

## Additional Item

**Agenda:** *Development Control Committee*

**Date:** *Monday 17 March 2008*

**Time:** *8.00 pm*

**Session:** *Two*

**Item:** *R1*

**Development Control Committee**

## **Outline of Meeting Protocol & Procedure:**

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

## **Delegated Authority (“D” Items):**

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

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

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

**Committee Membership:** 7 Councillors

**Quorum:** The quorum for a committee meeting is 4 Councillors.

# **Additional Information Relating to Committee Matters**

**Site Inspection**

**Other Matters**

**Additional Item**  
**Meeting Agenda**  
**Session Two – Commencing 8.00pm**  
**Part Four**

<b>Item</b>	<b>Subject</b>	<b>Pages</b>
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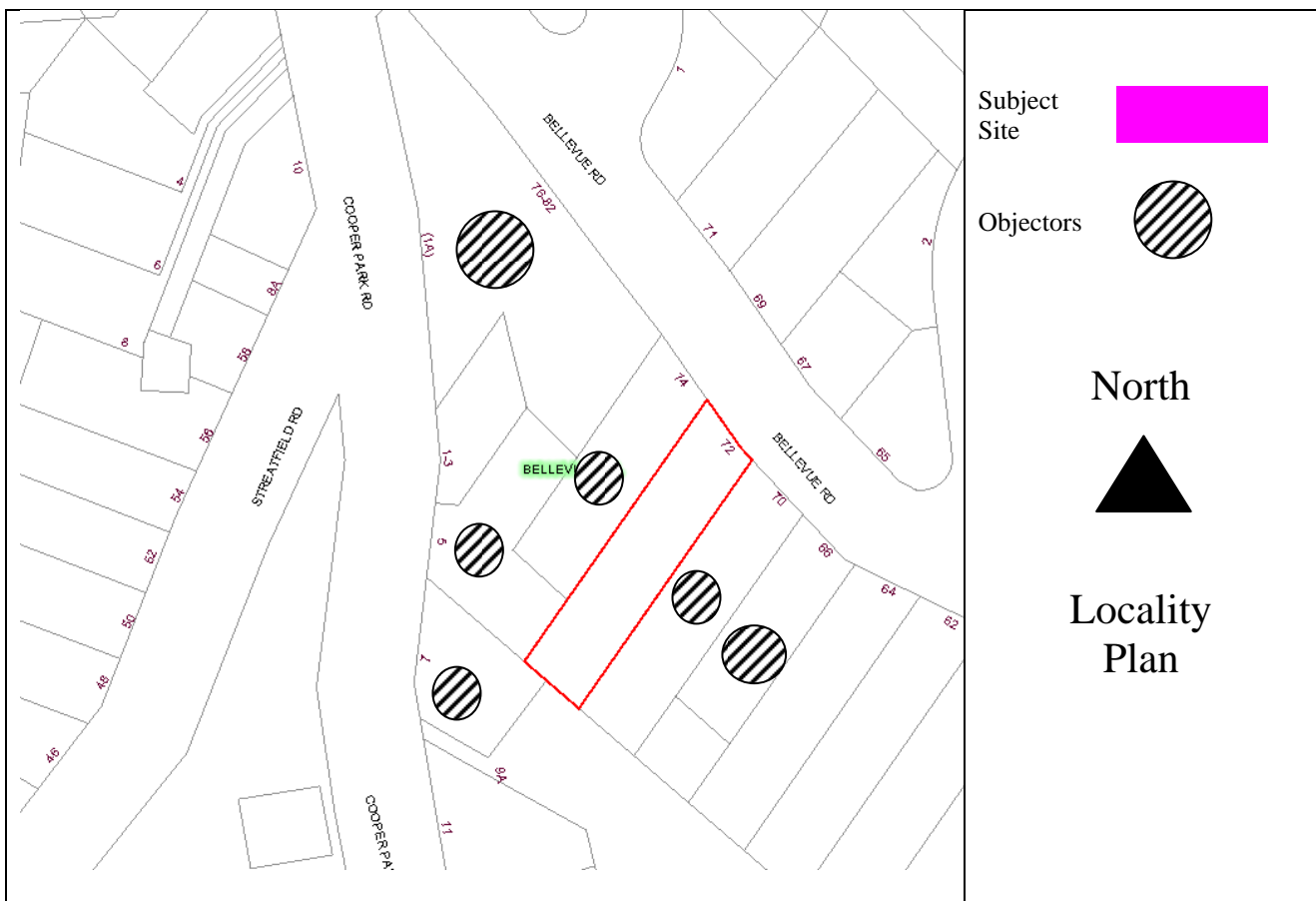
**Items to be Submitted to the Council for Decision  
with Recommendations from this Committee**

R1	DA137/2006 – 72 Bellevue Road, Bellevue Hill – Section 82A Review – Demolition of existing dwelling & construction of a residential flat building containing 3 units, car parking, swimming pool & landscaping – 30/5/2007 <b>*See Recommendation Page 398</b>	370-500
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## SECTION 82A REVIEW OF DETERMINATION REPORT

<b>ITEM No.</b>	R1
<b>FILE No.</b>	DA 137/2006
<b>ADDRESS:</b>	72 Bellevue Road, Bellevue Hill
<b>PROPOSAL:</b>	Review of refusal
<b>DATE DA DETERMINED:</b>	5 February 2007
<b>SUBJECT OF REVIEW:</b>	Demolition of the existing dwelling and construction of a residential flat building containing 3 units, car parking, swimming pool and landscaping
<b>DATE S82A REVIEW APPLICATION LODGED:</b>	30/05/2007
<b>APPLICANT:</b>	Mr G Klauzner
<b>OWNER:</b>	Tuheta Pty Ltd
<b>REVIEW OFFICER:</b>	Mr J La Posta

### LOCALITY PLAN



## 1. SUMMARY

### Reason for report

The original development application was refused by Council's Development Control Committee. In accordance with Council's delegations, the application is referred to the DCC as an R item to go before Full Council for determination.

### Issues

- drainage issues
- number of building stories
- side setbacks
- objectors concerns

### Objections

- Six (6) submissions were submitted to the original application.
- Six (6) objections have been submitted to the 82A review

### Recommendation

The application is recommended for approval subject to conditions.

## 2. BACKGROUND

The original application was refused by the DCC for the following reasons:

### 1. *View sharing*

*The proposal does not comply with the objectives and performance criteria for view sharing contained in the Woollahra Residential Development Control Plan 2003 (WRDCP 2003) Parts O5.5.2 and C5.5.6) and as a result would not ensure equitable access to views from the adjoining dwelling at No.70 Bellevue Road.*

### 2. *Height and number of storeys*

*The proposal does not comply with the numerical standard and objectives (a)(b) and (c) for height contained in Clauses 12AA and 12 of the Woollahra Local Environmental Plan 1995 (WLEP 1995) and also does not comply with the performance criteria for building height – storeys (WRDCP 2003 Part C4.6.7.3) as it does not satisfy all other WRDCP controls including view sharing, deep soil landscaped area and side boundary setbacks.*

### 3. *Excavation*

*The proposal does not comply with the objectives and performance criteria for excavation (WLEP 1995 Clause 2(1)(h), 2(1)(i), 18 (1) (e) (natural landforms) and WRDCP 2003 Parts C4.6.7.1, O5.2.4 and C5.2.17). This would result in unsatisfactory temporary and permanent impacts including acoustic and visual impacts to adjoining properties, subterranean landscaped area at the frontage, subterranean habitable rooms and an excessively long driveway.*

**4. Streetscape**

*The proposal does not comply with the objective for streetscape (WLEP cl.2(2)(1) of WLEP 1995, WRDCP 2003 Part O5.1.5) because of the excavated frontage and built form which are uncharacteristic and would not adequately recognise predominant streetscape qualities.*

**5. Deep soil landscaped area**

*The proposal does not comply with the objective and performance criteria for deep soil landscaped area (WRDCP 2003 Parts O5.3.1, C5.3.1 and C 4.6.7.1) as it would not ensure adequate provision of accessible and useable landscaped open space, is deficient in overall deep soil landscaped area and the deep soil landscaped area at the frontage is subterranean.*

**6. Acoustic and visual privacy**

*The proposal does not comply with the objective and performance criteria for acoustic and visual privacy (WRDCP 2003 Part O5.8.1 and Parts C5.8.2, C5.8.4, C5.8.5, C5.8.6 and C5.8.7) and as a result would not ensure adequate acoustic and visual privacy for occupants and neighbours.*

**7. Side boundary setbacks**

*The proposal does not comply with the purposes, objectives and performance criteria for side boundary setbacks (cl.2(2)(1) of WLEP 1995, WRDCP 2003 Part 5.2, Parts O5.2.2 and C5.2.5). This would result in unreasonable visual and acoustic impacts, overshadowing and privacy impacts on the adjoining dwellings.*

**8. Stormwater drainage disposal**

*Development consent of the proposal is prohibited under Clause 25(2) of WLEP 1995 in that adequate provision has not been made to date for the disposal of stormwater from the land.*

**9. Floor space ratio**

*The proposal does not comply with objectives of the floor space ratio standard (WLEP 1995 Clause 11AA (b) (c) and (d)) because it would not accord with the desired future character objectives for the precinct, would not minimise adverse environmental effects on the use and enjoyment of adjoining properties and would not relate well to the existing character of the surrounding built environment as viewed from the street.*

**10. Front fence**

*The proposal does not comply with the objectives and performance criteria in regard to the front fence (WRDCP 2003 Part C4.4.5) because it would not contribute positively to the streetscape or achieve passive surveillance of the street.*

**11. The proposal is not in the public interest.**

## **12. Bulk and Scale**

*The bulk and scale of the building and in particular in the bulk and scale of that part of the building that extends beyond the rear building line of the neighbouring dwelling is excessive.*

## **3. DESCRIPTION OF PROPOSAL SUBJECT OF REVIEW**

Demolition of the existing dwelling and construction of a residential flat building containing 3 units, car parking, swimming pool & landscaping

## **4. DESCRIPTION OF PROPOSED REVIEW**

The original application proposed the demolition of a dwelling and construction of a residential flat building containing three (3) units, car parking, swimming pool and landscaping. Specifically the works included:

- 3 x 4 bedroom units
- basement car park
- the front section of the building is three levels with basement car park below
- the rear section of the building is part 2 / part 3 stories
- a single width driveway provides access from Bellevue Road to the basement garage
- the basement garage is to accommodate 6 spaces for the residents & 1 visitor space
- landscape areas are proposed at the front and rear of the building

The section 82A review plans included the following changes from the original approval:

- reduction in the height of the building
- reduction in the gross floor area of the building
- correction to the RL levels on plans to clarify potential view loss
- the planter box above the driveway has been removed from the drawings
- removal of the swimming pool and additional deep soil landscaping provided on the site
- increased sill height to numerous side facing windows
- reduction in the area of roof terrace to the rear of the site

On the 21 January 2008 the applicant submitted amended plans. The plans detailed the following changes:

- the lowering of the rear section of the building by 400mm (from RL89.45 to RL89.05)
- a 1m wide planter along the western side of balcony on the first and second floors
- highlight windows for the first floor western elevation living area
- different colour tones for the ground and first floors
- a masonry wall enclosing the curved access ramp
- additional landscaping beside the new masonry wall of the access ramp
- additional landscaping along the western boundary (from the end of the access ramp to the rear alignment of the proposed building).

Council notified the applicant that the submitted Floor Space Ratio calculations within the Statement of Environmental Effects were erroneous having regard to the definition of gross floor area within the Woollahra LEP 1995. Subsequently the applicant made modifications (reductions) to the application to ensure compliance with this development standard. Accordingly amended plans (Rev E) were submitted to Council proposing the following changes:

- deletion of the western end of the second floor front balcony
- deletion of the raised access adjoining the garage bins storage area



- reconfiguration of bins storage
- increase side boundary setback (both sides) by 110mm to the lower level of unit two

An amended landscape plan and BASIX certificate (183754M) was also submitted to Council.

The Revision E plans submitted to Council will form the basis of this assessment.

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

## **5. COUNCIL'S STATUTORY RESPONSIBILITIES UNDER S82A**

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

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

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

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

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

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

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

## **6. CONSIDERATION OF REVIEW**

### **6.1 Substantially the same development**

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

### **6.2 REFERRALS**

### 6.2.1 Building

The proposal has not been assessed for its compliance with the Building Code of Australia. Should the application be approved and it is found there are issues of compliance with the BCA, then the applicant may need to submit a Section 96 application.

### 6.2.2 Technical Services

Council's Team Leader of engineering, Mr Nick Tomkins provided the following referral response:

#### *Site Drainage comments*

*Stormwater disposal concept plan prepared by CHH Partnership P/L Dwg No HS001, 002 Rev A dated 14-02-2006 are unacceptable as they are proposing to redirect stormwater out of the natural drainage catchment by pumping it up to the street. This places an unexpected burden on public drainage infrastructure effected by the redirected flows and can contribute or create flooding problems in the alternate catchment. The drainage is to be by gravity means and is drain to the rear of the property and drainage easements and pipeline provided to drain to Council's existing drainage system in Cooper Park Road*

*Due to the increase in developed area, the stormwater is to be routed through an On Site Detention as required in Council's draft Development Control Plan Stormwater Drainage Management (draft version 1, public exhibition copy dated 23 August 2004)*

*Revised drainage plans including the above amendments are 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 Draft Stormwater Development Control Plan and Local Approvals Policy. This is to ensure that site stormwater is disposed in a controlled and sustainable manner*

#### *Easement comments*

*Negotiations have been underway between the applicant and Woollahra Council to create an easement for interallotment drainage as shown on Councils Plan Annexure 2. Council is the owner of the land below the development site. These negotiations have almost been completed with Council at its meeting of 17 December 2007 resolved:*

*"A. That Council agree to the granting of a new easement for stormwater drainage by transfer to the owner of 72 Bellevue Rd, Bellevue Hill as favouree in respect of a 1.575 metre wide portion of 9A Cooper Park Rd; subject to (B).*

- i) The owner of No 72 paying \$10,000 plus GST in compensation to Council.*
- ii) The owner of No 72 to financially compensate Council for all its costs based on a notional 375 mm stormwater pipe installation, including valuation, legal fees, surveyor fees, and any other unspecified costs related to the proposal.*

*B. That the Common Seal of Council be affixed to the 88B Conveyancing Act 1919 instrument for creation of the easement; subject to certification from Council's solicitors that the document protects the Council's interests."*

*As the land below the site at 9A Cooper Park Rd is classified as Community Land, Council is required to publicly advertise its proposal to grant a private easement. This will occur in the latter part of February 2008 and to date this is yet to commence.*

*However while the creation of an easement is intended it has not yet been created and the drainage of the site does not comply with clause 25(2) of Councils LEP 1995, "Council must not grant consent ..... unless (Council) is satisfied that adequate provision has been made for the disposal of stormwater from the land..."*

#### *Interallotment Drainage comments*

*The interallotment drainage line is to be in accordance with Council's Plan Annexure 1.*

*The pipe is to be a minimum of 375mm diameter reinforced concrete pipe and is to be constructed from the site through No 9a Cooper Park Rd and connect to Council's existing underground drainage system in Cooper Park Road at Pit No E (A7).*

*The pipeline is to be located at sufficient depth so as to not interfere with the proposed driveway access as shown on plan of driveway long section Annexure 3*

#### *Flooding comments*

*Hydrological/Overland Flow Study by Martens Consulting Engineers Ref: P0601374JR01\_v1 dated March 2006 provides the following recommendations*

*"Hydraulic modelling results shows that road section (section 4) at entrance of the proposed development has a overland flow height of 87.94 m AHD for 1 in 100year ARI storm event and only 0.47 m<sup>3</sup>/sec of flow is carried through the road gutter system and rest of the flow (1.45 m<sup>3</sup>/sec) spilling into the proposed development through the entrance path way.*

*Our recommendation is to raise the driveway entrance level to contain the 100 year ARI overland flow to the following levels including a freeboard of 150mm:*

- Upslope driveway level 88.05m AHD.*
- Mid driveway level 87.95m AHD.*
- Lower driveway level 87.81m AHD. "*

*The Access Ramp Section plans by Gennady Klauzner architects Dwg No DA06 dated Feb 06 are to be adjusted internally with the provision of a threshold to avoid the ingress of flood waters*  
*Construction Management comments*

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

#### *Impacts on Council Infrastructure comments*

*The existing crossing is to be removed and a new driveway 3.5m wide is to be constructed on the northern side of the property. The remainder of the footpath, K&G etc are in serviceable condition. Conditions applied.*

#### *Traffic comments*

*The expected traffic generation from the proposed development is typical for the zoning of the site.*

### *Vehicle Access & Accommodation comments*

*The proposed driveway profiles by Access Ramp Section details by Gennady Klauzner architects Dwg No DA06 dated Feb 06 are generally acceptable. However these are to be amended to incorporate the:*

- *flooding requirements as detailed above and comply with AS2890.1. and*
- *as there are only 3 units in this block then the maximum gradient is the same for Domestic Driveways as defined in AS2890.1 and as a result the maximum grade on the inside of the driveway curves is 1:4(25%).*

*As the driveway is single width and must accommodate two-way traffic a traffic signal system must be installed on the driveway to ensure that vehicles do not reverse out on to the street or into the subject property.*

*To protect pedestrians the sight distance available to drivers exiting the property is to be sufficient to alert them of oncoming vehicles and/or pedestrians. The walls/landscaping on either side of the driveway must not exceed the requirements in WRDCP Sect C5.5.8.*

*The required number of carparking spaces is 7, 6 for residents and 1 for visitors. The application complies.*

*The proposed carpark will require some minor changes in order to comply with AS 2890.1. Geotechnical, Hydrogeological and/or Structural comments*

*A Geotechnical Report by Martens Consulting Engineers Ref: P0501313JR01\_v1 dated January 2006 has been submitted in support of the application. The proposal involved excavation about 5.5m/6m below the existing ground level for the underground carpark at the front of the site.*

*The report identified that the property has various layers of silty sand with increasing clay and moisture content to a depth of approx 3m where sandstone bedrock was encountered. No groundwater was encountered*

*The report made comments and recommendations on the following:*

- *Soil profile*
- *Stability*
- *Risk assessment and management*
- *Vibration / vibration monitoring*
- *Hydrogeological assessment*
- *Construction management*

*Conditions covering these matters as well as others i.e. dilapidation reports identified by Council can be added.*

### *Other comments*

*Due to the likelihood of additional power usage as a result of the new development, Energy Australia has requested that the applicant contact them with regards to the possible provision of a new Electricity Substation on site.*

### *Recommendation*

*Council's Development Engineer has determined that the proposal still does not satisfy Technical Services as the required drainage easement has not been finalised.*

Condition A.3 has been imposed on the consent to address the outstanding drainage concern having regard to clause 25(2).

Technical Services provided the Assessment Officer with conditions of consent subject to the drainage issue being satisfactorily addressed. The following conditions A.4, A.5, C.1, C.2, C.4, C.5, C.10, C.11, C.12, C.13, C.14, C.15, D.2, D.3, D.4, D.5, D.6, D.9, E.3, E.7, E.10, E.11, E.12, E.13, E.14, E.17, E.18, E.22, F.3, F.4, F.5, G.1, H.4, H.5, I.3, I.4 have been imposed on the consent

### **6.2.3 Tree Management**

Council's Trees and Landscaping Officer Simone Zeibots provided the following referral response:

#### ***ISSUES***

*Inadequate contribution of tree canopy coverage to the area.*

#### ***COMMENTS***

*The submitted landscape plan appears to make a contribution to tree canopy coverage within the area by proposing to plant four canopy specimen trees within the property and approximately 20 small trees to provide screening along the side boundaries within the rear of the property. In addition to the proposed landscaping Councils Tree Management Department recommends that a tree be planted on the Council verge at the front of the property. The species of tree will be to Councils specifications and will contribute to the streetscape value of the area.*

*The accompanying arborist report for the above development application identifies a tree along the western boundary of the neighbouring property, 70 Bellevue Rd Bellevue Hill. The report identifies the tree as a *Tibouchina granulosa* Purple Glory bush. The subject tree is not this species. At the time of inspection the subject tree has been identified as an *Elaeocarpus* sp. With a *Tibouchina granulosa* Purple Glory bush growing near the base.*

#### ***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 A.4, C.9, E.8, E.9, F.2, H.2 of Consent.*

### **ENVIRONMENTAL ASSESSMENT UNDER S.79C**

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

### **6.3 RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION**

### 6.3.1 SEPPs

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

*State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* ("BASIX") applies to the proposed development. The application was accompanied by BASIX Certificate (No. 183754M) committing to environmental sustainability measures.

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

#### State Environmental Planning Policy No. 55

Under clause 7 (1) (a) of State Environmental Planning Policy No. 55 – Remediation of Land, consideration has been given as to whether the land is contaminated. An assessment of the *Initial site evaluation* undertaken in the original assessment concluded that the land does not require further consideration under clause 7 (1) (b) and (c) of SEPP 55.

### 6.3.2 REPs

#### *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*

The subject site is within the area to which the SREP applies. This plan has the following aims with respect to the Sydney Harbour Catchment:

- (a) *to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained:*
  - (i) *as an outstanding natural asset, and*
  - (ii) *as a public asset of national and heritage significance, for existing and future generations,*
- (b) *to ensure a healthy, sustainable environment on land and water,*
- (c) *to achieve a high quality and ecologically sustainable urban environment,*
- (d) *to ensure a prosperous working harbour and an effective transport corridor,*
- (e) *to encourage a culturally rich and vibrant place for people,*
- (f) *to ensure accessibility to and along Sydney Harbour and its foreshores,*
- (g) *to ensure the protection, maintenance and rehabilitation of watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity,*
- (h) *to provide a consolidated, simplified and updated legislative framework for future planning.*

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

### 6.3.3 Section 94 contribution

Council's Section 94 Contributions Plan is not applicable to the proposal, however a monetary contribution is required under Council's Section 94A Development Contributions Plan 2005. The Section 94A contribution is calculated as follows:

Levy = 1% (levy rate) x \$1,450,000 (proposed cost of development)  
= \$14,500.00

The total contribution = \$14,500.00

This requirement is outlined in **Condition C2**.

### 6.3.4 Other relevant legislation

None relevant.

## 6.4 WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

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

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

#### 6.4.1 Statutory compliance table

Site Area: 999m <sup>2</sup>	Existing	Proposed	Control	Complies
Lot Frontage	16.22m	16.22m	15m minimum	Yes
Overall Height	9m	9.5m	9.5m	Yes
Floor Space Ratio	Not known	0.749:1 (748.7m <sup>2</sup> )	0.75:1 (749m <sup>2</sup> )	Yes

#### 6.4.2 Site area and frontage standards

The site complies with the minimum site width requirements for residential flat buildings containing 3 dwellings as prescribed by the Woollahra LEP 1995.

#### 6.4.3 Height

The application proposes a maximum height of 9.5 metres, compliant with the maximum statutory height control prescribed in clause 12(1) of the Woollahra LEP 1995.

#### 6.4.4 Floor space ratio

The Revision E plans submitted to Council propose a Floor Space Ratio (FSR) of 0.749:1, compliant with the statutory floor space ratio prescribed in clause 11(1)(a) of the Woollahra LEP 1995.

#### 6.4.5 Other special clauses/development standards

##### Clause 18 Excavation:

The proposed development involves excavation to accommodate the basement level car park and the front section of the ground floor level.

A maximum excavation depth of 6 metres will be required to achieve a basement floor level of RL81.215.

A geotechnical investigation report was prepared by Martens Consulting Engineers. The report makes the following comments in regards to the excavation conditions:

### **Geotechnical Assessment**

*“Sandstone bedrock exists at a depth of approximately 2-3 metres below natural ground level”*

*“Further testing is recommended given that foundations are expected to be required to extend to bedrock”*

*“There was no evidence of recent slope instability on-site”*

*“No evidence of gross instability was observed and we consider this form of instability unlikely to occur. Soil creep is possible but is would be very slow and have an insignificant consequence”*

*“The proposed development is considered to constitute a Very Low – Low risk to property resulting from slope instability. This assessment is based on an unlikely likelihood of slope instability and a minor consequence to life and property should instability occur. The implication of such a risk are generally acceptable according to the AGS (2000) guidelines on landslide risk management and Woollahra Council (2002) guidelines for geotechnical and hydrogeological assessment, provided that good hillslope engineering practices and comprehensive site management are employed during all site works.”*

### **Hydrogeological Assessment**

#### **Risk Assessment**

*“Given the likely depth of groundwater, the proposed development is unlikely to impact local groundwater levels within bedrock. Local dewatering is therefore unlikely”.*

#### **Risk management Recommendations**

*“An investigation of the local ground water resource found that the proposed development construction works is not expected to intercept the permanent water table. Ephemeral groundwater flows may be encountered and should be dealt with as prescribed for ground water seepage flows.”*

#### **Construction management**

*“In the event that the proposed development works cause an adverse impact on the neighbouring properties, works should cease immediately. The nature of the impact should be documented and reasons for the adverse impact investigated. This may require site inspections by a qualified person such as a geotechnical or structural engineer”.*

Cl.18 of WLEP 1995 requires Council 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, and*
- (b) *public safety, and*
- (c) *vehicle and pedestrian movements, and*
- (d) *the heritage significance of any heritage item that may be affected by the proposed excavation and its setting; and*
- (e) *natural landforms and vegetation, and*
- (f) *natural water runoff patterns.*

The provisions of Cl.18 are addressed as follows:

The temporary amenity impacts are assessed as follows:

- (i) Noise: The excavation process will cause noise impacts. Condition E.6 of the consent limits the hours when excavation may occur and the duration of the excavation.
- (ii) Vibrations: The geotechnical investigation report considers the impact of vibrations. Condition C.11 requires the applicant to prepare a vibration monitoring program and Condition E.13 requires certification to be given prior to the program being implemented.
- (iii) Dust: Condition E.10 requires the applicant to implement appropriate measures to control dust.
- (iv) Erosion: Conditions D.9, E.10, E.14 requires the applicant to implement best practice techniques to control erosion from the site.
- (v) Support to existing land and building both with the site and neighbouring site: Conditions A.4, E.11 requires the applicant to comply with the requirements of the geotechnical reports, whilst Condition D2 requires the applicant to undertake a dilapidation report of the potentially effected properties.
- (vi) Ground Water: It is not envisaged that the proposed development will impact on local groundwater levels. Local dewatering is therefore unlikely
- (vii) On-site processing of excavated materials: It is not proposed to process excavated material on-site.

The permanent amenity impacts of the proposed excavation are assessed as follows:

- (i) Landform: Following consideration by Council's Tree and Landscaping officer, the location and extent of excavation would not impact on any significant vegetation.

The proposal would ensure sufficient deep soil landscaping within the site to satisfy the numeric requirements of the WRDCP 2003.

- (ii) Support to existing land and building both within the site and neighbouring site: It is anticipated that when completed the development will result in a high level of geotechnical stability across the site and surrounding properties.
- (iii) Ground water levels: It is not envisaged that the proposed development will impact on local groundwater levels. Local dewatering is therefore unlikely

Subject to conditions, the proposed excavation is acceptable in terms of Clause 18.

## **Clause 24 Land adjoining public open space:**

The subject property is adjoined for more than half the length of its rear boundary by land owned by Woollahra Council zoned for public open space. This adjoining land is known as 9A Cooper Park Road and is connected to Cooper Park.

In accordance with Clause 24(2) an assessment is required of the impact of the proposed development (including stormwater drainage in this case) on the public open space and whether there is conflict with the existing plan of management for Cooper Park.

Subject to stormwater and overland flow being adequately controlled the proposed development is consistent with the plan of management approved by Council on the 9 March 2001.

## **Clause 25 Water, wastewater and stormwater:**

### **Clause 25 (2) of the Woollahra LEP 1995 stipulates the following:**

*“The Council must not grant consent to the carrying out of development on land or the subdivision of land to which this plan applies for any purpose unless it is satisfied that adequate provision has been made for the disposal of stormwater from the land it is proposed to develop”.*

On 3 December 2007, Council’s Corporate and Works Committee considered the granting of a new easement for stormwater drainage from the subject property, through the Council owned land at 9A Cooper Park Road. On the 17 December 2007 Full Council agreed to the easement and adopted the following resolution:

- A. *That Council agree to the granting of a new easement for stormwater drainage by transfer to the owner of 72 Bellevue Rd, Bellevue Hill as favouree in respect of a 1.575 metre wide portion of 9A Cooper Park Rd; subject to (B).*
- i) The owner of No 72 paying \$10,000 plus GST in compensation to Council.*
  - ii) The owner of No 72 to financially compensate Council for all its costs based on a notional 375 mm stormwater pipe installation, including valuation, legal fees, surveyor fees, and any other unspecified costs related to the proposal.*
- B. *That the Common Seal of Council be affixed to the 88B Conveyancing Act 1919 instrument for creation of the easement; subject to certification from Council’s solicitors that the document protects the Council’s interests.*

The applicant agreed to the above terms of the easement, however as 9A Cooper Park Rd is classified as Community Land, Council is required to publicly advertise its proposal to grant a private easement. The commencement date for the advertising was 13 February 2008, with the application advertised over a 28 day notice period. Following discussions with Council’s Property Officer, it is the understanding of the Assessment Officer that no objections have been received following the advertising of the easement.

It is the understanding of the Assessment Officer that the registering of the easement is immanent. Accordingly, Council has imposed condition A.3 on the consent to approve the development with a deferred commencement condition.

In addition that applicant has demonstrated the physical means to provide connection to Cooper Park Road as shown on the annexure 1, 2 & 3 all attached to the report approved by the Corporate and Works Committee. *(These plans have been attached to the Technical Services referral for reference)*

Subject to compliance with condition A.3 the proposal would satisfy the requirements of clause 25.

### Clause 25D Acid Sulphate Soils:

The proposed works are located on land not identified on the Acid Sulphate Soils Planning Map as requiring an assessment of acid sulphate soils under Clause 25D of Woollahra LEP 1995.

### Clauses 26-33 Heritage and conservation area provisions:

The site is not a heritage item, is not in the vicinity of a heritage item and is not located within a heritage conservation area pursuant to WLEP1995.

The proposal is acceptable in terms of the provisions of Clauses 26-33.

## 6.5. DRAFT AMENDMENTS TO STATUTORY CONTROLS

**Amendment 60 of the Draft Woollahra LEP 1995 is not relevant to this assessment.**

## 6.6 DEVELOPMENT CONTROL PLANS

### 6.6.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

Site Area (999m <sup>2</sup> )	Existing	Proposed	Control	Complies
Maximum Number of Storeys – RFB	-	3 + basement car park	2 (additional basement storey may be permitted)*	<b>NO</b>
Building Boundary Setbacks				
Front	7.15m	7.5m	7.5m	Yes
Rear	38m	16.5m	16.375m	Yes
Side (north-west)				
Lower floor	N/A	1.5m	1.5m	Yes
Ground floor	3.0m	3.0m	1.5m	Yes
First floor	3.0m	3.1m	3.5m	<b>NO</b>
First floor (rear building)	N/A	4.5m	4.5m	Yes
Second floor	N/A	5.15m (predominant)	5m	<b>NO</b>
Side (south-east)				
Lower floor	N/A	1.5m	1.5m	Yes
Ground floor	0.9m	1.5m	1.5m	Yes
First floor	0.9m	2.5m	3.0m	<b>NO</b>
First floor (rear building)	N/A	4.5m	4.5m	Yes
Second floor	N/A	4.5m (predominant)	5m	<b>NO</b>
Building Footprint	21.5% (214m <sup>2</sup> )	34% (342.8m <sup>2</sup> )	35% (349m <sup>2</sup> )	Yes
Floor to Ceiling Height – Habitable Rooms	Not known	2.7/2.8m	2.7m	Yes

Site Area (999m <sup>2</sup> )	Existing	Proposed	Control	Complies
Maximum Unarticulated Length to Street	-	9.75m (entry beam)	6.0m	<b>NO</b>
Solar Access to Open Space of Adjacent Properties (Hrs on 21 June)	>50% for 2 hours	>50% for 2 hours	50% (or 35m <sup>2</sup> ) for 2 hours	Yes
Solar Access to Nth Facing Living Areas of Adjacent Properties (Hrs on 21 June)	>3.0 hours	<3.0 hours	3.0 hours	<b>NO</b>
Excavation Piling and Subsurface Wall Setback	-	1.5m	1.5m	Yes
Deep Soil Landscaping – RFB	-	40% (400.1m <sup>2</sup> )	40% (399m <sup>2</sup> )	Yes
Deep Soil Landscaping – Front Setback	56% (67m <sup>2</sup> )	57% (70.9m <sup>2</sup> )	40% (49m <sup>2</sup> )	Yes
Deep Soil Landscaping – Front Setback (Consolidated Area)	40m <sup>2</sup>	24m <sup>2</sup>	20m <sup>2</sup>	Yes
Private Open Space at Ground Level – Total (Unit 2)	-	86m <sup>2</sup> 7m	35m <sup>2</sup> Min dimension 3m	Yes
Private Open Space at Ground Level – Principal Area	-	86m <sup>2</sup> 7m	16m <sup>2</sup> Min dimension 4m	Yes
Private Open Space at Ground Level – Maximum Gradient	<1:10	<1:10	1:10	Yes
Private Open Space – Upper Floor Units in RFBs	-	>8m <sup>2</sup> >2m	8m <sup>2</sup> Min dimension 2m	Yes
Front Fence Height	1.0m	1.2m 1/6m	1.2m/1.5m where 50% transparent	Yes
Side and Rear Fence Height	1.8m	3.8m (acoustic wall) 1.8m (all other walls)	1.8m	Yes
Solar Access to North-Facing Living Areas of Development (Hrs on 21 June)	-	>3.0 hours	3.0 hours	Yes
Minimum Number of North Facing Habitable Rooms	>1	>1	1	Yes
Setback of Bedroom Windows from shared driveway	-	2.1m (Unit 1)	3.0m	<b>NO</b>
Car Parking Excavation	-	Exceeds Building Footprint	Within Building Footprint	<b>NO</b>
Car Parking Spaces – RFB	-	7	7	Yes
Minimum Access Driveway Width	3m	3.5m	3.5m – 6.0m	Yes
Access Driveway Grades – Maximum	-	25%	15%	<b>NO</b>
Access Driveway Grades – Transitional	-	12.5%	12%	<b>NO</b>
Volume of Lockable Storage Spaces per Dwelling	-	Nil	8m <sup>3</sup>	<b>NO</b>

\* existing non-compliance

### Site analysis performance criteria (*Part 3*)

The proposal would satisfy the relevant site analysis performance criteria of the WRDCP 2003.

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

The site is located within the Bellevue Hill South Precinct. The following precinct controls are applicable to the subject site:

- Local Neighbourhood character

The proposal is consistent with the zoning control for the land. The development proposes a contemporary architectural style, maintains a separation in building forms and complies with the landscaping controls for the site.

- Views and Vistas

The proposal maintains the significant view and vista corridors shown on the precinct map.

- Building footprint

Council has calculated the building footprint in accordance with the definition stated in the RDCP 2003. Applying the requirements of this definition the proposed building footprint complies with the 35% footprint prescribed for residential flat buildings in 2(b) Zones.

- Side boundary setbacks

The precinct control is not applicable as the site width is less than 18 metres.

- Location of garages

The proposed garage is to be generally sited below the proposed building form. The garaging will not be visible from the street ensuring this element does not dominate the streetscape. The proposal complies with this requirement.

#### **Bellevue Hill South Minor Street Section**

- Deep soil within frontage

The application proposes 70.9m<sup>2</sup> or 57% of the frontage as deep soil landscaping, compliant with the control.

- Front setback

The proposal complies with the frontage requirements of part 5.2 of the RDCP 2003.

- Building height - stories

C4.6.7.3 of the RDCP 2003 permits development to a maximum height of 2 stories, inclusive of a basement level providing all other controls are met. The proposed works represent a departure from this control. In this instance the departure from the control is acceptable as:

- the proposal has the bulk and scale of a two storey building when viewed from Bellevue Road
- the scale of the building is consistent with the street and provides a transition between 70 & 74 Bellevue Road

- the proposed building generally conforms to the building envelope controls inclusive of FSR, building footprint, front setbacks, rear setbacks and side setbacks (excluding minor non-compliance with the required side setbacks at upper levels)
- the building form preserves the significant views from the public and private domain
- the building does not unreasonably impact on the amenity of the adjoining neighbours
- the proposed level of excavation complies with clause 18 of the WLEP and is supported by Council's Engineers

- Roof form

The proposed roof form is varied and contributes to the architectural design of the building, compliant with the control.

- Street Landscape

Condition E.9 has been imposed on the consent to require the applicant to plant a significant street tree. Subject to condition the proposal would comply.

- Front fence height

The proposed front fence height at the street frontage complies with the maximum 1.2m height permissible in the RDCP 2003. The application includes a secondary fence within the front setback that reaches a height of 1.6 metres above disabled access path. The height of this fence will not be dominant within the streetscape and satisfies the relevant fencing objectives.

- Building articulation

The proposal complies with the maximum unarticulated length.

- Building form

The proposed building height is transitional with the higher sections of the building within the front (upper) sections of the site and the building tapering downwards to a lower height within the rear where the natural ground level is lower.

- Open Space

The proposal ensures that dwelling units at the ground level include a physical connection with the deep soil open space area located to the rear of the site.

- Significant vegetation

The proposal does not seek to remove any significant vegetation from the site.

The proposed development is acceptable having regard to the objectives of the Bellevue Hill South Precinct.

### **Streetscape performance criteria (*Part 5.1*)**

The proposed development addresses the street and provides a residential interface with Bellevue Road. In many respects this is an improvement beyond the surrounding context, whereby garaging and parking structures dominate the street frontage of Bellevue Road.

The proposal satisfies the relevant objectives and performance criteria of the RDCP 2003.

### **Building size and location objectives and performance criteria (*Part 5.2*)**

The proposed development conforms to the majority of the building size and location controls. The only variances sought to the controls are as follows:

- side boundary setbacks at the upper levels of the development
- sunlight to north facing windows of the adjoining neighbour

The objectives relevant to the above mentioned controls seek to ensure sufficient setback between buildings, preserve privacy and sunlight access and ensure that the form of the development is not excessive.

The applicant has submitted shadow analysis demonstrating the existing and proposed level of sunlight access afforded to the neighbours north facing windows. The analysis demonstrates that whilst not all north facing windows receive uninterrupted levels of sunlight for three hours on June 21, the windows that do not comply are limited to a study window which includes an east facing window and two non-habitable rooms. As such, the overshadowing impact on the adjoining property will not unreasonably impact on the amenity of the neighbour, nor detract from the principle habitable areas of the building that will maintain sunlight for a minimum of three hours.

The non-compliance with the side setback control range between 100mm – 500mm and are isolated to the upper most sections of the first and second levels of the building. The departure from each control is not unreasonable as:

- the areas of non-compliance do not impact on privacy and do not unreasonably impact on solar access to the southern neighbour
- the impact of the non-complying setbacks is lessened as the non-complying sections of the building will interface with the built form of the neighbouring properties as opposed to an interface with sensitive rear open space areas or principle outdoor entertaining spaces
- the setbacks proposed are acceptable within the surrounding context, whereby many of the surrounding developments would not comply with Council controls at the upper levels.
- the proposal complies with the sunlight access requirements for the open space areas of the adjoining southern neighbours property

Concern has also been raised from the adjoining neighbours regarding the temporary and permanent impacts of excavation. The location of the proposed excavation conforms to Council's side setback requirements. Furthermore, Council's engineers have concluded that subject to compliance with the Geotechnical Report submitted, the excavation, subject to conditions is acceptable.

### **Open space and landscaping performance criteria (*Part 5.3*)**

The proposed development, subject to the amendments submitted to Council inclusive of the landscape planting and additional screen plantings would satisfy the relevant objectives and controls prescribed by the RDCP 2003.

The application includes plantings within the side setback of the site. Condition C.1(a) has been included on the consent to require the plantings within the side setback of the property to include an approximate mature height of 5 metres to preserve the views from the southern neighbours terrace.

### **Fences and walls performance criteria (Part 5.4)**

As previously discussed the proposed front fence(s) height is / are compliant with the objectives of the RDCP 2003.

Following consideration of the concerns registered by the adjoining neighbour, the applicant has submitted plans which include a masonry acoustic wall ranging in height between 1.6 – 3.2 metres. The proposed wall will continue along the neighbours boundary where adjoining the driveway. Whilst the wall does not conform to the requirements of the RDCP for side fence heights, the variation to the control is acceptable as the purpose of the wall is to provide a visual and acoustic barrier between the driveway and neighbouring properties. Furthermore, the wall is to the southern side of the neighbour's property and will not impact on sunlight access to their ground floor windows.

All other side boundary walls are proposed at a height of 1.8 metres, compliant with Council's controls.

### **Views performance criteria (Part 5.5)**

The proposal would not detract from significant views and vistas from the public domain.

Objective 5.5.2 seeks to encourage view sharing as a means of ensuring equitable access to views from dwellings.

Following a site visit on the 18 December 2007 to the adjoining neighbours' property at 70 Bellevue Road, it was revealed that the immediately adjoining neighbour is afforded views of the Harbour Bridge, Opera House and City Skyline from the main balcony area that is accessed from the principle living areas at the ground or middle level of the dwelling. The proposed rear link and double storey form of the subject application has the potential to obstruct the views currently enjoyed by the southern neighbour. Accordingly an assessment of the impact of the view is required.

The applicant arranged for height poles on the site to facilitate an accurate view loss assessment.

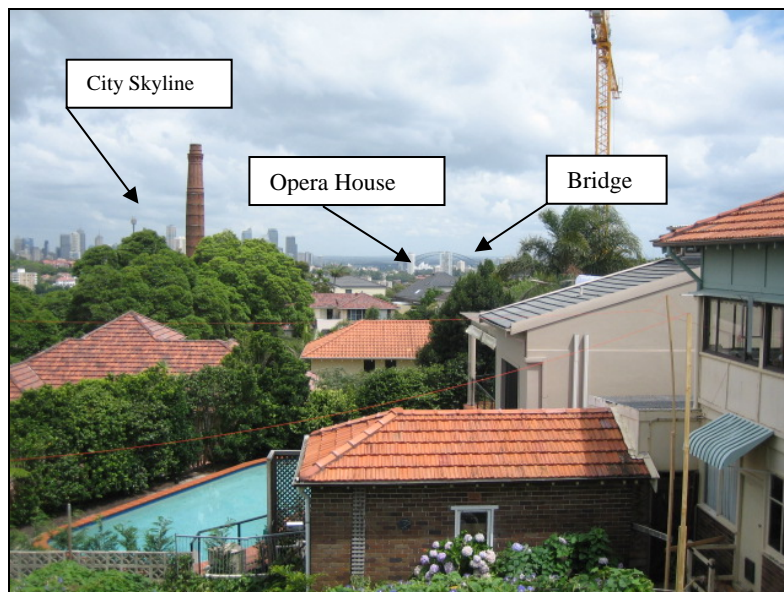
The Land & Environment Court, in *Tenacity Consulting Pty Ltd Vs Warringah Council* (2004), adopted a four-step assessment of view sharing. These steps are as follows:

#### **Step 1. What views will be affected?**

*The Court said: "26 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, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured."*

The view concerned is a panorama of the city skyline including the Opera House and the Harbour Bridge.





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

The Court said: "27 *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.*"

The view is obtained from the principal outdoor entertaining area of the dwelling from both a standing and seated position across the northern (side boundary) of the neighbours allotment.

## Step 3. What is the extent of the impact?

The Court said: "28 *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.*"

The original plans submitted with the 82A review (Rev C) proposed a maximum RL of 89.450 for the rear section of the development that interfaces with the rear deck of the adjoining neighbours.

Following extensive discussion with the Town Planner representing the adjoining property owner at 70 Bellevue Road and Council, the applicant reduced the height of the rear building form (Rev D & E plans) to include a maximum RL of 89.050. This 400mm reduction in the RL height will maintain views of the bridge, opera house and city skyline from both a seated and standing position from the rear terrace.

The impact of view loss is assessed as negligible as only some views within the foreground between the site and iconic elements will be obstructed.

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

The Court said: "29 *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 proposed area of the building that is causing impact is reasonable as:

- the building maintains views of the iconic elements from a seated and standing position
- the existing view is across a side boundary
- the proposed building complies with the height control prescribed the WLEP 1995
- the extent of impact is negligible
- condition C.1(a) has been imposed on the consent to limit the approximate mature height of all landscaping within the side setback of the proposal to 5 metres.

Applying the Planning Principle established by The Land & Environment Court, in Tenacity Consulting Pty Ltd Vs Warringah Council (2004) the proposal is acceptable.

Accordingly the proposal satisfies the relevant objectives and performance criteria of the RDCP 2003.

#### **Energy efficiency performance criteria (Part 5.6)**

The proposal complies with the relevant objectives and performance criteria of the RDCP 2003.

#### **Stormwater management performance criteria (Part 5.7)**

Subject to condition A.3 the proposal is acceptable.

#### **Acoustic and visual privacy performance criteria (Part 5.8)**

The RDCP 2003 seeks to ensure adequate acoustic and visual privacy for occupants and neighbours.

C5.8.2 requires bedroom windows to be a minimum of 3.0 metres from shared driveways. The proposed bedroom windows of unit 1 are within 3.0 metres of the shared driveway resulting in a non-compliance with the control. A variation is acceptable given the low number of units (3) within the proposal and the low number of anticipated vehicle movements along the driveway.

The Revision E drawings submitted to council include an acoustic screen along the north western side of the driveway to minimise the adverse acoustic impact on the adjoining northern neighbour. This measure would ensure that the application complies with C5.8.3 of the RDCP 2003.

The proposal is satisfactory having regard to the acoustic privacy controls of the RDCP 2003.

All windows on the ground, first and second level that have the potential to overlook the open space areas or habitable rooms of the adjoining neighbours have been modified to include a minimum sill height of 1.7 metres above finished floor level.

The proposed terraces located to the rear (south west) of level one and two have been reduced in area and are orientated to look outwards towards the rear of the property. The proposed size and location of the terraces is not considered to unreasonably overlook the adjoining open space areas of the neighbouring properties. The changes shown on the Rev E drawings would prevent the occupants of the development from unreasonably overlooking the open space areas of the neighbouring properties that are within 9 metres.

The proposal is satisfactory having regard to the visual privacy controls of the RDCP 2003.

#### **Car parking and driveways performance criteria (*Part 5.9*)**

The proposed garaging is to be located within the excavated basement area of the site. Whilst objective O5.9.1 of the RDCP 2003 states that the amount of site excavation for the propose of car parking should be limited, the excavation proposed would comply with the setback requirements of the RDCP 2003 and would satisfy the requirements of clause 18 of the Woollahra LEP 1995. Furthermore, the location of the garaging below the building would ensure that car parking and garaging does not dominate or detract from the appearance of the development and local streetscape, thereby satisfying O5.9.3 of the RDCP.

The number of spaces proposed ( 3 units x 2 spaces for each apartment and 1 visitor space) would comply with the numeric requirements of the RDCP 2003.

Whilst the car parking design does not comply with the gradient specifications or passing bay requirements of the RDCP, Council's Technical Services engineer is satisfied with the parking arrangement and access proposed subject to conditions including a two way traffic signal. Furthermore, having regard to the density proposed on site (three units), it is not envisaged that there will be a high number of vehicle movements along the single width driveway.

The proposed departures from Council's controls are supported by Council's Technical Services Department and are acceptable given the circumstances of the site

#### **Site facilities performance criteria (*Part 5.10*)**

The proposal would satisfy the relevant objectives and performance criteria of the RDCP 2003.

#### **Access and mobility performance criteria (*Part 5.13*)**

The proposal would satisfy the relevant objectives and performance criteria of the RDCP 2003.

### **6.6.2 DCP for off-street car parking provision and servicing facilities**

Car parking has been assessed against the requirements of the RDCP 2003 which supersedes the Off-street car parking DCP for residential development.

### **6.6.3 Woollahra Access**

The proposal complies with the requirements of the Access DCP.

#### **6.6.4 Other DCPs, codes and policies**

None relevant.

#### **6.7 APPLICABLE REGULATIONS**

None relevant.

#### **6.8 THE LIKELY IMPACTS OF THE PROPOSAL**

All likely impacts have been discussed elsewhere in this report.

#### **6.9 THE SUITABILITY OF THE SITE**

The site is suitable for the proposed development.

#### **6.10 SUBMISSIONS**

The proposal was advertised and notified in accordance with Council's Advertising and Notifications DCP.

Submissions to the original notification were received from:

- Caroline Storch No.5 Cooper Park Road
- Frances Smallbone No.7 Cooper Park Road
- J.A Isaac Property Group Pty Ltd – 76 – 82 Bellevue Rd
- Tony Moody Planning Consultant on behalf of Mr and Mrs Schaffer No.70 Bellevue Road
- Anthony Rowan Planning Consultant on behalf of Mr and Mrs Moss No.74 Bellevue Road
- Dr James Condoleon

The objectors raised the following issues:

- *Non-compliance with Council Controls*

This has been addressed discussed throughout this report.

- *Loss of visual Privacy*

This has been addressed within section 6.6.1 of this report.

- *Loss of Acoustic Privacy*

This has been addressed within section 6.6.1 of this report.

- *Boundary fence concerns*

This has been addressed within section 6.6.1 of this report.

- *Increase in traffic*

This has been addressed within section 6.6.1 of this report.

- *View loss from 70 Bellevue Rd*

This has been addressed within section 6.6.1 of this report.

- *Overshadowing*

This has been addressed within section 6.6.1 of this report.

- *Non-compliance with side setbacks*

This has been addressed within section 6.6.1 of this report.

- *Non-complying FSR*

As discussed above within this report the applicant has amended the plans to comply with the FSR requirements and definition of the Woollahra LEP 1995.

- *Deficiency of information*

The information submitted to Council over the duration of the 82A review process has enabled for an adequate assessment of the application against the requirements of Section 79(c) & Section 82(a) of the Environmental Planning and Assessment Act 1979.

- *Stormwater disposal*

This has been addressed within section 6.4.5 of this report.

- *Non-compliance building footprint*

This has been addressed within section 6.6.1 of this report.

- *Excessive excavation*

This has been addressed within section 6.4.5 & 6.6.1 of this report.

- *Deficient deep soil landscaping*

This has been addressed within section 6.6.1 of this report.

- *Stability of existing boundary retaining walls*

This has been addressed within section 6.6.1 of this report.

The amended drawings (a replacement application as defined by Clause 90 of the *Environmental Planning and Assessment Regulation 2000*) were not renotified under clause 5.1 of the DCP because, having considered clause 9 of the DCP, the replacement application is substantially the same development as the original proposal and the modifications proposed are minor, marginally reduce the building envelope and are considered to have no greater environmental impact upon neighbours.

## 6.11 REVIEW OF ORIGINAL REASONS FOR REFUSAL

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

### 1. **View sharing**

*The proposal does not comply with the objectives and performance criteria for view sharing contained in the Woollahra Residential Development Control Plan 2003 (WRDCP 2003) Parts O5.5.2 and C5.5.6) and as a result would not ensure equitable access to views from the adjoining dwelling at No.70 Bellevue Road.*

The amended proposal maintains the iconic views of the Sydney Harbour Bridge and Opera House from a seating and standing position when occupying the adjoining neighbours' rear terrace at 70 Bellevue Rd.

### 2. **Height and number of storeys**

*The proposal does not comply with the numerical standard and objectives (a)(b) and (c) for height contained in Clauses 12AA and 12 of the Woollahra Local Environmental Plan 1995 (WLEP 1995) and also does not comply with the performance criteria for building height – storeys (WRDCP 2003 Part C4.6.7.3) as it does not satisfy all other WRDCP controls including view sharing, deep soil landscaped area and side boundary setbacks.*

The proposal complies with the height control specified in clause 12 of the Woollahra LEP 1995.

Whilst the number of stories proposed does not conform to the requirements of part C4.6.7.3 of the RDCP 2003, a variation from the control is acceptable as the building generally achieves all building envelope controls, density requirements, open space areas and deep soil landscaping requirements of the WLEP 1995 and RDCP 2003.

### 3. **Excavation**

*The proposal does not comply with the objectives and performance criteria for excavation (WLEP 1995 Clause 2(1)(h), 2(1)(i), 18 (1) (e) (natural landforms) and WRDCP 2003 Parts C4.6.7.1, O5.2.4 and C5.2.17). This would result in unsatisfactory temporary and permanent impacts including acoustic and visual impacts to adjoining properties, subterranean landscaped area at the frontage, subterranean habitable rooms and an excessively long driveway.*

The proposed excavation satisfies the requirements of clause 18 of the WLEP 1995. The variations to the RDCP 2003 controls are warranted as discussed previously within this report.

### 4. **Streetscape**

*The proposal does not comply with the objective for streetscape (WLEP cl.2(2)(1) of WLEP 1995, WRDCP 2003 Part O5.1.5) because of the excavated frontage and built form which are uncharacteristic and would not adequately recognise predominant streetscape qualities.*

The building presents as a complying development to the street, complying with the Precinct controls and streetscape objectives of the RDCP 2003. Condition C.1(a) has been imposed on the consent to lower the front fence height.

**5. Deep soil landscaped area**

*The proposal does not comply with the objective and performance criteria for deep soil landscaped area (WRDCP 2003 Parts O5.3.1, C5.3.1 and C 4.6.7.1) as it would not ensure adequate provision of accessible and useable landscaped open space, is deficient in overall deep soil landscaped area and the deep soil landscaped area at the frontage is subterranean.*

The proposal complies with the numeric requirements and objectives of the RDCP 2003.

**6. Acoustic and visual privacy**

*The proposal does not comply with the objective and performance criteria for acoustic and visual privacy (WRDCP 2003 Part O5.8.1 and Parts C5.8.2, C5.8.4, C5.8.5, C5.8.6 and C5.8.7) and as a result would not ensure adequate acoustic and visual privacy for occupants and neighbours.*

The proposal complies with the numeric requirements and objectives of the RDCP 2003.

**7. Side boundary setbacks**

*The proposal does not comply with the purposes, objectives and performance criteria for side boundary setbacks (cl.2(2)(1) of WLEP 1995, WRDCP 2003 Part 5.2, Parts O5.2.2 and C5.2.5). This would result in unreasonable visual and acoustic impacts, overshadowing and privacy impacts on the adjoining dwellings.*

The proposed development complies with the rear setback.

The departure from the side setback control is minor and does not adversely impact on the amenity of the adjoining neighbour. A variation to the control is acceptable in the circumstances of the site.

**8. Stormwater drainage disposal**

*Development consent of the proposal is prohibited under Clause 25(2) of WLEP 1995 in that adequate provision has not been made to date for the disposal of stormwater from the land.*

Subject to condition A.3, the section 82A review is acceptable having regard to Clause 25(2) of the Woollahra LEP 1995.

**9. Floor space ratio**

*The proposal does not comply with objectives of the floor space ratio standard (WLEP 1995 Clause 11AA (b) (c) and (d)) because it would not accord with the desired future character objectives for the precinct, would not minimise adverse environmental effects on the use and enjoyment of adjoining properties and would not relate well to the existing character of the surrounding built environment as viewed from the street.*

The proposal has been modified to comply with the statutory requirements of the clause 11 of the WLEP 1995.

## **10. Front fence**

*The proposal does not comply with the objectives and performance criteria in regard to the front fence (WRDCP 2003 Part C4.4.5) because it would not contribute positively to the streetscape or achieve passive surveillance of the street.*

The proposed front fence complies with the objectives of the RDCP 2003.

## **11. The proposal is not in the public interest.**

The Section 82A review is in the public interest.

## **12. Bulk and Scale**

*The bulk and scale of the building and in particular in the bulk and scale of that part of the building that extends beyond the rear building line of the neighbouring dwelling is excessive.*

The 82A review has modified the rear section of the building to comply with the relevant building envelope controls of the RDCP 2003. The rear section of the building is no longer excessive.

## **7. CONCLUSION**

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

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

THAT the Council, as the consent authority, grant development consent to Development Application No. 137/2006 for demolition of the existing dwelling and construction of a residential flat building containing 3 units, car parking, swimming pool and landscaping on land at 72 Bellevue Road Bellevue Hill, subject to the following conditions:

### **A. General Conditions**

#### **A.1 Conditions**

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

Standard Condition: A1

#### **A.2 Definitions**

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

*Applicant* means the applicant for this Consent.



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

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

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

*Council* means Woollahra Municipal Council

*Court* means the Land and Environment Court

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

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

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

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

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

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

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

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

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

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

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

*Site* means the land being developed subject to this consent.

*WLEP 1995* means *Woollahra Local Environmental Plan 1995*

*Work* for the purposes of this consent means:

- a. the use of land in connection with development,

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

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

Standard Condition: A2

### **A.3 Deferred Commencement - (s80(3) of the Act, cl.95 of the Regulation)**

Development consent is granted subject that this consent is not to operate until the applicant satisfies the Council, in accordance with the *Regulations*, as to all matters specified in this condition:

- a. That the person with the benefit of this consent must procure an easement for stormwater drainage over one or more of the properties below the land being developed such that stormwater from the development may, by gravity, be piped and directly connected underground to Council's stormwater pipes in Cooper Park Road, Bellevue Hill. Evidence of registration of the easement for stormwater drainage benefiting the land being developed and burdening the title of such properties below the land being developed is provided to Council. Detailed plans and specifications for any new stormwater pipes from the land being developed underground to Council's stormwater pipes in Cooper Park Road, Bellevue Hill being submitted to Council together with an application under Section 138 of the Roads Act 1993 for that portion of the work within Cooper Park Road, Bellevue Hill . Approval being given by Council under Section 138 of the Roads Act 1993 for that portion of the work within Cooper Park Road, Bellevue Hill and for the easement system generally. All stormwater drainage pipes from the land being developed underground to Council's stormwater pipes in Cooper Park Road, Bellevue Hill being completed to the satisfaction of Council. The intent of this condition is that the stormwater drainage system must be in place before the development consent operates such that all surface and other waters collected and filtered of all sediment or the like must be discharged by gravity from the land being developed.

#### **Period within which evidence must be produced**

The applicant must produce evidence to Council sufficient enough to enable it to be satisfied as to those matters above within 365 days (1 year) of the date of determination.

Clause 95(4) of the *Regulation*:

*“The applicant may produce evidence to the consent authority sufficient to enable it to be satisfied as to those matters and, if the consent authority has specified a period for the purpose, the evidence **must be produced within that period.**”*

If the evidence is not produced with within 365 days (1 year) of the date of determination this deferred commencement consent is of no effect, the consent does not operate and no construction certificate can be issued. No development can lawfully occur under this consent unless it operates.

**Note:** Nothing in the *Act* prevents a person from doing such things as may be necessary to comply with this condition. (See section 80(3) of the *Act*)

This consent does not operate until Council has acknowledged compliance with this condition in writing.

**Note:** Implementing the development prior to written confirmation of compliance may result in legal proceedings. If such proceedings are required Council will seek all costs associated with such proceedings as well as any penalty or order that the Court may impose. No *Construction Certificate* can be issued until all conditions including this condition required to be satisfied prior to the issue of any *Construction Certificate* have been satisfied.  
Standard Condition: A3

#### A.4 Approved Plans and supporting documents

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

Reference	Description	Author/Drawn	Date(s)
DA01 – DA05 (All Rev E)	Architectural Plans	Gennady Klauzner Architects	5 Mar 2008
183754M	BASIX Certificate	Department of Planning	25 Feb 2008
	Landscape Plan	Vision Dynamics Pty Ltd	10/02/08
Dwg No DA06	Access Ramp Section details	Gennady Klauzner architects	Feb 06
Ref: P0601374JR01_v1	Hydrological/Overland Flow Study	Martens Consulting Engineers	Mar 2006
Dwg No HS001, 002 Rev A	Stormwater Management Plan	CHH Partnership P/L	Rev A dated 14-02-06
Ref: P0501313JR01_v1	Geotechnical Report	Martens Consulting Engineers	Jan 2006

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

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

#### A.5 Ancillary Aspect of the Development (s80A(2) of the Act)

The owner must procure the repair, replacement or rebuilding of all road pavement, kerb, gutter, footway, footpaths adjoining the site or damaged as a result of work under this consent or as a consequence of work under this consent. Such work must be undertaken to Council's satisfaction in accordance with Council's “Specification for Roadworks, Drainage and

Miscellaneous Works” dated January 2003 unless expressly provided otherwise by these conditions at the *owner's* expense.

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

## **A.6 Prescribed Conditions**

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

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

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

### **B.1 Construction Certificate required prior to any demolition**

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

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

### **B.2 Recording of buildings with little or no heritage significance that are to be demolished:**

A photographic archival record of the building and landscape elements to be demolished is to be submitted prior to the commencement of demolition work and prior to the issue of a Construction certificate.

The photographic archival recording is to be bound in an A4 format and is to include the following:

Site plan at a scale of 1:200 (or 1:500 if appropriate) of all structures and major landscape elements including their relationship to the street and adjoining properties.

Postcard sized photographs of:

- a. each elevation,
- b. each structure and landscape feature;
- c. views to the subject property from each street and laneway or public space.

Each photograph to be mounted, labelled and cross-referenced in accordance with recognised archival recording practice.

One original coloured photographic set and a coloured photocopy are to be submitted to the satisfaction of Council prior to the commencement of demolition work and prior to the issue of a construction certificate. The original will be retained by Council and the coloured photocopy will be provided to the Woollahra Local History Library.

Standard Condition: B4

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

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

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

- a. The proposed broad-leaved paper bark tree as shown on the landscape plan is to be replaced with a brush cherry tree to preserve views from the neighbouring properties.
- b. The provision of an OSD system to control stormwater discharge.
- c. Provision of a drainage system from the site through 9a Cooper Park Road to Cooper Park Road.
- d. Adjustment of the driveway and boundary where necessary to prevent the ingress of floodwaters

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

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

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

Standard Condition: C4

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

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

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

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

Description	Amount	Indexed	Council Fee Code
<b>LONG SERVICE LEVY</b> under Building and Construction Industry Long Service Payments Act 1986			
<b>Long Service Levy</b> Use Calculator: <a href="http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm">http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm</a>	Contact LSL Corporation or use their online calculator	No	
<b>SECURITY</b> under section 80A(6) of the Environmental Planning and Assessment Act 1979			
<b>Property Damage Security Deposit -</b> Making good any damage caused to any property of the <i>Council</i> as a consequence of the doing of anything to which the consent relates.	\$31,000.00	No	T115
<b>DEVELOPMENT LEVY</b> under Woollahra Section 94A Development Contributions Plan 2005 This plan may be inspected at Woollahra Council or downloaded from our website <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a> .			
Development Levy (S94A)	\$14,500.00 + Index Amount	Yes, quarterly	T96
<b>INSPECTION FEES</b> under section 608 of the Local Government Act 1993			
Public Road and Footpath Infrastructure Inspection Fee	\$363.25	No	
Security Administration Fee	\$168	No	T16
<b>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</b>		\$46,031.25	<b>Plus any relevant indexed amounts and long service levy</b>

### Building & Construction Industry Long Service Payment

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

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

#### How must the payments be made?

Payments must be made by:

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

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

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

### **How will the section 94A levy be indexed?**

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

### **Do you need HELP indexing the levy?**

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

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

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

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

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

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

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

Standard Condition: C5

## **C.3 BASIX commitments**

The *applicant* must submit to the *Certifying Authority* *BASIX Certificate* No183754M with any application for a *Construction Certificate*.

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

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

**Note:** Clause 145(1)(a1) of the *Environmental Planning & Assessment Regulation 2000* provides: "A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires,"  
Standard Condition: C7

#### **C.4 Road and Public Domain Works – Council approval required**

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

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

Specific works include:

- a. Full width vehicular crossings having a width of 3.5m in accordance with Council's standard drawing RF2.

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

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

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

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

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

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

Standard Condition: C13

#### **C.5 Utility Services Generally**

The *Construction Certificate* plans and specifications, required by clause 139 of the *Regulation*, must demonstrate that all utility services (telecommunications, electricity, gas, water and waste water) will be provided underground. All service ducts, pipes and conduits must be provided within the fabric of the building (excluding stormwater down pipes).

Where telecommunications and electricity are provided from existing poles in the road they must, in accordance with the relevant suppliers' requirements, be carried to the site underground directly to the main switch board within the fabric of the building.



**Note:** Where adequate provision has not been made for an electrical sub-station within the building, this may necessitate the lodgement of an application to amend this consent under section 96 of the Act to detail the location, landscape/streetscape impacts and compliance with AS2890 as applicable.

The location of service poles and substations required by the relevant suppliers must be shown upon the plans submitted with any *Construction Certificate* application together with a letter from each relevant supplier setting out their requirements.

Proposed water pipes, waste pipes, stack work, duct work, mechanical ventilation plant and the like must be located within the building unless expressly shown upon the approved DA plans. Details confirming compliance with this condition must be shown on the *Construction Certificate* plans and/or detailed within the *Construction Certificate* specifications. Required external vents or vent pipes on the roof or above the eaves must be shown on the *Construction Certificate* plans.

**Note:** The intent of this condition is that the design quality of the development must not be compromised by cables, pipes, conduits, ducts, plant, equipment, electricity substations or the like placed such that they are visible from any adjoining public place. They must be contained within the building unless shown otherwise by the approved development consent plans.

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

**Note:** This condition has been imposed to ensure that where private sewer pipes are old, may leak or may be subject to root invasion (whether from existing or proposed private or public landscaping) that existing cast iron, concrete, earthenware or terracotta pipes be replaced with new UPVC or copper continuously welded pipes between all sanitary fixtures and Sydney Waters sewer main, such that clause 25(1) of WLEP 1995 be satisfied. Further, leaking sewer pipes are a potential source of water pollution, unsafe and unhealthy conditions which must be remedied in the public interest.  
Standard Condition: C20

## C.6 Provision for Energy Supplies

The applicant must provide to the *Certifying Authority* a letter from Energy Australia setting out Energy Australia's requirements relative to the provision of electricity/gas supply to the development.

Any required substation must be located within the boundaries of the site.

Where an electricity substation is required within the site but no provision has been made to place it within the building and such substation has not been detailed upon the approved development consent plans a section 96 application is required to be submitted to Council. Council will assess the proposed location of the required substation.

The *Construction Certificate* plans and specifications, required to be submitted pursuant to clause 139 of the *Regulation*, must detail provisions to meet the requirements of Energy Australia.

Where the substation is required the *Construction Certificate* plans and specifications must provide:

- a. a set back not less than 3m from the road boundary and dense landscaping of *local native plants* to screen the substation from view within the streetscape,

- b. a set back not less than 3m from any other site boundary (fire source feature) and not within the areas required to be kept clear of obstructions to vehicle visibility pursuant to clause 3.2.4 of AS2890.1-1993(See: Figures 3.2 and 3.3),
- c. a set back to and not within the drip line of any existing tree required to be retained,
- d. a setback not less than the 10m from any NSW Fire Brigade booster connection as prescribed by clause 5.6.3(d)(iii) of AS 2419.1-1994 or be separated from any booster connections by a construction with a fire resistance rating of not less than FRL 90/90/90 for a distance of not less than 2 m each side of and 3 m above the upper hose connections in the booster assembly pursuant to clause 5.6.3(c)(ii) of AS 2419.1-1994, and
- e. the owner shall dedicate to the appropriate energy authority, free of cost, an area of land adjoining the street alignment to enable an electricity substation to be established, if required. The size and location of the electricity substation is to be in accordance with the requirements of the appropriate energy authority and Council. The opening of any access doors are not to intrude onto the public road reserve.

**Warning:** If the substation is not located within the building its location, screening vegetation, all screen walls or fire separating walls must have been approved by the grant of development consent or amended development consent prior to the issue of any *Construction Certificate* for those works. Documentary evidence of compliance, including correspondence from the energy authority is to be provided to the *Certifying Authority* prior to issue of the *Construction Certificate*. The *Certifying Authority* must be satisfied that the requirements of energy authority have been met prior to issue of the *Construction Certificate*.

**Note:** This condition has been imposed because the application fails to provide sufficient detail (either by plans or by the Statement of Environmental Effects) demonstrating that provision has been made to EnergyAustralia's satisfaction for the provision of electricity supply to the building. Nevertheless, Council has no reason to believe that provision cannot be reasonably made for electricity to service the development.

**Note:** Where it is proposed to shield any booster connection or any building from any substation pursuant to clause 5.6.3(c)(ii) of AS 2419.1-1994 or by fire resisting construction under the *BCA* respectively and this construction has not been detailed upon the approved development consent plans such works should be considered inconsistent with consent pursuant to clause 145 of the *Regulation*. The Applicant must lodge with Council details for any such construction pursuant to section 96 of the *Act* to allow assessment under section 79C of the *Act*.

**Note:** Substations must not be located within the minimum sight distance at driveway entrances under Australian Standard AS/NZS 2890 (Set)-2004 Parking Facilities Set whether such driveways service the site or any adjoining land.  
Standard Condition: C21

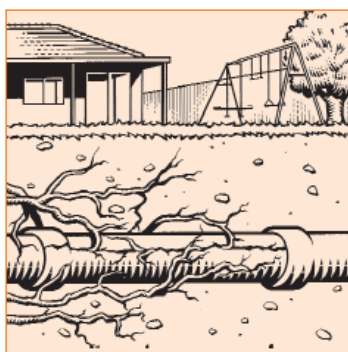
### **C.7 Water and waste water - Section 73 Developers Certificate & Upgrading of existing system (Clause 25(1) WLEP 1995)**

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

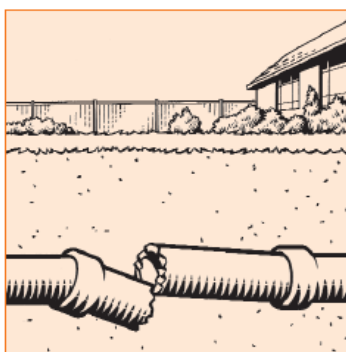
**Note:** Following application to Sydney Water, a 'Notice of Requirements' will detail water and sewer extensions to be built and charges to be paid. Please make early contact with Sydney Water's authorised Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

**Note:** Further information can be obtained from the Sydney Water Corporation on or telephone 13 20 92 or by visiting their web site:  
[http://www.sydneywater.com.au/html/yourHome/edeveloper/urban\\_dev\\_qa.cfm](http://www.sydneywater.com.au/html/yourHome/edeveloper/urban_dev_qa.cfm).

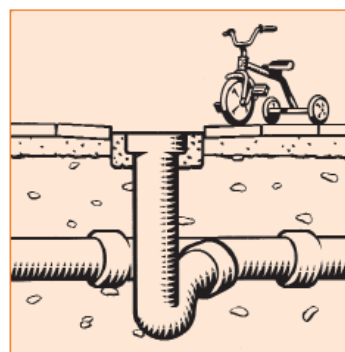
The Construction Certificate plans and specifications, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail the replacement of all private sewer pipes between all sanitary fixtures and Sydney Waters sewer main where they are not found by inspection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



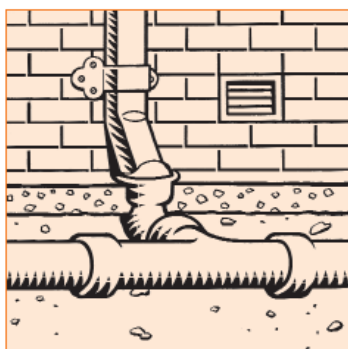
*Cracked pipes*



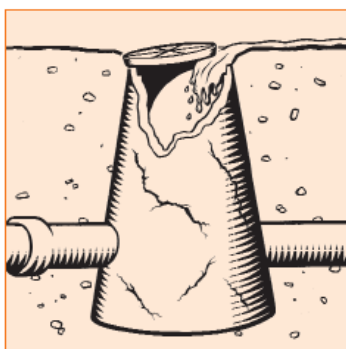
*Broken pipes*



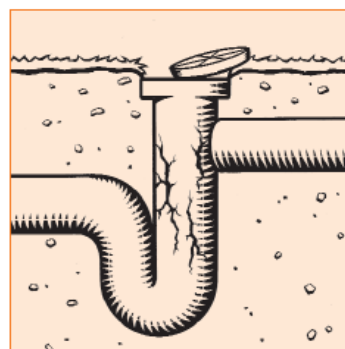
*Damaged or low-lying gullies*



*Direct stormwater connections*



*Hidden or damaged maintenance holes*



*Hidden or damaged inspection points*

**Note:** This condition has been imposed to ensure that where private sewer pipes are old, may leak or may be subject to root invasion (whether from existing or proposed private or public landscaping) that existing cast iron, concrete, earthenware or terracotta systems are replaced with new UPVC or copper continuously welded pipes between all sanitary fixtures and Sydney Waters sewer main as part of the development, such that clause 25(1) of WLEP 1995 be satisfied. Further, leaking sewer pipes are a potential source of water pollution, unsafe and unhealthy conditions which must be remedied in the public interest. See:

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

Standard Condition: C22

## **C.8 Soil and Water Management Plan – Submission & Approval**

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

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

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

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

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

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

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

## C.9 Tree Management Details

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

- a. trees to be numbered in accordance with these conditions,
- b. shaded green where required to be protected and retained,
- c. shaded yellow where required to be transplanted,
- d. shaded blue where required to be pruned,
- e. shaded red where authorised to be removed and,
- f. references to applicable tree management plan, arborists report, transplant method statement or bush regeneration management plan.

Standard Condition: C30

## C.10 Professional Engineering Details

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

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

**Note:** This does not affect the right of the developer to seek staged *Construction Certificates*  
Standard Condition: C36

## C.11 Geotechnical and Hydrogeological Design, Certification & Monitoring

The *Construction Certificate* plans and specification required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation* must be accompanied by a *Geotechnical / Hydrogeological Monitoring Program* together with civil and structural engineering details for foundation retaining walls, footings, basement tanking, and subsoil drainage systems, as applicable, prepared by a *professional engineer*, who is suitably qualified and experienced in geotechnical and hydrogeological engineering. These details must be certified by the *professional engineer* to:

- a. Provide appropriate support and retention to ensure there will be no ground settlement or movement, during excavation or after construction, sufficient to cause an adverse impact on adjoining property or public infrastructure.
- b. Provide appropriate support and retention to ensure there will be no adverse impact on surrounding property or infrastructure as a result of changes in local hydrogeology (behaviour of groundwater).
- c. Provide foundation tanking prior to excavation such that any temporary changes to the groundwater level, during construction, will be kept within the historical range of natural groundwater fluctuations. Where the historical range of natural groundwater fluctuations is unknown, the design must demonstrate that changes in the level of the natural water table, due to construction, will not exceed 0.3m at any time.
- d. Provide tanking of all below ground structures to prevent the entry of all ground water such that they are fully tanked and no on-going dewatering of the site is required.
- e. Provide a Geotechnical and Hydrogeological Monitoring Program that:
  - i. Will detect any settlement associated with temporary and permanent works and structures;
  - ii. Will detect deflection or movement of temporary and permanent retaining structures (foundation walls, shoring bracing or the like);
  - iii. Will detect vibration in accordance with AS 2187.2-1993 Appendix J including acceptable velocity of vibration (peak particle velocity);
  - iv. Will detect groundwater changes calibrated against natural groundwater variations;

details:

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

Standard Condition: C40

## C.12 Ground Anchors

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

The use of permanent ground anchors under Council land is not permitted.

Temporary ground anchors may be permitted, in accordance with Council's "Rock Anchor Policy", where alternative methods of stabilisation would not be practicable or viable, and where there would be benefits in terms of reduced community impact due to a shorter construction period, reduced disruption to pedestrian and vehicular traffic on adjacent public roads, and a safer working environment.

If temporary ground anchors under Council land are proposed, a separate application, including payment of fees, must be made to Council under Section 138 of the *Roads Act* 1993. Application forms and Council's "Rock Anchor Policy" are available from Council's web-site <http://www.woollahra.nsw.gov.au>. Approval may be granted subject to conditions of consent. Four weeks should be allowed for assessment.

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

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

**Note:** Clause 20 of the *Roads (General) Regulation 2000* prohibits excavation in the vicinity of roads as follows: "**Excavations adjacent to road** - A person must not excavate land in the vicinity of a road if the excavation is capable of causing damage to the road (such as by way of subsidence) or to any work or structure on the road." Separate approval is required under the *Roads Act* 1993 for any underpinning, shoring, soil anchoring (temporary) or the like within or under any road. Council will not give approval to permanent underpinning, shoring, soil anchoring within or under any road.  
Standard Condition: C41

### C.13 Bicycle, Car and Commercial Parking Details

The *Construction Certificate* plans and specifications required by clause 139 of the Regulation, must include detailed plans and specifications for all bicycle, car and commercial vehicle parking in compliance with AS2890.3:1993 *Parking Facilities - Bicycle Parking Facilities*, AS/NZS 2890.1:2004 : *Parking Facilities - Off-Street Car Parking* and AS 2890.2:2002 – *Off-Street Parking: Commercial Vehicle Facilities* respectively. The Access Ramp Section details by Gennady Klauzner architects Dwg No DA06 dated Feb 06 are to be amended as follows:

- The existing footpath level and grade at the street alignment of the property must be maintained.
- The driveway gradients are to be amended to prevent the ingress of flood waters. All grades are to comply with AS2890.1.
- The new levels are to be a minimum level of 150mm above the flood levels. The provision of the driveway threshold and associated training walls will be required to provide flood protection.
- A traffic signal system must be installed on the driveway to ensure that vehicles do not reverse out on to the street or into the subject property.
- The walls/landscaping on either side of the driveway must not exceed one metre in height for a distance of two metres from the property boundary. This is to ensure that the sight distance available to drivers exiting the property is sufficient to alert them of oncoming vehicles and/or pedestrians.

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

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

The *Certifying Authority* has no discretion to reduce or increase the number or area of car parking or commercial parking spaces required to be provided and maintained by this consent.  
Standard Condition: C45

#### **C.14 Stormwater management plan (Site greater than 500m<sup>2</sup>)(Clause 25(2) WLEP 1995)**

The *Construction Certificate* plans and specifications, required by clause 139 of the *Regulation*, must include a *Stormwater Management Plan* for the site and be submitted to and approved by Council prior to the release of the Construction Certificate. (Note: Council will take a minimum of 4 weeks to assess)

The *Stormwater Management Plan* must detail:

- a. A revised stormwater plan in accordance with Councils requirements other than amended by this and other conditions;
- b. The provision of an On Site Detention system for stormwater;
- c. the discharge of stormwater, by direct connection via an interallotment drainage line in accordance with Council's Plan Annexure 1 (Copy at the end of this Referral)

The pipe is to be a minimum of 375mm diameter reinforced concrete pipe and is to be construct from the site through No 9a Cooper Park Rd and connect to Council's existing underground drainage system in Cooper Park Road at Pit No E (A7).

The pipeline is to be located at sufficient depth so as to not interfere with the proposed driveway access as shown on plan of driveway long section Annexure 3

- d. compliance the objectives and performance requirements of the BCA;
- e. any rainwater tank required by BASIX commitments including their overflow connection to the *Stormwater Drainage System*, and
- f. general compliance with the Council's draft Development Control Plan Stormwater Drainage Management (draft version 1, public exhibition copy dated 23 August 2004), and
- g. on-site stormwater detention ("OSD").

#### **OSD Requirements**

The minimum (OSD) Site Storage Requirements ("SSR") and the Peak Site Discharge ("PSD") from the site must be in accordance with the following minimum storage/discharge relationships based upon a 1000m<sup>2</sup> site area:

Average Reoccurrence Interval	PSD L/s	Minimum Site Storage Requirement (SSR) m <sup>3</sup>
2 year	23.5 L/s	4m <sup>3</sup>
100 year	34 L/s	25m <sup>3</sup> – Dwelling House 27m <sup>3</sup> – Residential Flat Building 29m <sup>3</sup> – Other Development
All values based on per 1000m <sup>2</sup> site area (interpolate to site area).		

Where a rainwater tank is proposed in conjunction with OSD, the volume of the rainwater tank may contribute to the SSR as follows:

- i. Where the rainwater tank is used for external uses only, 40% of the rainwater tank volume to a maximum of 4m<sup>3</sup>, or
- ii. Where the rainwater tank is used for external and internal uses, 75% of the rainwater tank volume to a maximum of 7.5m<sup>3</sup>.

**Example:** The Site Storage Requirements may be 25,000 litres and a 10,000 litre rainwater tank is to be used for garden irrigation. Therefore, the rainwater tank contributes 4,000 litres toward SSR. Therefore, the OSD tank needs to be 21,000 litres (25,000 litres less the 4,000 litres allowance). Note: 1m<sup>3</sup> = 1,000 litres.

The *Stormwater Management Plan* must include the following specific requirements:

### **Layout plan**

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

It must include:

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

### **On-site Detention (OSD) details:**

- Any potential conflict between existing and proposed trees and vegetation,
- Internal dimensions and volume of the proposed detention storage,
- Diameter of the outlet to the proposed detention storage basin,
- Plans, elevations and sections showing the detention storage basin invert level, centre-line level of outlet, top water level, finished surface level and adjacent structures,
- Details of access and maintenance facilities,
- Construction and structural details of all tanks and pits and/or manufacturer's specifications for proprietary products,
- Details of the emergency overland flow-path (to an approved Council drainage point) in the event of a blockage to the on-site detention system,
- Non-removable fixing details for orifice plates where used,

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

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

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



## C.15 Flood protection

The *Construction Certificate* plans and specifications, required by clause 139 of the *Regulation*, must include a Flood Risk Management Plan on the basis of a 1:100 year flood at the top of the existing kerb in Bellevue Road.

Driveway - The driveway entrance level are to be raised to contain the 100 year ARI overland flow to the following levels including a freeboard of 150mm:

- Upslope driveway level 88.05m AHD.
- Mid driveway level 87.95m AHD.
- Lower driveway level 87.81m AHD.

The driveway levels are to be adjusted internally as well as the Access ramp Section details by Gennady Klauzner architects Dwg No DA06 dated Feb 06 to avoid the ingress of flood waters

Habitable Areas - The property is to be protected along Bellevue Rd by the provision of a wall or barrier to prevent the ingress of overland flow of stormwater. Protection is to be provided for 1:100 year flood as well as the following freeboard:

- a. Habitable floor levels not less than 300mm above the flood level.
- b. Non-habitable floor levels not less than 150mm above flood level.
- c. Driveway crest not less than 150mm above flood level before descending into the site (as applicable) and associated training walls to prevent entry of water.

**Note:** The revised driveway profile, gradients and transitions must be in accordance with Australian Standard 2890.1 – 2004, Part 1 (Off-street car parking). The driveway profile submitted to Council must contain all relevant details: reduced levels, proposed grades and distances. Council will not allow alteration to existing reduced levels within the road or any other public place to achieve flood protection.  
Standard Condition: C54

## C.16 Acoustic Certification of Mechanical Plant & Equipment

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

Where sound attenuation is required this must be detailed.

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

1. **Australian Acoustical Society**—professional society of noise-related professionals ([www.acoustics.asn.au/index.php](http://www.acoustics.asn.au/index.php)).
2. **Association of Australian Acoustical Consultants**—professional society of noise related professionals ([www.aaac.org.au](http://www.aaac.org.au)).  
Standard Condition: C62

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

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

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

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

This condition does not apply:

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

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

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

## **D.2 Dilapidation Reports for existing buildings**

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

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

- a. 70 Bellevue Road
- b. 74 Bellevue Road

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

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

Standard Condition: D4

### D.3 Adjoining buildings founded on loose foundation materials

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

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

Standard Condition: D6

### D.4 Construction Management Plan

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

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

- a. **describe the anticipated impact of the construction works on:**
  - local traffic routes
  - pedestrian circulation adjacent to the building site
  - and on-street parking in the local area, and;
- b. **describe the means proposed to:**
  - manage construction works to minimise such impacts,
  - provide for the standing of vehicles during construction,
  - provide for the movement of trucks to and from the site, and deliveries to the site, and;
- c. **show the location of:**
  - any site sheds and any anticipated use of cranes and concrete pumps,
  - any areas of Council property on which it is proposed to install a Works Zone (Construction Zone),
  - structures to be erected such as hoardings, scaffolding or shoring,
  - any excavation.
- d. **describe the excavation impact on the area including**
  - Number and types of trucks to be used
  - Time frame
  - Streets to be used
  - Routes to be taken
  - Directions of travel
  - Truck storage areas
  - It is recommended that vehicle routes be shared
  - Excavation is to only be carried out outside peak and school hours between 9.30am to 2.30pm week days
  - The CMP is to include both demolition and excavation works.
- e. **show the location** of all Tree Protection (Exclusion) Zones as required within the conditions of this development consent.

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

**Note:** A minimum of eight weeks will be required for assessment. Work must not commence until the Construction Management Plan is approved. Failure to comply with this condition may result in fines and proceedings to stop work.  
Standard Condition: D9

## D.5 Work (Construction) Zone – Approval & Implementation

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

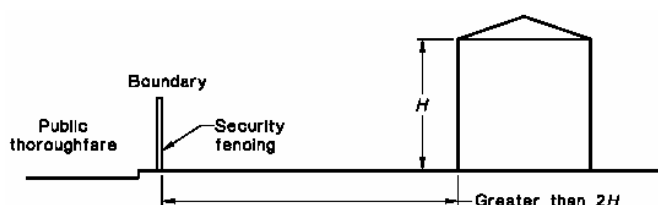
The *principal contractor* must pay all fees associated with the application and occupation and use of the road as a work zone. All Work Zone signs must have been erected by Council to permit enforcement of the work zone by Rangers and Police before commencement of any work. Signs are not erected until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

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

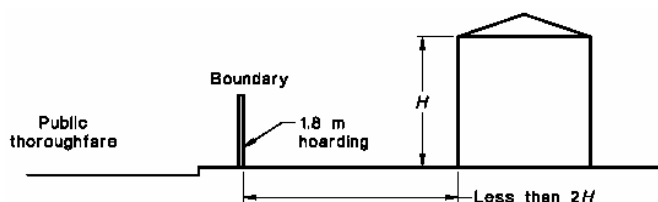
**Note:** The enforcement of the work zone is at the discretion of Council's Rangers and the NSW Police Service. The principal contractor must report any breach of the work zone to either Council or the NSW Police Service.  
Standard Condition: D10

## D.6 Security Fencing, Hoarding and Overhead Protection

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



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

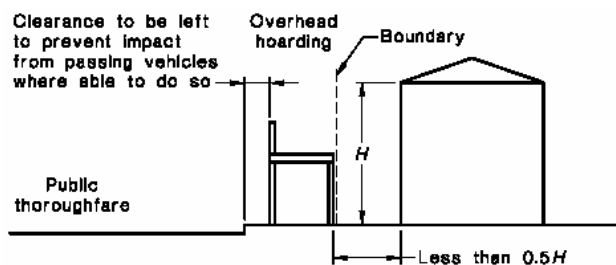


Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an *overhead protective structure* and the facing facade protected by heavy-duty scaffolding, unless either

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

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

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



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

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

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

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

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

## D.7 Site Signs

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

“Erection of signs

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

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

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

## D.8 Toilet Facilities

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

Each toilet provided:

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

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

In this condition:

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

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

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

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

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

## D.9 Erosion and Sediment Controls – Installation

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

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

Where there is any conflict The Blue Book takes precedence.

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

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

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

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

Standard Condition: D14

### **D.10 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)**

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

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

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

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

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

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



### **D.11 Notification of Home Building Act 1989 requirements**

- a. For the purposes of section 80A (11) of the Act, the requirements of this condition are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the Home Building Act 1989.
- b. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
  - i. in the case of work for which a *principal contractor* is required to be appointed:
    - the name and licence number of the principal contractor, and
    - the name of the insurer by which the work is insured under Part 6 of that Act,
  - ii. in the case of work to be done by an owner-builder:
    - the name of the owner-builder, and
    - if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- c. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.
- d. This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.  
Standard Condition: D17

### **D.12 Establishment of boundary location, building location and datum**

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

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

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

**Note:** On larger developments, or where boundary redefinition is required, the placement of new State Survey Marks as permanent marks should be considered by the registered surveyor.  
Standard Condition: D18

### **D.13 Checking Construction Certificate plans & protecting assets owned by the Sydney Water Corporation**

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

**Note:** Further information can be obtained from the Sydney Water Corporation on or telephone 13 20 92 or by visiting their web site:  
[http://www.sydneywater.com.au/html/yourhome/quick\\_check/building\\_renovating.cfm](http://www.sydneywater.com.au/html/yourhome/quick_check/building_renovating.cfm)  
Standard Condition: D19

## **E. Conditions which must be satisfied during any development work**

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

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

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

This condition does not apply:

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

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

Standard Condition: E1

### **E.2 Compliance with Australian Standard for Demolition**

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

Standard Condition: E2

### E.3 Compliance with Construction Management Plan

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

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

**Note:** Irrespective of the provisions of the Construction Management Plan the provisions of traffic and parking legislation prevails.  
Standard Condition: E3

### E.4 Requirement to notify about new evidence

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

Standard Condition: E4

### E.5 Critical Stage Inspections

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

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

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

**Note:** The PCA may, in addition to inspections, require the submission of *Compliance Certificates*, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.  
Standard Condition: E5

### E.6 Hours of Work –Amenity of the neighbourhood

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

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

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

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

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

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

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

**Note:** see [http://www.epa.nsw.gov.au/resources/ci\\_build\\_sheet7.pdf](http://www.epa.nsw.gov.au/resources/ci_build_sheet7.pdf)  
Standard Condition: E6

## **E.7 Maintenance of Vehicular and Pedestrian Safety and Access**

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

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

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

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

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

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

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

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

Part C Management of Waste:

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

Part E Public roads:

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

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

## E.8 Tree Preservation

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

### General Protection Requirements:

- a) There must be no excavation or *work* within the required Tree Protection Zone(s). The Tree Protection Zone(s) must be maintained during all *development work*.
- b) Where excavation encounters tree roots with a diameter exceeding 40mm excavation must cease. The *principal contractor* must procure an inspection of the tree roots exposed by a qualified arborist. Excavation must only recommence with the implementation of the recommendations of the qualified arborist or where specific instructions are given by Council’s Tree Management Officer in strict accordance with such Council instructions.
- c) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the qualified arborist or where specific instructions are given by Council’s Tree Management Officer in strict accordance with such Council instructions.

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

## E.9 Tree Preservation & Approved Landscaping Works

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

- a) The following trees may be pruned in accordance with Australian Standard AS 4373 – 2007 “Pruning of Amenity Trees” and Workcover NSW Code of Practice Amenity Tree Industry, 1998 to the minimum extent necessary to provide clearance to the new development:

Council Reference No:	Species	Location	Approved pruning specification (extent of pruning)
1	<i>Elaeocarpus</i> <i>sp. Quandong</i>	Western side boundary of 70 Bellevue Rd Bellevue Hill	Pruning limbs no greater than 50mm diameter for proposed building clearance if needed.

**Note:** The tree trees required to be pruned should appear coloured blue on the construction certificate plans.

**Note:** Water Restrictions take precedence over this condition.

**Note:** Having regard to water restrictions manual hosing may be necessary.  
Standard Condition: E9

### Replacement trees which must be planted

The following compensatory replacement plantings must be planted to ensure the preservation of the landscape character of the area.

Species/Type	Planting Location	Container Size or Size of Tree (@ time of planting)	Minimum Dimensions at Maturity
3 x <i>Melaleuca linariifolia</i> <i>Snow in Summer</i>	In accordance with the submitted Vision Dynamics Pty Ltd landscape plan dated 10/02/08	75 litre	Natural height
20 x suitable screening tree species	In accordance with the submitted Vision Dynamics Pty Ltd landscape plan dated 10/02/08	75 litre	5 metres high
1 x <i>Flindersia australis</i> Crow’s Ash	Front of property on Council verge	100 litre	Natural height

**Note:** The tree/s required to be pruned should appear coloured blue on the construction certificate plans.

**Note:** Water Restrictions take precedence over this condition.

**Note:** Having regard to water restrictions manual hosing may be necessary.  
Standard Condition: E9

### E.10 Maintenance of Environmental Controls

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

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

**Note 1:** See [http://www.epa.nsw.gov.au/small\\_business/builders.htm](http://www.epa.nsw.gov.au/small_business/builders.htm) for additional information.  
Standard Condition: E11

### **E.11 Compliance with Geotechnical/Hydrogeological Monitoring Program**

Excavation must be undertaken in accordance with the recommendations of the *Geotechnical / Hydrogeological Monitoring Program* and any oral or written direction of the supervising *professional engineer*.

The *principal contractor* and any sub-contractor must strictly follow the *Geotechnical / Hydrogeological Monitoring Program* for the development including, but not limited to;

- a) the location and type of monitoring systems to be utilised;
- b) recommended hold points to allow for inspection and certification of geotechnical and hydrogeological measures by the *professional engineer*; and
- c) the contingency plan.

**Note:** The consent authority cannot require that the author of the geotechnical/hydrogeological report submitted with the Development Application to be appointed as the *professional engineer* supervising the work however, it is the Council's recommendation that the author of the report be retained during the construction stage.  
Standard Condition: E12

### **E.12 Support of adjoining land and buildings**

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

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

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

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

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

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

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

### E.13 Vibration Monitoring

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

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

Where any such alarm triggers all excavation works must cease immediately.

Prior to the vibration monitoring equipment being reset by the *professional engineer* and any further work recommencing the event must be recorded and the cause of the event identified and documented by the *professional engineer*.

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

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

A copy of any written direction required by this condition must be provided to the *Principal Certifying Authority* within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining *building* or such that there is any removal of support to *supported land* the *professional engineer*, *principal contractor* and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that *supported land* and take immediate action under the direction of the *professional engineer* to prevent any further damage and restore support to the *supported land*.

**Note:** *Professional engineer* has the same mean as in Clause A1.1 of the BCA.

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

**Note:** *Supported land* has the same meaning as in section 88K of the Conveyancing Act 1919.  
Standard Condition: E14

### E.14 Erosion and Sediment Controls – Maintenance

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

- a) The Soil and Water Management Plan required under this consent;



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

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



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

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

### E.15 Disposal of site water during construction

The principal contractor or owner builder must ensure:

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

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

### E.16 Filling of site

To the extent that this consent permits filling of the site such fill must be *virgin excavated natural material* (“*VENM*”).

*VENM* means “*Virgin excavated natural material (such as clay, gravel, sand, soil and rock) that is not mixed with any other type of waste and which has been excavated from areas of land that are not contaminated with human-made chemicals as a result of industrial, commercial, mining or agricultural activities and which do not contain sulphidic ores or soils.*”

**Note:** This definition is the same as in Schedule 1 of the *Protection of the Environment Operations Act 1997*, Appendix IX: Types of waste.

**Note:** Sulphidic ores and soils are commonly known as Acid Sulphate Soils.

**Note:** If a person transports waste to a place (the site) that cannot lawfully be used as a waste facility for that waste: (a) the person, and, (b) if the person is not the owner of the waste, the owner, are each guilty of an offence under section 143 of the *Protection of the Environment Operations Act 1997*.

**Note:** A person who is the owner or occupier (principal contractor) of any land that cannot lawfully be used as a waste facility and who permits the land to be used as a waste facility is guilty of an offence under section 144 of the *Protection of the Environment Operations Act 1997*.

**Note:** Additional information is available from the following websites:

**Illegal waste dumping** - <http://www.epa.nsw.gov.au/waste/dumping.htm>

**Is that fill legal?** <http://www.epa.nsw.gov.au/resources/012648web.epa%20fill.dl%20bro.pdf>  
Standard Condition: E18

## **E.17 Site Cranes**

Site Crane(s) and hoist(s) may be erected within the boundary of the land being developed subject to compliance with Australian Standards AS 1418, AS 2549 and AS 2550 and all relevant parts to these standards.

Cranes must not swing or hoist over any public place unless the *principal contractor* or *owner builder* have the relevant approval under the *Local Government Act 1993*, *Crown Lands Act 1989* or *Roads Act 1993*.

The crane must not be illuminated outside approved working hours other than in relation to safety beacons required by the Civil Aviation Safety Authority under the *Civil Aviation Act 1988* (Cth).

No illuminated sign(s) must be erected upon or displayed upon any site crane.

**Note:** Where it is proposed to swing a crane over a public place the *principal contractor* or *owner builder* must make a separate application to Council under section 68 of the *Local Government Act 1993* and obtain activity approval from Council prior to swinging or hoisting over the public place.

**Note:** Where it is proposed to swing a crane over private land the consent of the owner of that private land is required. Alternatively, the *principal contractor* or *owner builder* must obtain an access order under the *Access to Neighbouring Land Act 2000* or easement under section 88K of the *Conveyancing Act 1919* or section 40 of the *Land & Environment Court Act 1979* as appropriate. The encroachment of cranes or the like is a civil matter of trespass and encroachment. Council does not adjudicate or regulate such trespasses or encroachments.  
Standard Condition: E19

### **E.18 Check Surveys - boundary location, building location, building height and stormwater drainage system relative to Australian Height Datum**

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

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

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

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

### **E.19 Placement and use of Skip Bins**

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

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

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

### **E.20 Prohibition of burning**

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

**Note:** Pursuant to the *Protection of the Environment Operations (Control of Burning) Regulation 2000* all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.  
Standard Condition: E22

## **E.21 Dust Mitigation**

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

This generally requires:

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

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

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

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

## **E.22 Compliance with Council’s Specification for Roadworks, Drainage and Miscellaneous Works Road works and work within the Road and Footway**

All work carried out on assets which are under Council ownership or will revert to the ownership, care, control or management of Council in connection with the *development* to which this consent relates must comply with Council’s *Specification for Roadworks, Drainage and Miscellaneous Works* dated January 2003.

The *owner, principal contractor or owner builder* must meet all costs associated with such works.

This condition does not set aside the need to obtain relevant approvals under the *Roads Act 1993* or *Local Government Act 1993* for works within Roads and other public places.

**Note:** A copy of Council’s “*Specification for Roadworks, Drainage and Miscellaneous Works*” can be down loaded free of charge from Council’s website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)  
Standard Condition: E24

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

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

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

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

## F.2 Amenity Landscaping

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

**Note:** This condition has been imposed to ensure that the environmental impacts of the development are mitigated by approved landscaping prior to any occupation of the development.  
Standard Condition: F6

## F.3 Commissioning and Certification of Systems and Works

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

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

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

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

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

**Note:** The *PCA* must submit to Council, with any *Occupation Certificate*, copies of works-as-executed (“WAE”) plans, *Compliance Certificates* and evidence of suitability in accordance with Part A2.2 of the *BCA* upon which the *PCA* has relied in issuing any *Occupation Certificate*.  
Standard Condition: F7

#### **F.4 Commissioning and Certification of Public Infrastructure Works**

The *principal contractor* or *owner builder* must submit, to the satisfaction of Woollahra Municipal Council, certification from a *professional engineer* that all public infrastructure works have been executed in compliance with this consent and with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* dated January 2003.

The certification must be supported by closed circuit television / video inspection provided on DVD of all stormwater drainage together with works as executed engineering plans and a survey report detailing all finished reduced levels.

Standard Condition: F9

#### **F.5 New drainage easement (Council drainage infrastructure)**

A new deposited plan, including a 1.575 metre wide drainage easement over the drainage infrastructure through 9a Cooper Park Road, must be registered at the Land Titles Office, prior to the issue of any Occupation Certificate, a copy provided to Council.

Standard Condition: F14

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

##### **G.1 Electricity Substations – Dedication as road and/or easements for access**

If an electricity substation, is required on the site the owner must dedicate to the appropriate energy authority (to its satisfaction), free of cost, an area of land adjoining the street alignment to enable an electricity substation to be established. The size and location of the electricity substation is to be in accordance with the requirements of the appropriate energy authority and Council. The opening of any access doors are not to intrude onto the public road (footway or road pavement).

Documentary evidence of compliance, including correspondence from the energy authority is to be provided to the *Principal Certifying Authority* prior to issue of the Construction Certificate detailing energy authority requirements.

The Accredited Certifier must be satisfied that the requirements of energy authority have been met prior to issue of the Construction Certificate.

Where an electricity substation is provided on the site adjoining the road boundary, the area within which the electricity substation is located must be dedicated as public road. Where access is required across the site to access an electricity substation an easement for access across the site from the public place must be created upon the linen plans burdening the subject site and benefiting the Crown in right of New South Wales and any Statutory Corporation requiring access to the electricity substation.

Standard Condition: G4

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

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

All BASIX commitments must be effected in accordance with the BASIX Certificate No. 183754M.

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

## H.2 Landscaping

All landscape work including all planting must be completed by the *principal contractor* or *owner* in compliance with the approved landscape plan, arborist report, transplant method statement and tree management plan. The *principal contractor* or *owner* must provide to *PCA* a works-as-executed landscape plan and certification from a qualified landscape architect/designer, horticulturist and/or arborist as applicable to the effect that the works as completed comply with this consent.

**Note:** This condition has been imposed to ensure that all Landscaping work is completed prior to the issue of the *Final Occupation Certificate*.  
Standard Condition: H9

## H.3 Removal of Ancillary Works and Structures

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

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

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

## H.4 Road Works (including footpaths)

The following works must be completed to the satisfaction of Council, in compliance with Council's "Specification for Roadworks, Drainage and Miscellaneous Works" dated January 2003 unless expressly provided otherwise by these conditions at the *principal contractor's* or *owner's* expense:

- a. stormwater pipes, pits and connections to public stormwater systems within the *road*;
- b. driveways and vehicular crossings within the *road*;
- c. removal of redundant driveways and vehicular crossings;
- d. new footpaths within the *road*;
- e. new or replacement street trees;
- f. new footway verges, where a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street.
- g. new or reinstated kerb and guttering within the *road*; and
- h. new or reinstated road surface pavement within the *road*.

**Note:** Security held by Council pursuant to section 80A(6) of the Act will not be release by Council until compliance has been achieved with this condition. An application for refund of security must be submitted with the *Final Occupation Certificate* to Council. This form can be downloaded from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or obtained from Council's customer service centre.  
Standard Condition: H13

## H.5 Positive Covenant & Works-As-Executed certification of stormwater systems

On completion of construction work, stormwater drainage works are to be certified by a *professional engineer* with Works-As-Executed drawings supplied to the *PCA* detailing:

- a. compliance with conditions of development consent relating to stormwater;
- b. the structural adequacy of the On-Site Detention system (OSD);
- c. that the works have been constructed in accordance with the approved design and will provide the detention storage volume and attenuation in accordance with the submitted calculations;
- d. Pipe invert levels and surface levels to Australian Height Datum; and
- e. Contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.
- f. A positive covenant pursuant to Section 88E of the *Conveyancing Act* 1919 must be created on the title of the subject property, providing for the indemnification of Council from any claims or actions and for the on-going maintenance of the on-site-detention system and/or absorption trenches, including any pumps and sumps incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered at the Land Titles Office.

**Note:** The required wording of the Instrument can be downloaded from Council's web site [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au). The PCA must supply a copy of the WAE Plans to Council together with the *Final Occupation Certificate*. The *Final Occupation Certificate* must not be issued until this condition has been satisfied.  
Standard Condition: H20

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

### I.1 Provision of off-street Public and Visitor Parking

The owner and occupier, in compliance with AS/NZS 2890.1:2004: Parking facilities - Off-street car parking, must maintain unimpeded public access to off-street parking as follows:

Use	Number of required public spaces
Class 1 (All day parking)	7

**Reason:** This condition has been imposed to ensure adequate on site parking is maintained.  
Standard Condition: I4

### I.2 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No.183754M.

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



### I.3 Maintenance of Landscaping

All landscaping must be maintained in general accordance with this consent.

This condition does not prohibit the planting of additional trees or shrubs subject that they are native species endemic to the immediate locality.

**Reason:** This condition has been imposed to ensure that the landscaping design intent is not eroded over time by the removal of landscaping or inappropriate exotic planting.

**Note:** This condition also acknowledges that development consent is not required to plant vegetation and that over time additional vegetation may be planted to replace vegetation or enhance the amenity of the locality. Owners should have regard to the amenity impact of trees upon the site and neighbouring land. Further, drought proof vegetation being native species endemic to the immediate locality is encouraged. Suggested native species endemic to the immediate locality are listed in the Brochure Titled "Local Native Plants for Sydney's Eastern Suburbs" published by Woollahra, Waverley, Randwick and Botany Bay Councils.  
Standard Condition: 18

### I.4 On-going maintenance of the on-site-detention system

The Owner(s) must in accordance with this condition and any positive covenant:

- a. permit stormwater to be temporarily detained by the system;
- b. keep the system clean and free of silt rubbish and debris;
- c. if the car park is used as a detention basin, a weather resistant sign must be maintained in a prominent position in the car park warning residents that periodic inundation of the car park may occur during heavy rain;
- d. maintain renew and repair as reasonably required from time to time the whole or part of the system so that it functions in a safe and efficient manner and in doing so complete the same within the time and in the manner reasonably specified in written notice issued by the Council;
- e. carry out the matters referred to in paragraphs (b) and (c) at the Owners expense;
- f. not make any alterations to the system or elements thereof without prior consent in writing of the Council and not interfere with the system or by its act or omission cause it to be interfered with so that it does not function or operate properly;
- g. permit the Council or its authorised agents from time to time upon giving reasonable notice (but at anytime and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant;
- h. comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time reasonably stated in the notice;
- i. where the Owner fails to comply with the Owner's obligations under this covenant, permit the Council or its agents at all times and on reasonable notice at the Owner's cost to enter the land with equipment, machinery or otherwise to carry out the works required by those obligations;
- j. indemnify the Council against all claims or actions and costs arising from those claims or actions which Council may suffer or incur in respect of the system and caused by an act or omission by the Owners in respect of the Owner's obligations under this condition.

**Reason:** This condition has been imposed to ensure that owners are aware of require maintenance requirements for their stormwater systems.

**Note:** This condition is supplementary to the owner(s) obligations and Council's rights under any positive covenant.  
Standard Condition: I12

## **I.5 Noise from mechanical plant and equipment**

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

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

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

## **J. Miscellaneous Conditions**

No relevant conditions

## **K. Advisings**

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

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

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

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

### **Warnings as to potential maximum penalties**

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

### **Warning as to enforcement and legal costs**

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

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

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

<http://www.theshopfront.org/documents/ConvictionsCriminalRecords.pdf> and the Attorney General's [www.agd.nsw.gov.au](http://www.agd.nsw.gov.au).  
Standard Advising: K1

## **K.2 Dial before you dig**



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

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

Standard Advising: K2

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

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

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

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

- <http://www.hreoc.gov.au/index.html>
- [http://www.hreoc.gov.au/disability\\_rights/dda\\_guide/ins/ins.html](http://www.hreoc.gov.au/disability_rights/dda_guide/ins/ins.html)

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

Standard Advising: K3

## **K.4 NSW Police Service and Road Closures**

The Rose Bay Local Area Command closely aligns with the boundaries of the Woollahra local government area.

Council and Police approval is required prior to a partial or full temporary road closure. If you are seeking a partial or full temporary road closure you must comply with the relevant conditions of this consent and you must also gain the approval of the Traffic Sergeant, Paddington Police Station, 16 Jersey Road, Paddington. Phone No. 02 8356 8299 or Fax No. 0283568211.

**Warning:** If you partially or fully close a road without compliance with Council and Police requirements Council Rangers or the Police can issue Penalty Infringement Notices or Court Attendance Notices leading to prosecution.  
Standard Advising: K4

## **K.5 Builders Licences and Owner Builders Permits**

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

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

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

Standard Condition: K5

## **K.6 Building Standards - Guide to Standards and Tolerances**

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

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

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

The Guide can be down loaded from:

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

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

Standard Condition: K6

## **K.7 Workcover requirements**

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

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

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

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

Standard Condition: K7

## **K.8 Asbestos Removal, Repair or Disturbance**

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

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

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

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

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

## **K.9 Lead Paint**

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

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

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

Standard Advising: K9

## K.10 Dividing Fences

The erection of dividing fences under this consent does not affect the provisions of the *Dividing Fences Act 1991*. Council does not adjudicate civil disputes relating to the provision of, or payment for, the erection of dividing fences.

**Note:** Further information can be obtained from the NSW Department of Lands - <http://www.lands.nsw.gov.au/LandManagement/Dividing+Fences.htm>. Community Justice Centres provide a free mediation service to the community to help people resolve a wide range of disputes, including dividing fences matters. Their service is free, confidential, voluntary, timely and easy to use. Mediation sessions are conducted by two impartial, trained mediators who help people work together to reach an agreement. Over 85% of mediations result in an agreement being reached. Mediation sessions can be arranged at convenient times during the day, evening or weekends. Contact the Community Justice Centre either by phone on 1800 671 964 or at <http://www.cjc.nsw.gov.au/>.  
Standard Advising: K10

## K.11 Appeal

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

**Joseph La Posta, Senior Assessment Officer** on (02) 9391 7064

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

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

Standard Condition: K14

## K.12 Release of Security

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

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

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

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

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

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

### **K.13 Recycling of Demolition and Building Material**

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

Standard Condition: K17

### **K.14 Owner Builders**

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

Standard Condition: K18

### **K.15 Model**

If you submitted a model with the application it must be collected from the Council offices within fourteen (14) days of the date of this determination. Models not collected will be disposed of by Council.

Standard Condition: K21 (Autotext KK21)

Mr J La Posta  
**SENIOR REVIEW OFFICER**

Mr M Schofield  
**TEAM LEADER**

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## **ANNEXURES**

1. Original assessment Report
2. Plans and elevations
3. Referral Response – Trees and Landscaping
4. Referral Response - Engineering