development Applications/53/2015/2
ADDRESS: 49 Drumalbyn Road BELLEVUE HILL 2023
PROPOSAL: Internal and external modifications
FROM: Mr R Lam
TO: Mr D Booth

1. ISSUES

- Nil

2. DOCUMENTATION

I refer to the following documents received for this report:

- Architectural Plans, project no. 14STA1, drawing no. S96_000 to 001, S96_101 to 106, S96_201, S96_301 to 302, S96_501 and S96_851, prepared by ergoarchitecture, dated 17 November 2015.

3. ASSESSMENT

Comments have been prepared on the following. Where Approval is recommended, Conditions of Consent follow at the end of the comments.

a. Site Drainage comments

A perusal of the submitted stormwater plans and a copy of the original DA consent revealed that the amendments that were previously imposed by Council’s Engineer have not been addressed. As such, the amendments listed in Condition C.1(e) of DA53/2015 shall remain unaltered.

b. Flooding & Overland Flow comments

The frontage of 49 Drumalbyn Road is subject to overland flow of stormwater from Drumalbyn Rd. From the submitted S96 architectural drawings provided, it is advised that the proposed basement entry level of RL41.35 is considered satisfactory as it will provide adequate freeboard (a minimum level of 150mm above the 1% AEP flood level of RL41.20) as identified in the Overland Flow Analysis, prepared by Donovan Associates, referenced E276719, dated 11 Jun 2015. However, the finished level of the proposed egress passage is considered unsatisfactory and it should also be raised to RL40.35 in order to avoid the ingress of flood water. This requirement will be conditioned accordingly.
c. Impacts on Council Infrastructure comments

Not relevant

d. Traffic comments

Not relevant

e. Vehicle Access & Accommodation comments

Not relevant

f. Geotechnical, Hydrogeological and/or Structural comments

An updated Geotechnical Report by JK Geotechnics, referenced 27976SB1rpt, dated 4 November 2015 has been submitted in support of this S96 application. The proposal involved excavation about 4m below the existing ground level for the underground carpark and locally deeper for the lift pit and car stakers of about 1.6m.

The report identified that the subsurface conditions as:

- a) Fill to depth 0.2m to 0.3m
- b) Sand / silt various densities property ranging from 1.8m to 4.7m
- c) Sandstone bedrock
- d) Groundwater appeared not to be an issue.

The report made comments and recommendations on the following:

- Geotechnical Issues
- Excavation
- Hydrogeological assessment
- Retention
- Footings
- Soil type and range
- Construction management
- Further testing and monitoring

Council’s Technical Services has no objection to the proposed excavation on technical grounds. Notwithstanding this, Council’s Planning Officer is also to undertake an assessment of the proposed excavation against the relevant excavation objectives and controls prescribed under the LEP and DCP.
4. RECOMMENDATION

Council’s Development Engineer has determined that the proposal is satisfactory, subject to the following modification to the original conditions:

**A.5 Approved Plans & Supporting documents**

<table>
<thead>
<tr>
<th>Reference</th>
<th>Description</th>
<th>Author/Drawn</th>
<th>Date(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>27976SB1rpt</td>
<td>Geotechnical Report</td>
<td>JK Geotechnics</td>
<td>4 November 2015</td>
</tr>
<tr>
<td>E276719</td>
<td>Stormwater Management Plan</td>
<td>Donovan Associates</td>
<td>17/11/2015</td>
</tr>
<tr>
<td>D1-Issue C</td>
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<tr>
<td>D8-Issue C</td>
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</tbody>
</table>

**Condition C.1 d) of original DA53/2015 shall be modified to read:**

- The finished level of the proposed egress passage should be raised from RL40.19 to RL40.35 in order to avoid the ingress of flood water.

**All other engineering conditions remain unaltered**
Item No: D5  Delegated to Committee

Subject: REGISTER OF CURRENT LAND AND ENVIRONMENT COURT MATTERS AND REGISTER FOR COURT PROCEEDINGS FOR BUILDING CONTROL, ENVIRONMENTAL CONTROL AND HEALTH CONTROL

Author: Grace Hawley, PA to Manager, Development Control

Approvers: Nick Economou, Manager - Development Control
            Tim Tuxford, Manager - Compliance

File No: 16/41833

Reason for Report: Update DCC on Legal Matters

Recommendation:

A. THAT the attached register of current Land and Environment Court Matters for Development Applications be received and noted.

B. THAT the attached register for Court Proceedings for Building Control, Environmental Control and Health Control be received and noted.

Council at its meeting of 17 August 1994 resolved in the following terms:

THAT the register of current Land and Environment Court Matters for Development Applications presented in the Development Applications Summary be transferred to the Development Control Committee to be considered at each meeting.

Further, the Development Control Committee at its meeting of 29 March 2010 resolved in the following terms:

THAT a ‘Register of Court Proceedings for Building Control, Environmental Control and Health Control’ be presented to the Development Control Committee at least once a month to highlight the prosecution activities being undertaken by Council’s Compliance section.

Please find attached copies of the current registers.

Annexures

1. Legal Register
## Development Control

### Class 1 - Appealed Deemed Refusal

**Awaiting Callover-Heard**

<table>
<thead>
<tr>
<th>Applicant/Respondent</th>
<th>File Ref.</th>
<th>Legal Rep</th>
<th>Address</th>
<th>Officer</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ellie Dothani v Woollahra Municipal Council</td>
<td>DA512/2016/1</td>
<td>Peter Rigg</td>
<td>45 Kembla Rd, BELLEVUE HILL</td>
<td>Dylan Sargent</td>
<td>This is an appeal against the deemed refusal of an application for the demolition of an existing dwelling and pool (retention of existing tennis court) and construction of a new 3 storey dwelling, house, swimming pool, cabana, fences, landscaping and siteworks. First directions hearing to be held on 23 March 2016.</td>
</tr>
<tr>
<td>Enas Tadeos &amp; Mohamad Mursi v Woollahra Municipal Council</td>
<td>DA5665/2013/1</td>
<td>Wishka Welbi, Sturton Beeston</td>
<td>135 Paspatoon Ave, VALICUSE</td>
<td>Lauren Samuels</td>
<td>This is an appeal against the deemed refusal of an application for substantial alterations additions to convert the existing dwelling into a dual occupancy. First directions hearing to be held on 7 April 2016.</td>
</tr>
<tr>
<td>Makena &amp; Subhaira Kariepa v Woollahra Municipal Council</td>
<td>DA574/2013/2</td>
<td>Lindsey Taylor, Lawyers</td>
<td>82 John St, WOOLLAHRA</td>
<td>Wilson Pendragon</td>
<td>This is an appeal against the refusal of a s.96 application for internal and external modification to the dwelling including the relocation of the awning pool, landscaping and siteworks. First directions hearing to be held on 1 April 2016.</td>
</tr>
<tr>
<td>Shafrah Salloum v Woollahra Municipal Council</td>
<td>DA599/2015/1</td>
<td>Wishka Welbi, Steurton Welthe</td>
<td>1 Nagney St, WOOLLAHRA</td>
<td>Simon Taylor</td>
<td>This is an appeal against the deemed refusal of an application for alterations and additions to the existing dwelling to facilitate a change of use to a health services facility. The proposal includes internal works, a new rear wing, parking to the rear partially below ground level for 3 cars, a hard stand car space off Nagney Street, new fences, landscaping and siteworks. First directions hearing to be held an 18 March 2016. The matter has been adjourned.</td>
</tr>
</tbody>
</table>

**Awaiting s34 Conference**

<table>
<thead>
<tr>
<th>Applicant/Respondent</th>
<th>File Ref.</th>
<th>Legal Rep</th>
<th>Address</th>
<th>Officer</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>746 ODH Pty Ltd v Woollahra Municipal Council</td>
<td>DA447/2015/1</td>
<td>HL, Elbourne, Lawyers</td>
<td>746 New South Head Rd, ROSE BAY</td>
<td>Lauren Samuels</td>
<td>This is an appeal against the refusal of an application for the demolition of an existing residential flat building and ancillary structures, the construction of a new residential flat building, garaging and flood walls, and strata subdivisions. First directions hearing to be held on 10 January 2016. Statement of Facts and Controversies to be filed and served by 1 February 2016. The matter is listed for a s34 conference on 11 February 2016. The matter has been adjourned to</td>
</tr>
<tr>
<td>Applicant v Respondent</td>
<td>File Ref.</td>
<td>Legal Rep</td>
<td>Address</td>
<td>Officer</td>
<td>Comment</td>
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<tr>
<td>Parker Logan Property Pty Ltd v Woollahra Municipal Council</td>
<td>DA564/2015/1</td>
<td>HWL Elsworth Lawyers</td>
<td>254-256 Old South Head Rd BELLEVLE HILL</td>
<td>David Smith</td>
<td>This is an appeal against the deemed refusal of an application for the demolition of existing dwellings and construction of a new residential flat building including excavation for basement level carparking and strata subdivision. First directions hearing to be held on 22 March 2016. The matter has been listed for a s34 Conference on 25 May 2016.</td>
</tr>
<tr>
<td>Parker Logan Property Pty Ltd v Woollahra Municipal Council</td>
<td>DA607/2015/1</td>
<td>Wills Weston</td>
<td>8A Cooper Park Rd BELLEVLE HILL</td>
<td>Simon Taylor</td>
<td>This is an appeal against the deemed refusal of an application for the construction of two x three storey residential flat building containing a total of 27 units and basement level car parking for 30 vehicles and storage, strata subdivision, landscaping and siteworks. First directions hearing to be held on 9 February 2016. Report going to ECC on 7 March 2016. Set down for a s34 Conference on 22 March 2016. Awaiting revised plans.</td>
</tr>
<tr>
<td>Discontinuance</td>
<td>DA2727/2015/1</td>
<td>Paul Rigg</td>
<td>147 Darling Point Rd DARLING POINT</td>
<td>Thomas Wong</td>
<td>This is an appeal against the deemed refusal of an application for alterations and additions to existing building including new gazing to Darling Point Road, new attic level with dormer windows and new re-pitched roof and the strata subdivision of the building. First directions hearing to be held on 21 January 2016. The Respondent to file and serve a Statement of Facts and Controversies by 25 February 2016. The appeal is listed for a preliminary s34.</td>
</tr>
</tbody>
</table>

### Class 1 - Appealed Determination

#### Awaiting Callover-Mention

<table>
<thead>
<tr>
<th>Applicant v Respondent</th>
<th>File Ref.</th>
<th>Legal Rep</th>
<th>Address</th>
<th>Officer</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Yellesco v Woollahra Municipal Council</td>
<td>DA562/2015/1</td>
<td>Lindsey Taylor Lawyers</td>
<td>13 Cove St WATSONS BAY</td>
<td>Lauren Sameels</td>
<td>This is an appeal against the refusal of an application for alterations and additions, and landscaping works. First directions hearing to be held on 1 April 2016.</td>
</tr>
<tr>
<td>John Austin v Woollahra Municipal Council</td>
<td>DA067/2015/1</td>
<td></td>
<td>30 Gosbell St MADDINGTON</td>
<td>Thomas Wong</td>
<td>This is an appeal against the refusal of an application to install a roller shutter to rear lane boundary; dormer window to existing attic storage and change ground floor window at side passage to a French door. First directions hearing to be held on 1 April 2016.</td>
</tr>
<tr>
<td>Applicant v Respondent</td>
<td>File Ref.</td>
<td>Legal Rep</td>
<td>Address</td>
<td>Officer</td>
<td>Comment</td>
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<tr>
<td>Julian Kiefferberg v Woollahra Municipal Council</td>
<td>DA467/2015/1</td>
<td>HML Ethwerts Lawyers</td>
<td>31 Ginnent Rd, PADDINGTON</td>
<td>Max Morabetti</td>
<td>This is an appeal against the refusal of an application for the demolition of an existing carport and construction of a new garage with lift structure above; removal of existing rear balcony and replace with a new pop-out bay window; new timber deck in the existing rear courtyard. First directions hearing to be held on 24 April 2016.</td>
</tr>
<tr>
<td>Mari Egelton v Woollahra Municipal Council</td>
<td>DA405/2015/2</td>
<td>Wilsden Webb Steadman Beattie</td>
<td>7 Stephen St, PADDINGTON</td>
<td>Mario D'Alescio</td>
<td>This is an appeal against the refusal of a DA seeking alterations and additions including new roof material to the principal building, internal modifications, evacuation to the front courtyard; new glass screen to the lightwell; new attic level with rear dormer and side boundary realignment. First directions hearing to be held on 22 March 2016. The matter has been adjourned.</td>
</tr>
<tr>
<td>Awatting 534 Conference</td>
<td>DA11/2015/1</td>
<td>Wilsden Webb Steadman Beattie</td>
<td>6-10 Cecil St, PADDINGTON</td>
<td>George Hota</td>
<td>This is an appeal against the refusal of an application for the alterations and additions to the existing two (2) storey warehouse building and its adaptive re-use as a four (4) storey blending house comprising twenty seven (27) self-contained rooms including a caretaker’s room, ground floor parking comprising of six (6) car parking spaces and one (1) motorbike space accessed from Cecil Lane and associated landscaping. First directions hearing to be held on 28 April 2016.</td>
</tr>
<tr>
<td>Kirsten Rose and Andres Felipe Salcido Sanchez v Woollahra Municipal Council</td>
<td>DA36/2015/1</td>
<td>Lindsey Taylor Lawyers</td>
<td>31 Ginnent Rd, PADDINGTON</td>
<td>Max Morabetti</td>
<td>This is an appeal against the refusal of an application for alterations and additions to existing building including rear extension over three levels as well as proposed works to the attic. First directions hearing to be held on 10 March 2016. Section 34 Conference to be held on 10 May 2016. A further directions hearing is set down for 15 May 2016.</td>
</tr>
<tr>
<td>Teda Bayside Pty Ltd v Woollahra Municipal Council</td>
<td>DA516/2014/1</td>
<td>HML Edwards Lawyers</td>
<td>4-8 Patterson St, DOUBLE BAY</td>
<td>Simon Taylor</td>
<td>This is an appeal against the refusal of an application for the demolition of 3 existing dwellings and structures over 3 sites and the construction of a new 4 storey residential flat building for 28 units and basement car parking for 12 vehicles; landscaping and streetscape; consolidation of the allotments and streets subdivision. First directions hearing to be held on 21 January 2016. The appeal is listed for a preliminary s34 conference on 29 February 2016.</td>
</tr>
</tbody>
</table>

Judgement Reserved
<table>
<thead>
<tr>
<th>Applicant v Respondent</th>
<th>File Ref.</th>
<th>Legal Rep.</th>
<th>Address</th>
<th>Officer</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andrew Graham Mackie v Woollahra Municipal Council</td>
<td>DA196/2016/3</td>
<td>Peter Rigg</td>
<td>17 &amp; 19 Smith St, WOOLLAHRA</td>
<td>Simon Taylor</td>
<td></td>
</tr>
<tr>
<td>Andrew Graham Mackie v Woollahra Municipal Council</td>
<td>DA496/2014/1</td>
<td>Peter Rigg</td>
<td>17 &amp; 19 Smith St, WOOLLAHRA</td>
<td>Simon Taylor</td>
<td></td>
</tr>
<tr>
<td>Stood Over Callover-Mention</td>
<td>DA77/2015/1</td>
<td>Norton Rose</td>
<td>835 New South Head Rd, ROGUE ISLE</td>
<td>Eleanor Smith</td>
<td></td>
</tr>
</tbody>
</table>

Class 4 - Orders & Civil Enforcement

| Awaiting Callover-Mention | DA33/2015/1 | Lindsay Taylor Lawyers | 22 New South Head Rd, GEORGE FABER | VAUCLUSE |

Judgement Finalised
Woollahra Municipal Council Legal Matter
746 OSH Pty Ltd v Woollahra Municipal Council
746 New South Head Rd, ROSE BAY

Jurisdiction: Land & Environment Court
Court Matter No.: 11140 of 2015
Penalty Infringement Number:
Type of Matter: Class 1 - Appealed Deemed Refusal
Council File Reference: DA447/2015/1
Status: Awaiting s34 Conference
F1 Account Number: 141.3620/066.

Precis

This is an appeal against the refusal of an application for the demolition of an existing residential flat building and ancillary structures, the construction of a new residential flat building, garaging and flood wall, and strata subdivision. First directions hearing to be held on 19 January 2016. Statement of Facts and Contentions to be filed and served by 1 February 2016. The matter is listed for a s.34 conference on 11 February 2016. The matter has been adjourned to allow for the applicant has submitted amended plans to Council. The amended plans are acceptable, subject to conditions. On 1 March 2016 the parties will appear before Commissioner Tuo at the Land and Environment Court for the recommencement of the adjourned section 34 conciliation. The matter is to be heard on 5 May 2016.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter:
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
Prudhoe Limited v Woollahra Municipal Council
147 Darling Point Rd, DARLING POINT

Jurisdiction: Land & Environment Court
Court Matter No.: 11229 of 2015
Penalty Infringement Number:
Type of Matter: Class 1 - Appealed Deemed Refusal
Council File Reference: DA272/2015/1
Status: Discontinuance
F1 Account Number: 141.2620.A099

Precis
This is an appeal against the deemed refusal of an application for alterations and additions to existing building including new garaging to Darling Point Road; new attic level with dormer windows and new re-pitched roof and the strata sub-division of the building. First directions hearing to be held on 21 January 2016. The Respondent to file and serve a Statement of Facts and Contentions by 25 February 2016. The appeal is listed for a preliminary s.34 conference on 22 March 2016. The proceedings are listed for a second directions hearing on 31 March 2016. Appeal to be discontinued on 18 March 2016.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
Cracknell & Lonergan Architects Pty Ltd v Woollahra Municipal Council
6-10 Cecil St Paddington, PADDINGTON

Jurisdiction: Land & Environment Court
Court Matter No.: 11163 of 2015
Penalty Infringement Number:
Type of Matter: Class 1 - Appealed Determination
Council File Reference: DA171/2015/1
Status: Awaiting s34 Conference
F1 Account Number: 141.3620.A098

Precis

This is an appeal against the refusal of an application for the alterations and additions to the existing two (2) storey warehouse building and its adaptive re-use as a four (4) storey boarding house comprising twenty seven (27) self-contained rooms including a caretakers room, ground floor parking comprising of six (6) car parking spaces and one (1) motorcycle space accessed from Cecil Lane and associated landscaping. First directions hearing to be held on 28 January 2016. In addition a Notice of Motion has been lodged with a returnable date of 17 December 2015. The matter has been set down for a s34 conference on 1 March 2016 commencing onsite at 3:30am. The statement of facts and contentions is due to be filed and served Thursday, 4 February 2016. The applicant is to provide amended plans by 7 March 2016 and further details by 14 March 2016. Respondent to supply response to amended plans by 14 March 2016. The applicant to provide final plans by 21 March 2016. The matter is listed for an eCourt communication on 27 March 2016 to advise the Court of the status of the matter and notification requirements.

Parties to Proceeding

Land to which proceeding relates

Critical Dates
Our Legal Team for this matter
Company Search
Judgement

Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
Teda Bayside Pty Ltd v Woollahra Municipal Council
4-8 Patterson St, DOUBLE BAY

Jurisdiction: Land & Environment Court
Court Matter No.: 11223 of 2015
Penalty Infringement Number:
Type of Matter: Class 1 - Appealed Determination
Council File Reference: D546/2014/1
Status: Awaiting s34 Conference
F1 Account Number: 141.3620.A105

Precis
This is an appeal against the refusal of an application for the demolition of 3 existing dwellings and structures over 3 sites and the construction of a new 9 storey residential flat building for 28 units and basement car parking for 18 vehicles; landscaping and sideworks; consolidations of the allotments and strata subdivision. First directions hearing to be held on 21 January 2016. The appeal is listed for a preliminary s.34 conference on 29 February 2016. The Respondent to file and serve its Statement of Facts and Contentions by 29 January 2016. The proceedings are listed for a second directions hearing on 8 March 2016. The matter is further adjourned.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
Andrew Graham Mackie v Woollahra Municipal Council
17 &19 Small St, WOOLLAHRA

Jurisdiction: Land & Environment Court
Court Matter No.: 11148 of 2015
Penalty Infringement Number:
Type of Matter: Class 1 - Appealed Determination
Council File Reference: DA498/2014/1
Status: Judgement Reserved
F1 Account Number: 1413692AC97

Precis
This is an appeal against the Conditions of Consent of an application for the demolition of the dwellings at 17 and 19 Small Street Woollahra and the construction of a new part three, part four storey dwelling-house including basement level car parking, new swimming pool, landscaping, siteworks and consolidation of the allotments. First directions hearing to be held on 27 January 2016. The matter has been adjourned to 19 February 2016. The matter has been set down for a conciliation conference and hearing on 14 and 15 March. Judgement reserved.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
Jewel Rose Bay Developments Pty Ltd v Woollahra Municipal Council
635 New South Head Rd, ROSE BAY

Jurisdiction: Land & Environment Court
Court Matter No.: 10523 of 2015
Penalty Infringement Number:
Type of Matter: Class 1 - Appealed Determination
Council File Reference: D477/2015/1
Status: Stood Over Call-over-Mention
F1 Account Number: 141.3620.A070

Precis
This is an appeal against the refusal of an application for the demolition of existing dwelling and erection of residential flat building comprising 3 apartments and basement car parking. First directions hearing to be held on 15 July 2015. This matter is listed for a s34 conciliation conference on 17 September 2015, commencing on-site at 9.30am and then returning to Court. Deferred to allow for the applicant to submit amended plans. Directions hearing to be held on 29 October 2015. The matter has been stood over to 13 November 2015. The matter has been listed for a telephone directions hearing on 18 March 2016. The matter has been adjourned.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
22 New South Head Rd, VAUCLUSE

Jurisdiction: Land & Environment Court
Court Matter No.: 41024 of 2015
Penalty Infringement Number: 
Type of Matter: Class 4 - Orders & Civil Enforcement
Council File Reference: DA37/2015/1
Status: Awaiting Callover-Mention
F1 Account Number: 141.3620.4093

Precis
Class 4 Proceedings against the First and Second respondents. The applicant seeks the following relief; a declaration that development consent granted by the Second Respondent to the First Respondent on 17 August 2015 is void and of no effect; an order that the First Respondent be permanently restrained from acting upon the Consent; an order that the Respondents pay the Applicant’s costs of these proceedings; such further or other relief or order the Court considers appropriate. First directions hearing to be held on 11 December 2015. Matter adjourned to 12 February 2016 to allow s82A application to be determined. The s82A review consent was issued on 8 February 2016. The matter has been adjourned to 11 March 2016. Awaiting further directions on 18 March 2016. The matter has been listed to a further callover.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Woollahra Municipal Council Legal Matter
CSKS Holdings Pty Ltd v Woollahra Municipal Council
2-4 Quarry St, PADDINGTON

Jurisdiction: Land & Environment Court
Court Matter No.: 46459/2014
Penalty Infringement Number: Class 4 - Orders & Civil Enforcement
Type of Matter: DA 2013/0099
Council File Reference: Judgement Finalised
Account Number: 141-3620-A003

Precis

This is a Class 4 Summon which orders the Respondent within 14 days to determine a development application. This summons is listed for 25 July 2014. The matter has been adjourned for 1 week. A directions hearing has been scheduled on 1 August 2014. This matter will more than likely be adjourned at this directions hearing until 22 August 2014 as agreed by Tony Sattler to Stuart Simington to allow DCC to determine the matter on 18 August 2014. Formal orders as follows: a. Amended summons and Applicant's evidence by 29 August 2014; b. Council's response and any evidence by 19 September 2014. Council is to now serve its response by 22 September 2014. The matter is listed for a hearing on 14 October 2014. Judgement reserved. The appeal was dismissed on 4 November 2014. Council to continue to wait until ICAC matter is finalised prior to determining the development application. The ICAC report finalised 18 May 2015 and released in June 2015. Landowners consent withdrawn by NSW Trade and Investment on 8 June 2015.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Annexure 1  Legal Register
Woollahra Municipal Council Legal Matter
Woollahra Municipal Council v A F Edwards
19 Alton St, WOOLLAHRA

Jurisdiction: Land & Environment Court
Court Matter No.: Class 4 - Orders & Civil Enforcement
Penalty Infringement: Order 126/2014
Number: Awaiting Callover-Mention
Type of Matter: F1 Account Number: 151-3626 A005
Council File Reference:

Precis

Class 4 action to enforce the requirements of Council’s Order 126/2014 to demolish the unauthorised third storey to the dwelling. On 5 June 2015 Development Application DA298/2015 was submitted to Council for assessment of the unauthorised works. Proceedings deferred pending determination of DA298/2015. DA 298/2015 refused on 24 September 2015. 21 November 2015 application lodged with Council for a Section 82A review of DA298/2015 refusal. Matter to be reviewed pending outcome of Section 82A review application.

Parties to Proceeding
Land to which proceeding relates:
Critical Dates
Our Legal Team for this matter:
Company Search
Judgement:
Staff Responsibility and Remarks:
Woollahra Municipal Council Legal Matter
Woollahra Municipal Council v Yousef Ahmad, Joseph El-Alam & Joseph Hallal
48 Cambridge Avenue, VAUCLUSE

Jurisdiction: Land & Environment Court
Court Matter No.: 16/40005
Penalty Infringement Number: 
Type of Matter: Class 4 - Orders & Civil Enforcement
Council File Reference: CDC 097-0315
Status: Awaiting Callover-Mention
F1 Account Number: 151-3620-A091 (P/Os 168881 - LTL: 110092 - Jason Lazares)

Precedent
Class 4 proceedings in the Land & Environment Court challenging the validity of comply development certificate CDC 097-0315 for a new dwelling, issued by Joseph Hallal of Phoenix Building Approvals Pty Ltd on 26 March 2015 and modified on 8 December 2015. Matter listed for initial call-over on 19 February 2016. Matter adjourned for a further call over on 18 March 2016. Matter adjourned by consent to 1 April 2016. Undertaking provided that no work will occur on upper level.

Parties to Proceeding
Land to which proceeding relates
Critical Dates
Our Legal Team for this matter
Company Search
Judgement
Staff Responsibility and Remarks
Political Donations – matters to be considered by Councillors at Meetings

Matter before Committee or Council Meeting

Did the applicant, owner (if not the applicant) or someone close to the applicant make a donation in excess of $1,000 that directly benefited your election campaign? (Code of Conduct Cl 4.21)

Do you believe the political contribution creates a significant non-pecuniary conflict of interest for you? (Code of Conduct Cl 4.23)

Did the applicant or someone close to the applicant make a donation less than $1,000 that directly benefited your election campaign? (Code of Conduct Cl 4.2)

Consider appropriate action required. This could include limiting involvement by:
1. participating in discussion but not in decision making (vote),
2. participating in decision making (vote) but not in the discussion
3. not participating in the discussion or decision making (vote)
4. removing the source of the conflict

Staff to record decision process (motions/amendments) and Division of votes for the determinative resolution or recommendation in the meeting minutes.

Is the matter before the meeting a Planning Matter?

Action
Participate in debate and vote on the matter

Staff to record decision process (motions/amendments) and Division of votes for the determinative resolution or recommendation in the meeting minutes.

Action
Declare a significant non-pecuniary conflict of interest, absent yourself from the meeting and take no further part in the debate or vote on the matter (Code of Conduct Cl 4.16(b))

Staff to record decision process (motions/amendments) and Division of votes for the determinative resolution or recommendation in the meeting minutes.

Action
Declare a significant non-pecuniary conflict of interest, absent yourself from the meeting and take no further part in the debate or vote on the matter (Code of Conduct Cl 4.16(b))

No

Yes

Yes

No

Yes

No