

Development Control Committee Minutes

Tuesday 7 October 2008

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Development Control Committee Minutes

**Minutes of the Meeting held on
Tuesday 7 October 2008 at 6.00pm**

Present: His Worship The Mayor, Councillor Andrew Petrie, ex-officio (Items D1 & D7)
Councillors Chris Howe (Chair)
Sean Carmichael
Lucienne Edelman
Susan Jarnason
David Shoebridge
Susan Wynne
Malcolm Young
Toni Zeltzer

Staff: Allan Coker (Director – Planning & Development)
Nick Economou (Team Leader)
Patrick Robinson (Manager – Development Control)
David Sheils (Manager Public Open Space)
Helen Tola (Team Leader – Governance)
David Waghorn (Team Leader)
Les Windle (Manager – Governance)

Session One: 6.00pm to 7.50pm
Session Two: 8.15pm to 1.04am

Also in Attendance: Councillor Anthony Boskovitz (Item D3 and D5)
Councillor Nicola Grieve (Item D7 to D13)

Note: Item D5 (57 New South Head Road, Vaucluse) was dealt with prior to Item D4 (Political Donation and Gift Disclosures).

Item D13 (1B New Beach Road, Darling Point) was deal with prior to Item D12 (Register).

Leave of Absence

Leave of Absence previously granted by Council: Nil

Apologies: Nil

Late Correspondence

Late correspondence was submitted to the committee in relation to Items: D5, D6, D7, D8, D9, D11 & D13

Declarations of Interest

Councillor Sean Carmichael declared a pecuniary interest in Item D7 (62 Wunulla Road, Point Piper) as the objector is his current employer and left the meeting and did not participate in the debate of vote on the matter.

Councillor Sean Carmichael declared a pecuniary interest in Item D8 (60A Wunulla Road, Point Piper) as the applicant is his current employer and left the meeting and did not participate in the debate or vote on the matter.

Councillor Malcolm Young declared a non-significant, non-pecuniary interest in Item D7 (62 Wunulla Road, Point Piper) as he was once retained by the solicitors to advise and appear for the applicant on a valuation matter, approximately 12 years ago and has had no further contact with the applicant.

Councillor Susan Wynne declared a non-significant, non-pecuniary interest in Item D6 (62 Drumalbyn Road, Bellevue Hill) as Bruce Bland, who addressed the Committee, was third on the Residents First Vaucluse ward ticket for the September 2008 Local Government Elections.

Items Decided by this Committee using its Delegated Authority (Items D1 to D13)

Item No: D1
Subject: **Election of Deputy Chairperson**
Author: Les Windle - Manager Governance
Reason for Report: For the Committee to elect a Deputy Chairperson
(Petrie/Zeltzer)

Resolved:

That Councillor Edelman be elected as Deputy Chairperson of the Development Control Committee for the ensuing twelve months.

Item No: D2 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 1 September 2008**
Author: Les Windle, Manager - Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 1 September 2008 were previously circulated. In accordance with the guidelines for Committees' operations it is now necessary that those Minutes be formally taken as read and confirmed.

(Shoebridge/Wynne)

Resolved:

That the Minutes of the Development Control Committee Meeting of 1 September 2008 be taken as read and confirmed.

D3 Recording of Voting on Planning Matters – 1191.G

Note: In accordance with Council's meeting procedures and policy this matter is referred to full Council due to a substantive change of the Committee's recommendation to the Officer's recommendation. **(See Item R2)**

D4 Political Donation & gift disclosures & requirements of General Managers to report matters to the Director General Department of Local Government – 1191.G

Note: The Committee added part c to the resolution.

(Shoebridge/Young)

Resolved:

- A. That the information be noted.
- B. That Council note that the following actions have been taken:
- a link has been provided on Council's website to the Election Funding Authority website,
 - information is provided for applicants and people making submissions on appropriate parts of Council's website and by notices in the Wentworth Courier,
 - a disclosure statement form, which incorporates explanatory information, is available for use by applicants and people making submissions,
 - Council's DA Guide, neighbour notification letters and DA form/check list have been updated,
 - DA assessment report templates have been revised to include details of disclosures,
 - disclosure statements are available on Council's website,
 - Council's technical and administrative staff have been briefed on the legislative requirements.
- C. That a further report be prepared and reported to the Committee as to the functionality of incorporating political donation declarations (with a search function) directly from Council's website.

Note: In accordance with section 375A of the Local Government Act a Division of votes is recorded on this planning matter.

For the Motion***Against the Motion***

Councillor Howe
Councillor Carmichael
Councillor Edelman
Councillor Jarnason
Councillor Shoebridge
Councillor Wynne
Councillor Young
Councillor Zeltzer

Nil

8/0

D5 DA238/2008 – 57 New South Head Road, Vaucluse – Alterations & additions comprising of new swimming pool with storage area below, removal of a vehicular access & landscaping works – 28/4/2008

Note: Late correspondence was tabled by Nick Economou Council's Team Leader.

(Edelman/Wynne)

Resolved:

THAT the matter be referred to a site inspection meeting to be held at 8.00am on Wednesday 15 October 2008.

Note: In accordance with section 375A of the Local Government Act a Division of votes is recorded on this planning matter.

For the Motion

Against the Motion

Councillor Howe
Councillor Carmichael
Councillor Edelman
Councillor Jarnason
Councillor Shoebridge
Councillor Wynne
Councillor Young
Councillor Zeltzer

Nil

8/0

D6 DA926/2001 Part 4 – 62 Drumalbyn Road, Bellevue Hill – Section 96 Application Proposed external modifications – 2/5/2008

Note: Councillor Susan Wynne declared a non-significant, non-pecuniary interest in Item D6 as Bruce Bland was third on the Residents First Vaucluse ward ticket for the September 2008 Local Government Elections.

Note: Late correspondence was tabled by Nick Economou Council's Team Leader, Lewis Adey – aSquare Planning & Dr Colin Rose.

Note: Colin Rose of Bellevue Hill, objector, John Caridad the applicant and Bruce Brand of Rose Bay, supporter addressed the Committee.

Note: The Committee deleted original condition G.1 (Reduction to the height of the fencing to the rear boundary and the rear section of the eastern side boundary), added condition G.2 (Screen planting to rear boundary palisade fence), added condition G.3 (Mesh infill), added condition G.4 (Eastern boundary wall adjacent to stairs) and part D to the recommendation.

Motion moved by Councillor Carmichael

THAT the matter be referred to a site inspection.

The Motion lapsed for want of a seconder.**Motion moved by Councillor Shoebridge****Seconded by Councillor Jarnason**

- A. THAT the 2.7m high palisade fence to the rear boundary and the rear section of the eastern side boundary be lowered to a height of 2.1m above ground level.
- B. THAT the applicant be required to provide screen planting, at the applicant's cost and of a species approved by Council staff.
- C. THAT consideration be given by Council to provide appropriate screen planting on the Council side of the rear fence.

The Motion was put and lost.

Note: In accordance with section 375A of the Local Government Act a Division of votes is recorded on this planning matter.

For the Motion

Councillor Howe
Councillor Jarnason
Councillor Shoebridge

Against the Motion

Councillor Carmichael
Councillor Edelman
Councillor Young
Councillor Wynne
Councillor Zeltzer

3/5

Further Motion moved by Councillor Zeltzer**Seconded by Councillor Edelman**

- A. THAT the 2.7m high palisade fence to the rear boundary and the rear section of the eastern side boundary be approved.
- B. THAT the applicant be required to provide screen planting, at the applicant's cost and of a species approved by Council staff.
- C. THAT consideration be given by Council to provide appropriate screen planting on the Council side of the rear fence.

The Motion was put and carried.

Note: In accordance with section 375A of the Local Government Act a Division of votes is recorded on this planning matter.

For the Motion

Councillor Edelman
Councillor Howe
Councillor Young
Councillor Wynne
Councillor Zeltzer

Against the Motion

Councillor Carmichael
Councillor Jarnason
Councillor Shoebridge

5/3

**Further Motion moved by Councillor Shoebridge
Seconded by Councillor Carmichael**

THAT Council take action to require the demolition/removal of the following works:

- i) The portion of the masonry wall to the rear section of the eastern side boundary extending above the stair. The 2.7 m high palisade fence is allowed to extend above the stair level.
- ii) The mesh infill to the fence to the eastern side of the 900 mm elevated rear yard.

**Amendment moved by Councillor Zeltzer
Seconded by Councillor Carmichael**

THAT the matter be referred to a site inspection.

The Amendment was put and lost.

Note: In accordance with section 375A of the Local Government Act a Division of votes is recorded on this planning matter.

For the Motion

Councillor Carmichael
Councillor Zeltzer

Against the Motion

Councillor Edelman
Councillor Shoebridge
Councillor Howe
Councillor Wynne
Councillor Young
Councillor Jarnason

2/6

**Further Amendment moved by Councillor Edelman
Seconded by Councillor Carmichael**

- A. In order to address the adverse visual impact upon Thornton Reserve, the upper half of the rear panel of the palisade fencing to the top of the masonry wall above the stair located within the north-eastern corner of the site be removed.
- B. That the masonry wall to the rear section of the eastern side boundary extending above the stair be rendered.

The Amendment was put and carried.

The Amendment became the Motion.

Note: In accordance with section 375A of the Local Government Act a Division of votes is recorded on this planning matter.

For the Motion

Councillor Carmichael
Councillor Edelman
Councillor Young
Councillor Wynne
Councillor Zeltzer

Against the Motion

Councillor Howe
Councillor Jarnason
Councillor Shoebridge

5/3

**Further Amendment moved by Councillor Shoebridge
Seconded by Councillor Young**

That Council take action to require the demolition/removal of the following works:

- i) The mesh infill to the fence to the eastern side of the 900 mm elevated rear yard.

The Amendment was put and carried.

Note: In accordance with section 375A of the Local Government Act a Division of votes is recorded on this planning matter.

For the Motion

Councillor Carmichael
Councillor Edelman
Councillor Young
Councillor Wynne
Councillor Shoebridge
Councillor Howe

Against the Motion

Councillor Jarnason
Councillor Zeltzer

6/2

The Amendment became the motion.

The Motion was put and carried.

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

- A. THAT Council, as the consent authority, modify development consent to Development Application No. 926/2001 for substantial alterations and additions to a 3 unit residential flat building on land at 62 Drumalbyn Road Bellevue Hill, as follows:

The modification of the following condition:**A.1 Approved Amended (s96) Plans and supporting documents**

Those acting upon or under this amended consent must carry out all work and maintain the use and works in accordance with the approved plans and supporting documents listed in the original consent, as amended by the amended approved plans and supporting documents as submitted by the Applicant and to which is affixed a Council stamp "Approved Plans" listed below otherwise than modified by further condition(s). Where the plans relate to amendments, alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
433-A01F, 02G, 03G, 04F-07F, 08G, 09G & 10F as amended by the work shown in colour on the plans 433-A01H, 06H, 07H & 09H and as further as amended by the work shown in colour on the plans 433-A01I & A06I-A09I inclusive.	Architectural Plans	Andre and Porebski and Associates	Sep 06 (F series) Feb 07 (G series) Aug 07 (H series) April 08 (I series)

The addition of the following conditions:**G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate****G.1 Reduction to the height of the palisade fencing to the top of the eastern boundary wall**

In order to address the adverse visual impact upon Thornton Reserve, the upper half of the rear panel of palisade fencing to the top of the masonry wall above the stair located within the north-eastern corner of the site be removed.

G.2 Screen planting to rear boundary palisade fence

In order to address the visual impact upon Thornton Reserve, appropriate screen planting adjacent to the rear palisade fence is to be provided within the boundaries of the subject site. Details of the planting species (screen planting) is to be approved by Council.

G.3 Mesh infill

The mesh infill to the eastern side is to be removed in order to address the visual impact upon Thornton Reserve and the adjoining properties to the east (No. 64 and 66 Drumalbyn Road).

G.4 Eastern boundary wall adjacent to stairs

The eastern boundary, masonry wall adjacent to the stairs is to be rendered along its eastern face (as presented to No. 64 and 66 Drumalbyn Road). This condition is imposed to ensure an appropriate standard of aesthetics to the locality.

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

- i) Full works as executed plans, duly coloured showing all works that have been undertaken without prior Council consent.
 - ii) A certificate from a practising structural engineer certifying the structural adequacy of the works that have been undertaken without prior Council consent. Such certificate should also certify the impact of the works that have been undertaken on the structural integrity of the existing building.
 - iii) A survey report prepared by a registered surveyor, showing the location of all structures on the subject property relative to the boundaries of the site.
- C. THAT this matter be referred to the Manager – Compliance to take appropriate action under Part 6 of the Environmental Planning and Assessment Act 1979 in accordance with Council’s Policy on Unauthorised Uses, Buildings and Works for failure to obtain Council’s consent prior to carrying out the unauthorised works.
- D. THAT consideration be given by the appropriate section of Council to provide appropriate screen planting on the Council side of the rear fence.

D7 DA263/2007 Part 3 – 62 Wunulla Road, Point Piper – Section 96 Application – Proposed modification to basement carpark, swimming pool & the building – 22/4/2008

Note: Councillor Sean Carmichael declared a pecuniary interest in Item D7 (62 Wunulla Road, Point Piper) as the objector is his current employer and left the meeting and did not participate in the debate of vote on the matter.

Note: Councillor Malcolm Young declared a non-significant, non-pecuniary interest in this Item as he was once retained by the solicitors to advise and appear for the applicant on a valuation matter, approximately 12 years ago and has had no further contact with the applicant.

Note: Late correspondence was tabled by Alan Yazbek of Infinity Contructions, Peter Blair of SPMA and Chris King Council’s Consultant Planner.

Note: Bruce Soloman of Point Piper, objector, Alan Yazbek of Infinity on behalf of Bruce Soloman, Murray Tobias representing the applicant and Peter Blair of SPMA, project manager for the applicant addressed the Committee.

(Petrie/Shoebridge)

Resolved:

- A. THAT consideration of the Development Application No. 263/2007 be deferred for two weeks until the next Development Control Committee (to the first session at 6.00pm on the 20 October 2008) to allow staff to report on and clarify the figures supplied in the late correspondence.
- B. THAT a copy of the previous assessment report be provided to all Councillors.

Note: In accordance with section 375A of the Local Government Act a Division of votes is recorded on this planning matter.

For the Motion***Against the Motion***

Councillor Petrie
 Councillor Howe
 Councillor Edelman
 Councillor Jarnason
 Councillor Shoebridge
 Councillor Wynne
 Councillor Young
 Councillor Zeltzer

Nil

8/0

D8 DA77/2002 Part 4 – 60A Wunulla Road, Point Piper - Section 96 Application - Proposed modification including new photovoltaic collectors to roof, new window & changes to boundary wall – 12/3/2008

Note: Councillor Sean Carmichael declared a pecuniary interest in Item D8 (60A Wunulla Road, Point Piper) as the applicant is his current employer and left the meeting and did not participate in the debate or vote on the matter.

Note: Late correspondence was tabled by Harvey Sanders of Design Collaborative, Jonathan Evans of Tzannes Assoc & Peter Blair of SPMA.

Note: Murray Tobias of Point Piper, objector, Prof. Geoff Smith on behalf of Murray Tobias and Jonathan Evans of Tzannes Associates on behalf of the applicant addressed the Committee.

(Shoebridge/Wynne)

THAT consideration of the Development Application No. 77/2002 Part 4 on land at 60A Wunulla Road Point Piper, be deferred for a period of two weeks (to the first session at 6.00pm of the Development Control Committee on the 20 October 2008) to allow the proposed solution to the glare and glint issues submitted by Professor Smith to be negotiated with the applicant with the view to obtain a better outcome.

Note: In accordance with section 375A of the Local Government Act a Division of votes is recorded on this planning matter.

For the Motion***Against the Motion***

Councillor Howe
 Councillor Edelman
 Councillor Jarnason
 Councillor Shoebridge
 Councillor Wynne
 Councillor Young
 Councillor Zeltzer

Nil

7/0

D9 DA130/2008 – 156 Edgecliff Road, Woollahra – Construct new retail/commercial building with basement car parking – 14/3/2008

Note: Late correspondence was tabled by Patrick Robinson Council's Manager Development Control, David Waghorn Council's Team Leader, Marco Rossi of Built & Myfanwy Horne.

(Shoebridge/Wynne)

Resolved:

THAT consideration of the Development Application No.130/2008 on land at 156 Edgecliff Road, Woollahra, be deferred for a period of two weeks (to the first session at 6.00pm of the Development Control Committee on the 20 October 2008) to allow the assessor to expand the analysis of the SEPP No. 1 objections.

Note: In accordance with section 375A of the Local Government Act a Division of votes is recorded on this planning matter.

For the Motion

Against the Motion

Councillor Howe
Councillor Carmichael
Councillor Edelman
Councillor Jarnason
Councillor Shoebridge
Councillor Wynne
Councillor Young
Councillor Zeltzer

Nil

8/0

D10 DA798/2007 – 163 Victoria Road, Bellevue Hill – Demolition of an existing residential flat building & erection of a new residential flat building consisting of 3 units & 6 off-street car parking spaces – 30/11/2007

Note: Greg Boston, Town Planning Consultant on behalf of the applicant addressed the Committee.

(Shoebridge/Zeltzer)

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

THAT the Council, as the consent authority, is of the opinion that the objection under SEPP 1- Development Standards to Council's 15 m site frontage standard under Clause 10B of Woollahra LEP 1995 is well founded. The Council is also of the opinion that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of this case as the non-compliance will not have any adverse impact upon the amenity of the locality and will achieve the objectives of the development standard.

AND

THAT the Council, as the consent authority, being satisfied that the objection under SEPP 1 is well founded and also being of the opinion that the granting of consent to DA 798/2007 is consistent with the aims of the Policy, grant development consent for the demolition of an existing residential flat building and the erection of a new residential flat building consisting of 3 units and 6 off-street car parking spaces on land at 163 Victoria 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.

A.2 Definitions

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

Applicant means the applicant for this Consent.

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

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

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

Council means Woollahra Municipal Council

Court means the Land and Environment Court

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

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

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

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

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

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

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

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

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

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

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

Site means the land being developed subject to this consent.

WLEP 1995 means *Woollahra Local Environmental Plan 1995*

Work for the purposes of this consent means:

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

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

A.3 Approved Plans and supporting documents

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

Reference	Description	Author/Drawn	Date(s)
DA03C, 04A, 05A, 06C & 07A.	Architectural Plans	Zoltan Kovacs	March 2005 (A) 01/08 (C)
LP03	Landscape Plan	Nova Hortus Landscapes	21 March 2005
Arborist Report	Arborist Report	Hyden Coulter	12 Dec 2007
Dwg No STW-02, STW-04, STW-05 Rev P	Stormwater disposal concept plan	Brian O'Mara & Ptnrs	15-10-07
	Victoria Road Bellevue Hill Drainage Works	Storm Consulting (Commissioned by Council)	8/8./2008
Ref; 10453/1-AA	Geotechnical Report	Geotechnique P/L	30 June 2004
Ref. 08007	Traffic & Parking Report	Varga Traffic Planning P/L	6 Feb 2008
	Flooding report	Northern Beaches Consulting	

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

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

A.4 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.

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

B.1 Establishment of Tree Protection Zones

To limit the potential for damage to trees to be retained, Tree Protection Zones are to be established for all trees to be retained on site. The Tree Protection Zones are to comply with the following requirements:

- a. Tree Protection Zones are to established within the specified radius from the trunks of the following trees;

Council Reference No:	Species	Location	Radius from Trunk (Metres)
1	<i>Jacaranda mimosifolia</i> Jacaranda	Within front of property	4
2	<i>Eucalyptus maculata</i> Spotted Gum	Rear boundary	8
3	<i>Eucalyptus saligna</i> Sydney Blue Gum	Rear of property	8

- b. Tree Protection Zones are to be fenced with a 1.8 meter high chainmesh or weldmesh fence to minimise disturbance to existing ground conditions. The area within the fence must be mulched, to a depth of 75mm, irrigated and maintained for the duration of the construction works.
- c. Installation of all Tree Protection measures is to be at the direction of and overseen by a qualified Arborist (minimum Australian Qualification Framework Level 4 or recognised equivalent).
- d. A sign must be erected on each side of the fence indicating the existence of a Tree Protection Zone and providing the contact details of the site Arborist.
- e. Existing soil levels must be maintained within Tree Protection Zones. Where excavation is undertaken adjacent such an area, the edge of the excavation must be stabilised, until such time as permanent measures are installed (eg. retaining wall etc) to prevent erosion within the Tree Protection Zone.
- f. Sediment control measures are to be installed around all Tree Protection Zones to protect the existing soil levels.
- g. The storage of materials, stockpiling, siting of works sheds, preparation of mixes, cleaning of tools or equipment is not permitted within Tree Protection Zones.
- h. Site personnel must be made aware of all Tree Protection requirements, measures and any actions that constitute a breach of the Conditions of Development Consent with regard to tree protection on site during their site induction.

B.2 Construction Certificate required prior to any demolition

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

B.3 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.

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) In order to ensure the protection of the Jacaranda tree located the front yard of the subject site, the front terrace at ground floor level is to be setback a minimum of 2.5 m from the trunk of the tree.
- b) In order to adequately maintain the visual privacy of the adjoining properties to the south-west (165 Victoria Rd) and to the north-east (161 Victoria Rd), 1.7 m high privacy screens are to be attached to the south-western and north-eastern sides of the first floor level rear balcony.
- c) In order to adequately maintain the visual privacy of the adjoining property to the south-west (165 Victoria Rd), the depth of the second floor level roof terrace is to be reduced from 6.9 m to 2 m.

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

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

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

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

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy Use Calculator: http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation or use their online calculator	No	
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit - Making good any damage caused to any property of the <i>Council</i> as a consequence of the doing of anything to which the consent relates.	\$22,000	No	T115
Infrastructure Works Bond - Completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent.	\$128,700	No	T112
DEVELOPMENT LEVY under Woollahra Section 94A Development Contributions Plan 2005 This plan may be inspected at Woollahra Council or downloaded from our website www.woollahra.nsw.gov.au			
Development Levy (S94A)	\$12,860.80 + Index Amount	Yes, quarterly	T96
INSPECTION FEES under section 608 of the Local Government Act 1993			
Public Road and Footpath Infrastructure Inspection Fee	\$375	No	T45
Security Administration Fee	\$175	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$164,110.80 Plus any relevant indexed amounts and long service levy		

Building & Construction Industry Long Service Payment

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

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

How must the payments be made?

Payments must be made by:

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

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

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

- c. the bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent; and
- d. the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

How will the section 94A levy be indexed?

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

Do you need HELP indexing the levy?

Please contact our customer service officers. Failure to correctly calculate the adjusted 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.

C.3 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 ***Council's Development Engineer*** and approved by *Council* under the *Roads Act 1993*, before the issue of any *Construction Certificate*. To accommodate this requirement, the following infrastructure works must be carried out on Council property at the Applicants expense:

Road & Footpath

- Full width vehicular crossings having a width of 4.5m including new layback and gutter in accordance with Council's standard drawing RF2.
- Removal and replacement of the existing footpath and kerb for the full width of the property in accordance with Council's standard drawing RF3.
- Removal of all driveway crossings and kerb laybacks which will be no longer required.
- Reinstatement of footpath, kerb and gutter to match existing.
- Where a grass verge exists, the balance of the area between the footpath and the kerb over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of Couch turf.

Drainage

- Construction of drainage works in accordance with Stormwater Drainage Concept Plan by Storm Consulting Dwg No 862/P01 Sheets 1 & 2 dated Aug 2008
- The drainage system is to be designed to accept the 1:100 year flow
- Construction of a standard gully pits in accordance with Council's Standard "Grated Gully Pit with extended Kerb Inlet" drawing DR1 and standard junction pits to DR3
- Construction of approximately 39m of 450mm RCP in-ground drainage. Due to the depth and services in Victoria Road the pipeline may have to be pipe jacked or bored. Council will not permit the closure of Victoria Rd.
- The developer shall be responsible for carrying out any service investigations to allow a gravity connection.

Bond

- A bond of **\$128,700 (One hundred and twenty eight thousand seven hundred dollars)** will be used as security to ensure the satisfactory completion of the infrastructure works. The security or bank guarantee must be the original and not have an expiry date.
- Council may use all or part of the Infrastructure Bond as well as the Property Damage Security Deposit to meet the cost of removing or completing the works if they do not meet Council's requirements.
- The Deposit/Bond will not be released until Council has inspected the site and is satisfied that the Works have been completed in accordance with Council approved drawings and to Council requirements

An "Application to carry out works in a Public Road" form (available from Councils web-site <http://www.woollahra.nsw.gov.au>) must be completed and lodged, with the Application fee, at Councils Customer Services counter. Detailed engineering plans and specifications of the works required by this Condition must accompany the Application form. The plans must clearly show the following:

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

The design of the works must be in accordance with Council's Draft Stormwater Drainage Management DCP (draft version 1.1, public exhibition copy dated 14/12/2006) available from Council's website www.woollahra.nsw.gov.au. Four weeks should be allowed for assessment.

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 design and construction works must comply with Council's "*Specification for Roadworks, Drainage and Miscellaneous Works*" dated January 2003 unless expressly provided otherwise by these conditions. This specification can be downloaded from www.woollahra.nsw.gov.au.

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

Note: Four (4) weeks is to be allowed for the *Roads Act* assessment

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

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

C.4 Waste Storage - Residential Units (up to 4 units)

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

- a. the storage of waste and recycling bins behind the building line or within non-habitable areas of the building as close as possible to the service road collection point,
- b. a path for wheeling bins between the waste and recycling storage area and the collection point free of steps and kerbs and having a maximum grade of 1:8.

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.

C.6 Soil and Water Management Plan – Submission & Approval

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

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

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

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

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

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

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

C.7 Professional Engineering Details

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

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

C.8 Bicycle, Car and Commercial Parking Details

The *Construction Certificate* plans and specifications required by clause 139 of the Regulation, must include detailed plans and specifications for all bicycle, car and commercial vehicle parking in compliance with AS2890.3:1993 *Parking Facilities - Bicycle Parking Facilities*, AS/NZS 2890.1:2004 : *Parking Facilities - Off-Street Car Parking* and AS 2890.2:2002 – *Off-Street Parking: Commercial Vehicle Facilities* respectively and including the following:

- All vehicles are to enter and exit in a forward direction
- Where a vehicular entrance is proposed in conjunction with a fence of height greater than 1.2m, a 45° splay or its equivalent is provided either side (as applicable) of the entrance to ensure driver and pedestrian vision. The splay is to have minimum dimensions of 2.0m by 2.0m (WRDCP Section C5.4.8 (Figure 5.4.2)).
- Traffic Signal System - a traffic signal system must be implemented to warn approaching vehicles of a vehicle exiting the basement garage. The signal must be clearly visible from the roadway to both pedestrians and vehicles approaching the entrance. The green default light is to face entering traffic.
- It is recommended that as the driveway ramp will be used occasionally by pedestrians, remove garbage and the like in wheelie bins a flatter grade would be more appropriate. In this case a grade of 1:5(20%) would be more appropriate
- Access levels and grades must comply with access levels and grade required by Council under the Roads Act 1993.

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

C.9 Stormwater management plan Clause 25(2) WLEP 1995)

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

The *Stormwater Management Plan* must detail:

- a. general design in accordance with Stormwater disposal concept plan prepared by Brian O'Mara & Ptnrs Drawing No STW-02 Rev P dated 15-10-07 other than amended by this and other conditions;

- b. the discharge of stormwater, by direct connection, to the new drainage system under Victoria Rd as shown on Stormwater Drainage Concept Plan by Storm Consulting Dwg No 862/P01 Sheets 1 & 2 dated Aug 2008;
- c. compliance the objectives and performance requirements of the BCA;
- d. any rainwater tank required by BASIX commitments including their overflow connection to the *Stormwater Drainage System*, and
- e. general compliance with the Council’s draft Development Control Plan Stormwater Drainage Management (draft version 1.1, public exhibition copy dated 14/12/2006) and
- f. on-site stormwater detention (“OSD”).

OSD Requirements

The minimum (OSD) Site Storage Requirements (“SSR”) and the Peak Site Discharge (“PSD”) from the site must be in accordance with the following minimum storage/discharge relationships based upon a 1000m² site area:

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

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

- i. Where the rainwater tank is used for external uses only, 40% of the rainwater tank volume to a maximum of 4m³, or
- ii. Where the rainwater tank is used for external and internal uses, 75% of the rainwater tank volume to a maximum of 7.5m³.

Example: The Site Storage Requirements may be 25,000 litres and a 10,000 litre rainwater tank is to be used for garden irrigation. Therefore, the rainwater tank contributes 4,000 litres toward SSR. Therefore, the OSD tank needs to be 21,000 litres (25,000 litres less the 4,000 litres allowance). Note: 1m³ = 1,000 litres.

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

Layout plan

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

It must include:

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

On-site Detention (OSD) details:

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

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

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

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

C.10 Flood protection

The *Construction Certificate* plans and specifications, required by clause 139 of the *Regulation*, must include a Flood Risk Management Plan (FRMP) on the basis of a 1:100 year flood at 85.63m AHD. (the Flood Level). The recommendations in the Flooding report prepared by Northern Beaches Consulting which identifies a driveway level with freeboard of RL 85.79 AHD **are to be reconfirmed** in the above FRMP. The flood protection measures are to include:

1. Freeboard allowances
 - 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)
2. the installation of training walls to prevent entry of water.
3. a crest on the driveway with a level consistent with the recommendations that of the flood study.
4. The carpark is to be sealed up to that level to prevent the 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.

C.11 Light & Ventilation

The *Construction Certificate* plans and specifications, required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation*, must detail all a lighting, mechanical ventilation or air-conditioning systems complying with Part F.4 of the *BCA* or clause 3.8.4 and 3.8.5 of the *BCA* Housing Provisions, inclusive of [AS 1668.1](#), [AS 1668.2](#) and [AS/NZS 3666.1](#). If an alternate solution is proposed then the *Construction Certificate* application must include a statement as to how the performance requirements of the *BCA* are to be complied with and support the performance based solution by expert *evidence of suitability*. This condition does not set aside the mandatory requirements of the *Public Health (Microbial Control) Regulation* 2000 in relation to *regulated systems*. This condition does not set aside the effect of the *Protection of the Environment Operations Act* 1997 in relation to offensive noise or odour.

Note: Clause 98 of the *Regulation* requires compliance with the *BCA*. Clause 145 of the *Regulation* prevents the issue of a *Construction Certificate* unless the *Accredited Certifier/Council* is satisfied that compliance has been achieved. Schedule 1, Part 3 of the *Regulation* details what information must be submitted with any *Construction Certificate*. It is the Applicant's responsibility to demonstrate compliance through the *Construction Certificate* application process. Applicants must also consider possible noise and odour nuisances that may arise. The provisions of the *Protection of the Environment Operations Act* 1997 have overriding effect if offensive noise or odour arises from the use. Applicant's must pay attention to the location of air intakes and air exhausts relative to sources of potentially contaminated air and neighbouring windows and air intakes respectively, see section 2 and 3 of [AS 1668.2](#).

C.12 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).
2. **Association of Australian Acoustical Consultants**—professional society of noise related professionals (www.aaac.org.au).

C.13 Tree Management Details

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

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

C.14 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.

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.

C.15 BASIX commitments

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

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

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

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

- a. that the work must be carried out in accordance with the requirements of the Building Code of Australia,

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

This condition does not apply:

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

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

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

D.2 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 not limited to):

- a. 165 Victoria Road, Bellevue Hill
- b. St Stephens Church, Victoria Road, Bellevue Hill

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.

D.3 Construction Management Plan – Approval & Implementation

A construction management plan must be submitted to and approved by Council’s Development Engineer before the commencement of demolition, excavation or construction works.

The Plan must:-

- a. describe the anticipated impact of the construction works on:
 - i. local traffic routes,
 - ii. pedestrian circulation adjacent to the building site,
 - iii. the public place including crown land and community land,
 - iv. and on-street parking in the local area.

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

- c. show the location of:
 - viii. all proposed site sheds and any anticipated use of cranes and concrete pumps,
 - ix. any areas of Council property on which it is proposed to install a Work (construction) Zone, and
 - x. proposed structures such as hoardings, scaffolding or shoring, or to excavate.

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 under the Roads Act 1993. Standing of cranes and concrete pumps on Council property or the road will need consent on each occasion.

Note: Separate approval is required for any proposed site crane, hoarding, work zone, road opening, road closure or the standing of any plant (crane or pump or the like) in any public place.

D.4 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.

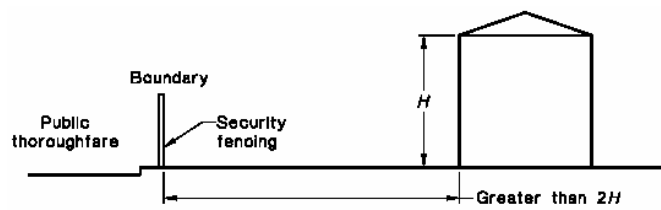
D.5 Adjoining buildings founded on loose foundation materials

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*.

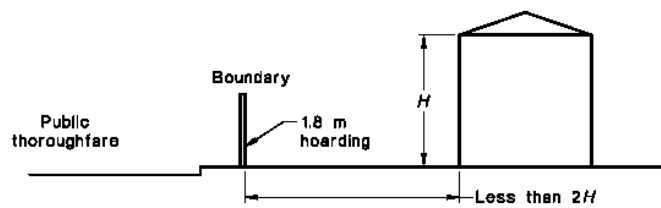
Note: A failure by contractors to adequately assess and seek professional engineering (geotechnical) advice to ensure that appropriate underpinning and support to adjoining land is maintained prior to commencement may result in damage to adjoining land and buildings. Such contractors are likely to be 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*.

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.

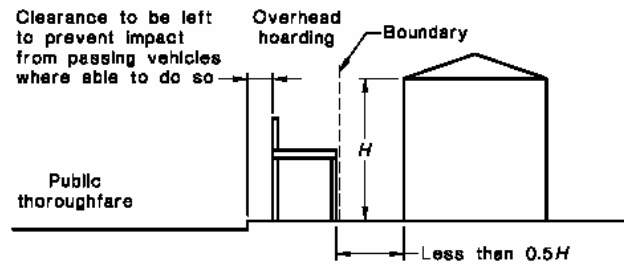


Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an *overhead protective structure* and the facing facade protected by heavy-duty scaffolding, unless either

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

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

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



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

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

<http://www.workcover.nsw.gov.au/Publications/LawAndPolicy/CodesofPractice/oheadprotstruucts.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.

D.7 Erosion and Sediment Controls – Installation

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

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

Where there is any conflict The Blue Book takes precedence.

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

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

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

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

D.8 Site Signs

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

“Erection of signs

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

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

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

D.9 Toilet Facilities

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

Each toilet provided:

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

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

In this condition:

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

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

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

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

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

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 .
- 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*.

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.

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.

E. Conditions which must be satisfied during any development work

E.1 Tree Preservation

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

General Protection Requirements:

- a) There must be no excavation or *work* within the required Tree Protection Zone(s). The Tree Protection Zone(s) must be maintained during all *development work*.
- b) Where excavation encounters tree roots with a diameter exceeding 50mm excavation must cease. The *principal contractor* must procure an inspection of the tree roots exposed by a qualified arborist. Excavation must only recommence with the implementation of the recommendations of the qualified arborist or where specific instructions are given by Council's Tree Management Officer in strict accordance with such Council instructions.
- c) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the qualified arborist or where specific instructions are given by Council's Tree Management Officer in strict accordance with such Council instructions.

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.

Hand excavation within tree root zones

To prevent damage to roots and compaction within the root zone, excavation undertaken within the specified radius from the trunks of the following trees must be hand dug. Small hand tools only are to be utilised, mattocks and similar digging tools are not be used within these areas. No root with a diameter equal to or in excess of 50mm is to be cut unless approved, in writing, by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 4 or recognised equivalent).

All root pruning must be undertaken in accordance with the Australian Standard 4373 Pruning of amenity trees and carried out by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 4 or recognised equivalent)

Beyond this radius, mechanical excavation is permitted, when root pruning by hand along the perimeter line of such works is completed.

Council Reference No:	Species	Location	Radius from Trunk(Metres)
1	<i>Jacaranda mimosifolia</i> Jacaranda	Within front of property	2.5 metres
2	<i>Eucalyptus maculata</i> Spotted Gum	Rear boundary	3 metres
3	<i>Eucalyptus saligna</i> Sydney Blue Gum	Rear of property	3 metres
4	<i>Jacaranda mimosifolia</i> Jacaranda	Adjoining property – church	3 metres

Level changes in the vicinity of trees

No level changes are to occur within the specified radius from the trunks of the following trees to allow for the preservation of their root zones.

Council Reference No:	Species	Location	Dimension (Metres)
1	<i>Jacaranda mimosifolia</i> Jacaranda	Within front of property	10 x 10 m
2	<i>Eucalyptus maculata</i> Spotted Gum	Rear boundary	12 x 7m
3	<i>Eucalyptus saligna</i> Sydney Blue Gum	Rear of property	14 x 13m
4	<i>Jacaranda mimosifolia</i> Jacaranda	Adjoining property – church	12 x 12m

E.2 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) Trees on private property which must be retained

Council Reference No:	Species	Location	Dimension (Metres)
1	<i>Jacaranda mimosifolia</i> Jacaranda	Within front of property	10 x 10 m
2	<i>Eucalyptus maculata</i> Spotted Gum	Rear boundary	12 x 7m
3	<i>Eucalyptus saligna</i> Sydney Blue Gum	Rear of property	14 x 13m
4	<i>Jacaranda mimosifolia</i> Jacaranda	Adjoining property – church	12 x 12m

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

b) The following trees may be removed:

Council Reference No:	Species	Location	Dimension (Metres)
5	<i>Celtis occidentalis</i> Hackberry	Front northern corner	5 x 3m
6, 7	<i>Ligustrum lucidum</i> Large-leaf Privet	Side south western boundary	5 x 3m and 9 x 5m
8	<i>Celtis occidentalis</i> Hackberry	Southern side of property	12 x 10m
9	<i>Phoenix canariensis</i> Canary Island Date Palm	Rear yard southern side	6 x 6m
10	<i>Betula pendula</i> Silver Birch	Rear southern side of property	8 x 5m
11	<i>Morus sp.</i> Mulberry tree	Rear of property	6 x 6m
12	<i>Ligustrum lucidum</i> Large-leaf Privet	Rear yard	6 x 4m

Note: The tree trees that may be removed should appear coloured red on the construction certificate plans.

c) 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	Minimum Dimensions at Maturity
4 x suitable trees	Within property	100 litre bags	6 x 4m
4 x suitable trees	Within property	100 litre bags	7 x 5m

E.3 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.

E.4 Compliance with Construction Management Plan

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

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

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

E.5 Maintenance of Vehicular and Pedestrian Safety and Access

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

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

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

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

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

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

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

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

Part C Management of Waste:

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

Part E Public roads:

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

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

E.6 Maintenance of Environmental Controls

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

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

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

E.7 Support of adjoining land and buildings

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

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

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

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

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

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

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

E.8 Erosion and Sediment Controls – Maintenance

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

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

E.9 Disposal of site water during construction

The principal contractor or owner builder must ensure:

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

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

E.10 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.

E.11 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.

E.12 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

E.13 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.

E.14 Compliance with Council's Specification for Roadworks, Drainage and Miscellaneous Works Road works and work within the Road and Footway

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

The *owner, principal contractor* or *owner builder* must meet all costs associated with such works. This condition does not set aside the need to obtain relevant approvals under the *Roads Act 1993* or *Local Government Act 1993* for works within Roads and other public places.

Note: A copy of Council's "*Specification for Roadworks, Drainage and Miscellaneous Works*" can be downloaded free of charge from Council's website www.woollahra.nsw.gov.au

E.15 Placement and use of Skip Bins

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

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

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

E.16 Dust Mitigation

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

This generally requires:

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

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

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

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

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

F.1 Amenity Landscaping

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

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

F.2 Commissioning and Certification of Systems and Works

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

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

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

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

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

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

F.3 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 support 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.

F.4 Occupation Certificate (section 109M of the Act)

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

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

F.5 Letter Box(es)

All letter boxes must be constructed and located in accordance with AS/NZS 4253:1994 Mailboxes and to Australia Post’s satisfaction.

Note: This condition has been imposed to ensure that mail can be delivered to occupiers of the site.

F.6 Compliance Certificate from Sydney Water

All work must be completed in accordance with the Compliance Certificate under the Sydney Water Act 1994 and the “Notice of Requirements”.

Note: Please refer to “Your Business” section of Sydney Water’s web site at www.sydneywater.com.au then the “e-developer” icon or telephone 13 20 92.

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.

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

H.1 Landscaping

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

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

H.2 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 or obtained from Council's customer service centre.

H.3 Positive Covenant & Works-As-Executed certification of stormwater systems

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

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

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

H.4 Fulfillment of BASIX commitments – Clause 154B of the Regulation

All BASIX commitments must be effected in accordance with the **BASIX Certificate No 172570M**.

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."

H.5 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*.

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

I.1 Maintenance of Landscaping

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

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

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

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

I.2 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.

I.3 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the **BASIX Certificate 172570M**.

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

I.4 Outdoor lighting – Residential

Outdoor lighting must comply with AS 4282-1997: Control of the obtrusive effects of outdoor lighting. The maximum luminous intensity from each luminaire must not exceed the level 1 control relevant under table 2.2 of AS 4282. The maximum illuminance and the threshold limits must be in accordance with table 2.1 of AS 4282.

Reason: This condition has been imposed to protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting in public places.

Note: This condition has been imposed to control the obtrusive effects of outdoor lighting.

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)
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.

J. Advising

J.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.

J.2 Dial before you dig



The *principal contractor, owner builder* or any person digging may be held financially responsible by the asset owner should they damage underground pipe or cable networks. Minimise your risk and Dial 1100 Before You Dig or visit www.dialbeforeyoudig.com.au. When you contact Dial Before You Dig, you will be sent details of all Dial Before You Dig members who have underground assets in the vicinity of your proposed excavation.

J.3 Builders Licences and Owner Builders Permits

Section 81A of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an **owner-builder**, must appoint a *principal contractor* for residential building work who must be the holder of a contractor licence. Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder): <http://www.dft.nsw.gov.au/building.html> .

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

J.4 Building Standards - Guide to Standards and Tolerances

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

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

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

J.5 Workcover requirements

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

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

J.6 Asbestos Removal, Repair or Disturbance

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW. Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence. All removal, repair or disturbance of or to asbestos material must comply with:

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

J.7 Lead Paint

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

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

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

J.8 Dividing Fences

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

J.9 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact **David Booth, Senior Assessment Officer** on (02) 9391 7119. 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.

J.10 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 80A of the *Act*. The securities will not be released until a *Final Occupation Certificate* has lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council's requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council's requirements. Council will only release the security upon being satisfied that all damage or all works, the purpose for which the security has been held have been remedied or completed to Council's satisfaction as the case may be. Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed. Upon completion of each section of road, drainage and landscape work to Council's satisfaction, 90% of the Bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.

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

J.11 Recycling of Demolition and Building Material

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

J.12 Owner Builders

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

J.13 Pruning or Removing a Tree Growing on Private Property

Woollahra Municipal Council's *Tree Preservation Order 2006* (TPO) may require that an application be made to Council prior to pruning or removing any tree. The aim is to secure the amenity of trees and preserve the existing landscape within our urban environment.

Before you prune or remove a tree, make sure you read all relevant conditions. You can obtain a copy of the TPO from Council's website www.woollahra.nsw.gov.au or you may contact Council on 9391-7000 for further advice.

Note: In accordance with section 375A of the Local Government Act a Division of votes is recorded on this planning matter.

For the Motion***Against the Motion***

Councillor Howe
Councillor Carmichael
Councillor Edelman
Councillor Jarnason
Councillor Shoebridge
Councillor Wynne
Councillor Young
Councillor Zeltzer

Nil

8/0

D11 DA663/2002 Part 2 – 600-612 New South Head Road, Rose Bay (Tingira Reserve beach frontage) – Section 96 Application – Proposed modification to the numbers of water craft for hire, changes to the permissible storage area on the beach & the placement of additional ancillary structures on the beach & reserve – 16/5/2008

Note: Late correspondence was tabled by Brian Fallon.

Note: Maureen Clarke of the Rose Bay Residents Association, Barry McGowen of Bellevue Hill, objectors, Howard Burston on behalf of the applicant and Ben King of Rose Bay Aquatic Hire addressed the Committee.

Note: The Committee deleted original Condition No. 8 (The use of Tingira Reserve).

(Young/Shoebridge)

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

THAT Council, as the consent authority, modify development consent to Development Application No. 663/2002 part 2 for the operation of an aquatic school and small water craft hire facility on the Tingira Reserve beach frontage adjacent to 600-612 New South Head Road Rose Bay, in the following manner:

The modification of Condition 1 as follows:

1. Location of permitted storage area.

The permitted storage is limited to the hatched area indicated on the diagram below.



All stored vessels must not pass over the existing sandstone wall into Tingira Reserve and at no time is craft to obstruct public access to the beach. The ancillary equipment (two flag signs, buoyancy vests, paddles, information board, small table and two chairs) are to be stored within the permitted storage area and removed at the end of each day and is not to be stored within the permitted storage area overnight. No equipment is to be stored within Tingira Memorial Reserve at any time.

The modification of Condition 4 as follows:

4. Hiring, identification and storage of water craft.

“The Rose Bay Aquatic Hire” shall be limited to the hiring of and storage of:

- 1 Hobie Cat
- 25 Kayaks
- 3 Surf Skis

No other water craft may be hired, or launched from the beach by Rose Bay Aquatic Hire other than that specified in this consent or without prior Council approval.

All vessels owned or hired by Rose Bay Aquatic Hire requires identification to indicate ownership.

The modification of Condition 5 as follows:

5. License agreement

The existing license agreement with Council for the use of the beach frontage of Tingira Reserve must be varied in accordance with the approved modifications. In this respect, contact should be made with Council's Property Officer, Mr Anthony Sheedy on 9391 7019.

The Council reserves the right to vary or re-determine the annual rental payable under the licence in accordance with the approved modifications.

The modification of Condition 6 as follows:

6. Unobstructed access to the foreshore to be retained at all times.

Access from Vickery Avenue and Tingira Memorial Reserve to the beach frontage is to be kept unobstructed at all times in order to maintain view corridors and ensure unimpeded access for beach cleaning machinery and the general public.

The addition of the following conditions:

8. Visual quality ancillary equipment

In order to ensure the visual amenity of the locality is maintained, all ancillary equipment (two flag signs, buoyancy vests, paddles, information board, small table and two chairs) is to be high-quality visually and maintained as such.

Note: In accordance with section 375A of the Local Government Act a Division of votes is recorded on this planning matter.

For the Motion

Against the Motion

Councillor Howe
Councillor Carmichael
Councillor Edelman
Councillor Jarnason
Councillor Shoebridge
Councillor Wynne
Councillor Young
Councillor Zeltzer

Nil

8/0

D12 Register of Current Land and Environment Court Appeals for Development Applications

(Shoebridge/Wynne)

Resolved:

THAT the consideration of the attached register of current Land and Environment Court Appeals for Development Applications be deferred until the next Development Control Committee to be held on the 20 October 2008.

Note: In accordance with section 375A of the Local Government Act a Division of votes is recorded on this planning matter.

For the Motion***Against the Motion***

Councillor Howe
Councillor Carmichael
Councillor Edelman
Councillor Jarnason
Councillor Shoebridge
Councillor Wynne
Councillor Young
Councillor Zeltzer

Nil

8/0

D13 DA753/2007 – 1B New Beach Road, Darling Point – Use of the existing T-heads at arms A,B,C & D for the berthing of vessels – 19/11/2007

Note: In accordance with Council's meeting procedures and policy this matter has been called to full Council by Councillor Shoebridge for the following reasons:

1. Substantial marina development on the harbour with significant public interest.
2. The preservation of the harbour is a matter appropriately dealt with by Full Council - (See Item R1)

**Items with Recommendations from this Committee
Submitted to the Council for Decision (Items R1 to R2)**

R1 DA753/2007 – 1B New Beach Road, Darling Point – Use of the existing T-heads at arms A,B,C & D for the berthing of vessels – 19/11/2007

Note: In accordance with Council's meeting procedures and policy this matter has been called to full Council by Councillor Shoebridge for the following reasons:

1. Substantial marina development on the harbour with significant public interest.
2. The preservation of the harbour is a matter appropriately dealt with by Full Council.

Note: Late correspondence was tabled by Councillor Shoebridge & M Seamonds of Rushcutters Bay Foreshore Protection Assoc.

Note: Morris Seamonds of Rushcutters Bay, Neil Gross of Darling Point, Adrian Gruzman Commodore of Sailing Association, John Price Commodore of Sailability NSW, Tony Daniel of Elizabeth Bay, Bob Walker Director Legacy Marina Corporation and Steven Churm NSW delegate for Sailability Australia, objectors addressed the Committee.

(Shoebridge/Jarnason)

THAT the Committee resolve to enter into closed session with the press and public excluded to consider the confidential report and legal advice on this matter in accordance with the provisions of Section 10A(2)(g) of the Local Government Act 1993.

Adopted

Note: In accordance with section 375A of the Local Government Act a Division of votes is recorded on this planning matter.

For the Recommendation***Against the Recommendation***

Councillor Howe
Councillor Carmichael
Councillor Edelman
Councillor Jarnason
Councillor Shoebridge
Councillor Wynne
Councillor Young
Councillor Zeltzer

Nil

8/0

In closed session

Note: The Committee discussed the confidential report and legal advice.

(Shoebridge/Young)

Recommendation:

- A. THAT the Council resolve to defend the appeal vigorously against Council's refusal of consent to Development Application No. 753/2007 for the use of the existing T-heads at arms A, B, C and D for the berthing of vessels on land at 1B New Beach Road, Darling Point and to clarify the reasons for refusal as follows:

1. The proposed new berths would have an unacceptable impact on navigation of the fairway, contrary to Clause 17 and 24 of the Sydney Region Environmental Plan (Sydney Harbour Catchment) 2005 and Clause 4.2 and 4.7 of the Sydney Region Environmental Plan (Sydney Harbour Catchment) Development Control Plan, 2005.
2. The use of the proposed new berths would be in conflict with the operation of the adjoining sailing school.
3. The proposed development would have a detrimental impact on the visual amenity of the harbour and would contribute to the visual clutter within Rushcutters Bay, contrary to Clauses 13, 14, 17 and 25 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and Clause 4.7 of the Sydney Region Environmental Plan (Sydney Harbour Catchment) Development Control Plan, 2005.
4. That marina development at Rushcutters Bay is currently excessive and that the proposal represents an incremental expansion which exacerbates the existing unacceptable intensity of marina activity.
5. That the marina is inadequately provided with off-street parking and that the proposed development does not provide an effective increase in off street parking to satisfy likely demand of the expanded use.
6. That the peak parking demand associated with the expanded use will give rise to unacceptable impacts in the vicinity of the site in relation to increased parking congestion and traffic generation having regard to the highly congested traffic and parking conditions which exist in the locality.
7. That the proposal compromises the public amenity of the waterways and does not benefit the general and boating public contrary to the provisions of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

B. THAT in accordance with Council's policy on confidentiality, the confidential report and legal advice remain confidential for a period of six (6) months or until the conclusion of the appeal, which ever occurs last.

Adopted

Note: In accordance with section 375A of the Local Government Act a Division of votes is recorded on this planning matter.

For the Recommendation

Against the Recommendation

Councillor Howe
Councillor Carmichael
Councillor Edelman
Councillor Jarnason
Councillor Shoebridge
Councillor Wynne
Councillor Young
Councillor Zeltzer

Nil

8/0

(Shoebridge/Wynne)

THAT the Committee move into "Open Session".

Adopted

Note: In accordance with section 375A of the Local Government Act a Division of votes is recorded on this planning matter.

For the Recommendation**Against the Recommendation**

Councillor Howe
Councillor Carmichael
Councillor Edelman
Councillor Jarnason
Councillor Shoebridge
Councillor Wynne
Councillor Young
Councillor Zeltzer

Nil

8/0

In Open Session

(Shoebridge/Young)

Recommendation:

- A. THAT the Council resolve to defend the appeal vigorously against Council's refusal of consent to Development Application No. 753/2007 for the use of the existing T-heads at arms A, B, C and D for the berthing of vessels on land at 1B New Beach Road, Darling Point and to clarify the reasons for refusal as follows:
1. The proposed new berths would have an unacceptable impact on navigation of the fairway, contrary to Clause 17 and 24 of the Sydney Region Environmental Plan (Sydney Harbour Catchment) 2005 and Clause 4.2 and 4.7 of the Sydney Region Environmental Plan (Sydney Harbour Catchment) Development Control Plan, 2005.
 2. The use of the proposed new berths would be in conflict with the operation of the adjoining sailing school.
 3. The proposed development would have a detrimental impact on the visual amenity of the harbour and would contribute to the visual clutter within Rushcutters Bay, contrary to Clauses 13, 14, 17 and 25 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and Clause 4.7 of the Sydney Region Environmental Plan (Sydney Harbour Catchment) Development Control Plan, 2005.
 4. That marina development at Rushcutters Bay is currently excessive and that the proposal represents an incremental expansion which exacerbates the existing unacceptable intensity of marina activity.
 5. That the marina is inadequately provided with off-street parking and that the proposed development does not provide an effective increase in off street parking to satisfy likely demand of the expanded use.
 6. That the peak parking demand associated with the expanded use will give rise to unacceptable impacts in the vicinity of the site in relation to increased parking congestion and traffic generation having regard to the highly congested traffic and parking conditions which exist in the locality.
 7. That the proposal compromises the public amenity of the waterways and does not benefit the general and boating public contrary to the provisions of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

- B. THAT in accordance with Council’s policy on confidentiality, the confidential report and legal advice remain confidential for a period of six (6) months or until the conclusion of the appeal, which ever occurs last.

Note: In accordance with section 375A of the Local Government Act a Division of votes is recorded on this planning matter.

For the Recommendation

Against the Recommendation

Councillor Howe
 Councillor Carmichael
 Councillor Edelman
 Councillor Jarnason
 Councillor Shoebridge
 Councillor Wynne
 Councillor Young
 Councillor Zeltzer

Nil

8/0

R2 Recording of Voting on Planning Matters – 1191.G

Note: In accordance with Council’s meeting procedures and policy this matter is referred to full Council due to a substantive change of the Committee’s recommendation to the Officer’s recommendation.

(Shoebridge/Zeltzer)

Recommendation:

- A. THAT the information be noted.
- B. THAT the Council staff seek legal advice on the application of Section 375A of the Local Government Act 1993 in relation to the requirements to vote on planning matters.
- C. THAT until the legal advice is received the Development Control Committee record the Councillor voting on all matters before the Committee.

Note: In accordance with section 375A of the Local Government Act a Division of votes is recorded on this planning matter.

For the Recommendation

Against the Recommendation

Councillor Howe
 Councillor Carmichael
 Councillor Edelman
 Councillor Jarnason
 Councillor Shoebridge
 Councillor Wynne
 Councillor Young
 Councillor Zeltzer

Nil

8/0

There being no further business the meeting concluded at 1.04am.

We certify that the pages numbered 3183 to 3244 inclusive are the Minutes of the Development Control Committee Meeting held on 7 October 2008 and confirmed by the Development Control Committee on 20 October 2008 as correct.

Chairperson

Secretary of Committee