

# Council Meeting

Monday 12 August 2013

## Table of Contents

Items Determined Under Delegated Authority by Council Committees .....	2520
Council Meeting.....	2521
Confirmation of Minutes.....	2522
Apologies .....	2522
Declarations of Interest.....	2522
Suspension of Standing Orders.....	2524
Corporate & Works Committee.....	2525
R1 Conflict of Interests Policy.....	2525
R2 Statutory Review of Policy - Payment of Expenses and Provision of Facilities to The Mayor, Deputy Mayor and Councillors Policy.....	2525
R3 Commercial and Retail Leasing Strategy for The Kiaora Lands Development.....	2526
Development Control Committee.....	2527
R1 550 New South Head Road, Rose Bay (Lyne Park) – The use of Lyne Park between 9 September 2013 – 8 October 2013 to perform the Great Moscow Circus – 13/2/2013.....	2527
R2 23 Derby Street, Vaucluse – Section 96 Application – Proposed modification internal & external – 7/6/2010.....	2554
R3 29-53 Victoria Road, Bellevue Hill (North-eastern section of The Scots College) – Section 96 Application – Proposed modifications internal & external – 15/4/2013.....	2558
R4 751-755, 757 & 759 New South Head Road, & 12 & 14 Richmond Road, Rose Bay – Section 96 Application – Proposed modification substation – 16/8/2012 .....	2560
Urban Planning Committee.....	2562
R1 Licenced Premises Development Control Plan .....	2562
Community & Environment Committee.....	2564
R1 Community and Cultural/Environmental Grants 2013 /2014 .....	2564
R3 Newcastle Street - Angle Parking.....	2564
R4 Albermarle Avenue & Wilberforce Avenue, Rose Bay – Boats and Trailers.....	2565
Notice of Motion.....	2566
Questions for Next Meeting.....	2567

## Items Determined Under Delegated Authority by Council Committees

The following Items were determined under Delegated Authority. To see the delegated decisions of Council please refer to the individual Committee Meeting Minutes.

### Corporate & Works Committee Meeting held on Monday 5 August 2013

- D1 Confirmation of Minutes of Meeting held on 15 July 2013
- D2 Joint Panel of Conduct Reviewers - Code of Conduct Matters

### Development Control Committee Meeting held on Monday 5 August 2013

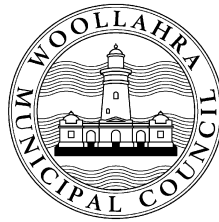
- D1 Confirmation of Minutes of Meeting held on 15 July 2013
- D2 DA338/2009 part 3 – 23 Derby Street, Vaucluse – Section 96 Application – Proposed modification internal & external – 7/6/2010 – (See Item R2)
- D3 DA491/2012 - 34-38 Wolseley Road, Point Piper – Alterations & additions to the existing entry including new passenger lift, level access tunnel & new stairs – 15/11/2012
- D4 DA150/2013 - 12 Court Road, Double Bay – Alterations & additions, including new balconies & landscaping & strata subdivision of six units – 11/4/2013
- D5 DA52/2012 - 19 Court Road, Double Bay – Demolition of existing dwelling & construction of a new dwelling, swimming pool, new front fence & landscaping – 10/2/2012
- D6 DA549/2012 - 14 Longworth Avenue, Point Piper – Alterations & additions to the existing inter-war flat building, including a new lift & lobbies – 14/12/2012
- D7 DA845/2008 part 2 - 751-755, 757 & 759 New South Head Road, & 12 & 14 Richmond Road, Rose Bay – Section 96 Application – Proposed modification substation – 16/8/2012 - (See Item R4)
- D8 DA183/2013 – 779 New South Head Road, Rose Bay (Rose Bay Pharmacy) – The erection of pharmacy signage (unauthorised & proposed) – 6/5/2013
- D9 DA545/2005 part 3 – 29-53 Victoria Road, Bellevue Hill (North-eastern section of The Scots College) – Section 96 Application – Proposed modifications internal & external – 15/4/2013 – (See Item R3)
- D10 Register of Current Land and Environment Court Matters and Register of Court Proceedings for Building Control, Environmental Control & Health Control

### Urban Planning Committee Meeting held on Monday 22 July 2013

- D1 Confirmation of Minutes of Meeting held on 24 June 2013

### Community & Environment Committee Meeting held on Monday 22 July 2013

- D1 Confirmation of Minutes of Meeting held on 24 June 2013
- D2 Woollahra Local Traffic Committee Minutes – 2 July 2013
- Y2 Albermarle Avenue & Wilberforce Avenue, Rose Bay – Boats and Trailers (See Item R4)
- Y3 Sun Herald City to Surf 2013
- Y4 Newcastle Street, Rose Bay – New Linemarking of Car Share Spaces
- Y5 Ocean Street at Albert Street, Edgecliff– Upgrade of existing pedestrian refuge
- Z1 New South Head Road, Vaucluse – Request for 40km/hr speed limit along the Vaucluse Shopping Strip and Bowling Club
- D3 Yarranabbe Park Steering Committee Meeting
- D4 Review of Commercial Fitness Training Policy on Public Open Space
- D5 Newcastle Street - Angle Parking (See Item R3)
- D6 International Fleet Review 3-11 October 2013



## Council Meeting

**Minutes of the Meeting of Woollahra Municipal Council  
held at the Council Chambers, Double Bay, on  
Monday 12 August 2013 at 8.00pm.**

Present His Worship the Mayor, Councillor Andrew Petrie  
Councillors Ted Bennett  
Anthony Boskovitz  
Luise Elsing  
Elena Kirillova  
Greg Levenston  
Anthony Marano  
Katherine O'Regan  
Matthew Robertson (arrived during DCC Item R3)  
Deborah Thomas  
Elena Wise  
Susan Wynne  
Toni Zeltzer  
Jeff Zulman

Staff: Chris Bluett (Acting Director – Planning & Development)  
Stephen Dunshea (Director – Corporate Services)  
Nick Economou (Team Leader)  
Gary James (General Manager)  
Tom O'Hanlon (Director – Technical Services)  
Kylie Walshe (Director – Community Services)  
Les Windle (Manager – Governance)

Also in Attendance: Nil

## Confirmation of Minutes

(Wynne/O'Regan)

1/12 THAT the Minutes of the Council Meeting held on 22 July 2013 be taken as read and confirmed.

**Adopted**

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## Apologies

(Wynne/O'Regan)

2/12 Apologies were received and accepted from Councillor Peter Cavanagh and Leave of Absence granted.

**Adopted**

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## Declarations of Interest

Councillor Wynne declared a Significant Non-Pecuniary Interest in Development Control Committee Item R2 (23 Derby Street, Vacluse) as she knows one of the objectors and has been to their house. Councillor Wynne left the meeting and did not participate in the debate or vote on the matter. Councillor Wynne also declared that she was on the previous Council with the Architect for the Applicant, former Councillor Chris Howe.

Councillor Zeltzer declared a Non-Significant, Non-Pecuniary Interest in Development Control Committee Item R2 (23 Derby Street, Vacluse), as the Architect for the Applicant was a Liberal Party Councillor on the last Council. Councillor Zeltzer does not believe it would affect her vote.

Councillor Thomas declared a Significant Non-Pecuniary Interest in Development Control Committee Item R3 (29-53 Victoria Road, Bellevue Hill) as a former long term employer and friend of hers is a part of the Concerned Scots Neighbours. Councillor Thomas left the meeting and did not participate in the debate or vote on the matter.

Councillor Elsing declared a Non-Significant Non-Pecuniary interest in Development Control Committee Item R2 (23 Derby Street, Vacluse) as in the late correspondence one of the advisors is also advising a number of objectors in relation to some court proceedings in relation to her own property. Councillor Elsing does not believe it would affect her vote.

Councillor Boskovitz declared a Significant Non-Pecuniary Interest in Development Control Committee Item R2 (23 Derby Street, Vacluse) as the owner of the property is the wife of a director of a company which his firm of solicitors acts for. Councillor Boskovitz left the meeting and did not participate in the debate or vote on the matter. Councillor Boskovitz also declared a Non-Significant Non-Pecuniary Interest in this matter as the Architect for the Applicant was a Liberal Party Councillor on the last Council.

The Mayor Councillor Petrie declared a Non-Significant, Non-Pecuniary Interest in Development Control Committee Item R2 (23 Derby Street, Vaocluse), as the Architect for the Applicant was a Liberal Party Councillor on the last Council. The Mayor, Councillor Petrie does not believe it would affect his vote.

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## Suspension of Standing Orders

### Councillor Zulman

- 3/12 That Standing Orders be suspended to allow him to thank the staff for their fantastic effort of cleaning up after the City to Surf event yesterday.

### Adopted

**The Mayor ruled Urgency and permitted the Suspension of Standing Orders.**

### Councillor Zulman advised:

I rise as one of the foot soldiers in 85,000 weary legged and 69,500 finishers to commend and to thank Council staff. I saw how many cups and how much debris was thrown aside. That's a big increase in numbers in prior years and by the afternoon it was all tidied up and I think it is fantastic, so congratulations to the staff.

**The Council noted the information.**

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## Corporate & Works Committee

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### Items with Recommendations from the Committee Meeting of Monday 5 August 2013 Submitted to the Council for Determination

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**Item No:** R1 Recommendation to Council  
**Subject:** **Conflict of Interests Policy**  
**Author:** Les Windle - Manager Governance  
**File No:** 817.G  
**Reason for Report:** For Council to consider amendment to the Conflict of Interests Policy

**Note:** Late correspondence was tabled at the meeting from Council's Manager Governance, Les Windle.

(O'Regan/Boskovitz)

4/12 **Resolved:**

That the Conflict of Interests Policy August 2013 submitted as Annexure 2 to the report to the Corporate and Works Committee on 5 August 2013 be adopted.

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**Item No:** R2 Recommendation to Council  
**Subject:** **Statutory Review of Policy - Payment of Expenses and Provision of Facilities to The Mayor, Deputy Mayor and Councillors Policy**  
**Author:** Les Windle - Manager Governance  
**File No:** 18.G  
**Reason for Report:** For Council to fulfil its statutory requirement to annually review and publicly exhibit a proposed policy for the Payment of Expenses and Provision of Facilities to the Mayor, Deputy Mayor and Councillors

(O'Regan/Boskovitz)

5/12 **Resolved without debate:**

- A. THAT Council's current Payment of Expenses and Provision of Facilities to the Mayor, Deputy Mayor and Councillors Policy as contained in Annexure 1 of the report to the Corporate and Works Committee meeting on 5 August 2013 be placed on public exhibition for a period of not less than 28 days as Council's proposed policy for the ensuing twelve months, subject to the maximum entitlement for reimbursement of "Care and related expenses" being increased to \$3,300 per annum.
- B. THAT a further report be submitted to the Committee at the conclusion of the exhibition period.

**Item No:** R3 Recommendation to Council  
**Subject:** **Commercial and Retail Leasing Strategy for The Kiaora Lands Development**  
**Author:** Tom O'Hanlon, Director Technical Services  
**File No:** Tender No 12/12  
**Reason for Report:** To advise Council on the progress of the commercial and retail leasing strategy for the Kiaora Lands Development.

**(O'Regan/Boskovitz)**

**6/12 Resolved without debate:**

- A. That Council note the Commercial and Retail Leasing Strategy for the Kiaora Lands Development.
  - B. That the General Manager be authorised to execute leases for commercial and retail spaces at Kiaora Lands that derive from the strategy and the work of Rook Partners.
  - C. That the content of the Strategy remains confidential under Section 10A (2) (c) until all negotiations for leasing of Kiaora Lands is concluded, as the strategy includes information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.
  - D. That the Corporate & Works Committee receive quarterly progress reports on the implementation of the Leasing Strategy.
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## Development Control Committee

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### Items with Recommendations from the Committee Meeting of Monday 5 August 2013 Submitted to the Council for Determination

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**Item No:** R1 Recommendation to Council

**Subject:** 550 New South Head Road, Rose Bay (Lyne Park) – The use of Lyne Park between 9 September 2013 – 8 October 2013 to perform the Great Moscow Circus – 13/2/2013

**Author:** Eleanor Smith – Senior Assessment Officer

**File No:** DA37/2013

**Reason for Report:** In accordance with Council’s meeting procedures and policy this matter is referred to full Council due to Council’s delegations require the subject development application to be determined by full Council.

(Boskovitz/Wynne)

7/12 **Resolved: Pursuant to Section 80(1) of the Environmental Planning and Assessment Act 1979**

THAT the Council, as the consent authority, grant development consent to Development Application No. 37/2013 for the use of Lyne Park between 9 September 2013 – 8 October 2013 to perform the Great Moscow Circus on land at 550 New South Head Road Rose Bay, subject to the following conditions:

#### A. General Conditions

##### A.1 Conditions

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

Standard Condition: A1

##### A.2 Definitions

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

**Applicant** means the applicant for this Consent.

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

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

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

**Council** means Woollahra Municipal Council

**Court** means the Land and Environment Court

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

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

- The collection of stormwater,
- The retention of stormwater,
- The reuse of stormwater,
- The detention of stormwater,
- The controlled release of stormwater; and
- Connections to easements and public stormwater systems.

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

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

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

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

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

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

**Road** has the same 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:

- the use of land in connection with development,
- the subdivision of land,
- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,

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

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

### A.3 Approved Plans and supporting documents

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

Reference	Description	Author/Drawn	Date(s)
Drawing No: 2844-1 r.m Sheet: 1 - Issue: A	Site Plan	Accurate Design and drafting	25.02.13
Sheets: 2 of 6 3 of 6 4 of 6 5 of 6 6 of 6	Temporary Structure and Seating Details	Osman Designpac	30.01.02
15.017.3 15.017.17 15.012.13A 15.012.13C	Temporary Structure and Seating Details	Baytex	25.03.02 09.02.02 09.02.02 11.06.01
Section 5. Technical Data of the Great Moscow Circus Information Manual	Temporary Structure and Seating Details	The Great Moscow Circus	Undated
	Arborist Report	Dr Treegood	May 2010
A1012155N (version 1a)  As amended by A101215N TMP (Version 1a), dated September 2010.	Traffic Report	ML Traffic Engineers	June 2010
A101215N TMP (Version 1a)	Traffic Report	ML Traffic Engineers	Sept 2010
nss21511 Rev A	Section 4 & 5 of the acoustic report titled „Acoustical Control Guidelines for the Moscow Circus, Lyne Park, Rose Bay“	Noise and Sound Services	June 2010

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

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

#### **A.4 Time Limited Consent (s80A(1)(d & e) of the Act)**

This is a time limited consent. This condition limits the period during which the development may be carried out as follows:

- a) The use of the subject site for the staging of the Great Moscow Circus must cease on or before 08 October 2013
- b) All of the temporary structures approved under this consent must be removed by no later than 08 October 2013.

If a new development application or section 96 application is not lodged and determined within the time limits imposed by this condition the development subject to this consent must cease. The issue of this time-limited consent does not render any previous consent or any existing use right void.

**Note:** Where this condition is amended or deleted by any further section 96 amendment or the ongoing use is subject to a further development application Council may, if it favourably considers such amendment or application, seek the surrender of previous consents or any existing use right. This condition has been imposed to allow a review of the practical effect of this consent through the submission of a new Development Application or the further assessment of an application to amend or delete this condition under section 96 of the Act prior to this consent's expiration in accordance with this condition.

**Note:** The purpose of this condition is to allow development that may have an adverse impact upon the amenity of the neighbourhood proceed for a trial period whereby towards the end of the trial period the person(s) with the benefit of this consent can seek the amendment or deletion of this condition pursuant to section 96 of the Act or submit a new development application where the proposed continuation of the development is not substantially the same development.

Standard Condition: A7

#### **A.5 Modifications to Circus Operations – Relating to the International Fleet Review**

That due to the over lapping of the Circus and the Fleet Review the following amendments are required:

- Thursday 03 October 2013 – the afternoon performance shall be moved from 2pm to 3pm. The Tall Ships arrive into the Harbour from 11am – 1pm. This change of performance time will allow expected crowds to disperse in time for the 3pm performance.
- Saturday 05 October 2013 – no performances permitted.
- For the whole of Saturday 05 October 2013 there is to be no circus activity (including, but not limited to performances, and the arrival or departure of large vehicles to and from the subject site).
- During the period 03 October 2013 to 06 October 2013 people are reminded to utilise public transport to and from the subject site.
- The permitted performance times our set out under condition I.1 of this consent.

#### **A.6 Ancillary Aspect of the Development (s80A(2) of the Act)**

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

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

### **A.7 Prescribed Conditions**

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

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

### **A.8 Conditions of consultation – Road and Maritime Services**

The following advisory comments have been provided by NSW Roads and Maritime Services. Council has determined to impose the advisory comments as condition(s) of consent:

- a) Due to the increase in pedestrian and vehicular movements along this section of New South Head, portable Variable Message Signs (VMS) should be placed on New South Head to provide advanced warning to motorists of the event. Any portable VMS signs shall be placed outside the clear zone on New South Head Road.
- b) Promotions of this event should include information on accessing the site via public transport to mitigate the effect of parking demand and traffic movements.
- c) All works associated with the proposed event shall be at no cost to the RMS.  
Standard Condition: A24

### **A.9 Ticket information in relation to parking**

All tickets sold to the event must clearly state that: there is no private parking available at the Circus site and public parking in the area is very limited, patrons are therefore advised to access the site via public transport.

### **A.10 Conditions of land Owners Consent**

Crown Lands have granted land owner's consent, subject to the understanding that:

- a) It does not imply or presume the Minister's approval or support of the proposal. This consent is given without prejudice so that consideration of the proposed development may proceed under the Environmental Planning and Assessment Act 1979 and any other relevant legislation.
- b) This consent pertains to the abovementioned proposed development only. Changes to the application are not permitted. Any changes which may be required by either the applicant or the Council will be considered on merit and may require the payment of additional fees;
- c) Irrespective of approval by any other authority or any future development approval by Council, no work shall commence on Crown land without agreement in principle to a suitable temporary licence under s108 of the Crown Lands Act, from the reserve trust manager, Woollahra Council.

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

### **B.1 License Agreement**

The Operator shall enter into a license agreement with Council for the hire of Lyne Park from 09 September 2013 to 08 October 2013. The license agreement will incur the applicable hire charge fees and a security bond.

### **B.2 Establishment of Tree Protection Zones (TPZ)**

Tree Protection Zones shall be established around all trees to be retained and in accordance with Section 4 of the *Australian Standard Protection of Trees on Development Sites* (AS 4970- 2009). Tree protection zones must also comply with the following requirements;

#### a) Tree Protection Zone areas

<b>Council Ref No</b>	<b>Species</b>	<b>Location</b>	<b>Radius from Centre of Trunk (Metres)*</b>
		As per Proposed Temporary Site for a Circus, drawn by Accurate Design and Drafting ( 2844-1r.m), dated 25.02.13	

- b) A sign identifying the Tree Protection Zone shall be erected on each side of the protection fence indicating the existence of a TPZ. Signage must be visible from within the development site.
- c) No excavation, construction activity, grade changes, storage of materials, stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is permitted within Tree Protection Zones, unless specified in Condition B.2 of this consent.
- d) All site personnel and contractors must be made aware of all tree protection requirements associated with these conditions of consent.
- e) The project arborist shall provide written certification of compliance with the above condition.

Standard Condition: B5

### **B.3 Arborists Documentation and Compliance Checklist**

The site arborist shall provide written certification that all tree protection measures and construction techniques relevant to this consent have been complied with. Documentation for each site visit shall include:

- a record of the condition of trees to be retained prior to and throughout development
- recommended actions to improve site conditions and rectification of non-compliance
- recommendations for future works which may impact the trees

All compliance certification documents shall be kept on site by the Site Foreman.

As a minimum the following intervals of site inspections must be made:

Stage of arboricultural inspection	Compliance documentation including photos shall be included
Prior to any vehicles, machinery or caravans entering the park.	Correct installation and positioning of Tree Protection Zone barriers.
During the week commencing 27 <sup>th</sup> September 2010.	Correct installation and positioning of Tree Protection Zone barriers. Monitor condition of trees.

Inspections and compliance documentation shall be made by an arborist with AQF Level 5 qualifications.

Additional site visits shall be made when required by site arborist and/or site foreman for ongoing monitoring/supervisory work.

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

#### C.1 Payment of Security, Levies and Fees (S80A(6) & S94 of the Act, Section 608 of the Local Government Act 1993)

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

Description	Amount	Indexed	Council Fee Code
<b>LONG SERVICE LEVY</b> under Building and Construction Industry Long Service Payments Act 1986			
<b>Long Service Levy</b> <a href="http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm">http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm</a>	Contact LSL Corporation or use online calculator	No	
<b>SECURITY</b> under section 80A(6) of the Environmental Planning and Assessment Act 1979			
<b>Property Damage Security Deposit</b> -making good any damage caused to any property of the <i>Council</i>	\$30,000.00	No	T115
<b>INSPECTION FEES</b> under Section 608 of the Local Government Act 1993			
Public Tree Management Inspection Fee	\$166.00	No	T45
Security Administration Fee	\$175.00	No	T16
<b>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</b>	\$30,341.00 plus any relevant indexed amounts and long service levy		

#### Building and Construction Industry Long Service Payment

The Long Service Levy under Section 34 of the *Building and Construction Industry Long Service Payment Act, 1986*, must be paid and proof of payment provided to the *Certifying Authority* prior to the issue of any *Construction Certificate*. The Levy can be paid directly to the Long Services Payments Corporation or to Council. Further information can be obtained from the Long Service Payments Corporation's website <http://www.lspc.nsw.gov.au/> or the Long Service Payments Corporation on 13 14 41.

#### How must the payments be made?

Payments must be made by:

- Cash deposit with Council,
- Credit card payment with Council, or

- Bank cheque made payable to Woollahra Municipal Council.

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

- The guarantee is by an Australian bank for the amount of the total outstanding contribution;
  - The bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable];
  - The bank agrees to pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent;
  - The bank guarantee is lodged with the Council prior to the issue of the construction certificate; and
  - The bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.
- Standard Condition: C5

## C.2 Professional Engineering Details

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

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

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

## C.3 Waste Management

A Waste Management Plan is to be submitted at the Construction Certificate stage. The plans should include, but not be limited to, the estimated volume of waste and method of disposal including receptacles for the operation phases of the development & the on-site waste storage and recycling areas. The proponent must enter into contractual agreement with an authorised waste contractor for the removal of waste and recyclable materials for the duration of the event. A copy of the contractual agreement shall be forwarded to Woollahra Council prior to occupation of the site.

## C.4 Temporary structure structural and fire safety upgrade (Clause 94A of the Regulation)

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

The *Construction Certificate* plans and specification required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation* must detail building upgrade works required by this condition.

The *Certifying Authority* must be satisfied that such work, to be implemented as part of the development, will upgrade the temporary structure to bring it into compliance with the following provisions of the *BCA* as in force at the date of the *Construction Certificate* application:



- a) That the structure of the tent shall comply with the requirements of Section B of the BCA;
- b) That the material used as an envelope/cover on the temporary structure shall have a minimum group number of 1 or 2 in accordance with the requirements of Specification C1.10 of the BCA;

**Note:** The *Certifying Authority* issuing the *Construction Certificate* has no power to remove the requirement to upgrade the existing building as required by this condition. Where this condition specifies compliance with performance requirements of the *BCA* the *Certifying Authority*, subject to their level of accreditation, may be satisfied as to such matters. Where this condition specifies compliance with prescriptive (deemed to satisfied) provisions of the *BCA* these prescriptive requirements must be satisfied and cannot be varied unless this condition is reviewed under section 82A or amended under section 96 of the *Act*.

**Note:** This condition does not set aside the *Certifying Authorities* responsibility to ensure compliance with clause 143 of the *Regulation* in relation to Fire Protection and Structural Adequacy.

**Note:** AS 4655 *Guidelines for fire safety audits for buildings* (or any succeeding AS) should form the basis of any fire upgrade report.  
Standard Condition: C10

## **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),
- b) to the erection of a temporary building.

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

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

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

## D.2 Dilapidation Reports for Public Infrastructure

To clarify the existing state of public infrastructure prior to the commencement of any development (including prior to any demolition), the *Principal Contractor* must submit a dilapidation report, prepared by a *professional engineer*, on Council's infrastructure within and near the development site.

The dilapidation report must be submitted to Council prior to the commencement of any work and include:

- a) Photographs showing any existing damage to the road pavement surrounding the site,
- b) Photographs showing any existing damage to the kerb and gutter surrounding the site,
- c) Photographs showing any existing damage to the footway including footpath pavement on and surrounding the site,
- d) Photographs showing any existing damage to retaining walls within the site or footway or road, and
- e) Photographs showing any existing damage to the playing fields, and trees, vegetation and grass surrounding the playing fields.
- f) The full name and signature of the professional engineer.

The reports are to be supplied in both paper copy and electronic format in Word. Photographs are to be in colour, digital and date stamped.

The dilapidation report must specify (with supporting photographic/DVD evidence) the exact location and extent of any damaged or defective public infrastructure prior to the commencement of any work. If the required report is not submitted then Council will assume there was no damage to any infrastructure in the immediate vicinity of the site prior to the commencement of any work under this consent.

**Note:** If the Principal Contractor fails to submit the dilapidation report required by this condition and damage is occasioned to public assets adjoining the site Council will deduct from security any costs associated with remedying, repairing or replacing damaged public infrastructure. Nothing in this condition prevents Council making any claim against security held for this purpose  
Standard Condition: D5

## D.3 Security Fencing, Hoarding and Overhead Protection

Security fencing must be provided around the development site in accordance with the approved site plan.

The security fencing must not obstruct access to utilities services including but not limited to man holes, pits, stop valves, fire hydrants or the like.

Standard Condition: D11

## D.4 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

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

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

- b) The person having the benefit of the development consent has:
- Appointed a principal certifying authority for the building work, and
  - Notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- c) the principal certifying authority has, no later than 2 days before the building work commences:
- Notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
  - Notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- d) The person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
- Appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
  - Notified the principal certifying authority of any such appointment, and
  - Unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
  - Given at least 2 days<sup>66</sup> notice to the council of the person<sup>66</sup>'s intention to commence the erection of the building.

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

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

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

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

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

Standard Condition: D15

## D.5 Establishment of Tree Protection Zones

The site fence as indicated on the Proposed Temporary Site for Circus Plan (number 2844-1 r.m, Sheet 1 Issue A, drafted by Accurate Design and Drafting, dated 25.02.13) is to act as the tree protection fence. The fence shall be continuous and be positioned no closer than 20m from the trunks of the following trees:

- Fourteen (14) *Ficus macrophylla* (Moreton Bay Fig) positioned at the southern end of the park
  - Fourteen (14) *Ficus rubiginosa* (Port Jackson Figs) trees extending generally in a north south direction on the eastern side of the park
- a) Tree Protection Fence shall be established prior to any vehicles, machinery or caravans entering the park. The fence shall also be established prior to the erection of any temporary structures such as tents.

- b) The tree protection fence shall comply with Australian standard 4687 – 2007 *Temporary Fencing and Hoardings*
- c) Once established, the fence shall not be removed or altered without approval of the project Arborist.
- 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) The storage of materials, stockpiling, siting of works sheds, cleaning of tools or equipment is not permitted within Tree Protection Zones.

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.

#### **D.6 Payment of Hire Fees and Bonds**

The hire fee which forms part of the license agreement for the hire of Lyne park between 09.09.13 and 08.10.13 shall be paid to Council at least three weeks prior to the event.

A bond of \$30,000 shall be paid to Council, prior to the event, as security for the restoration of the park at the conclusion of the event. Council will assess Lyne Park and may use all or part of the bond to carry out rectification works if necessary.

#### **D.7 Public Liability Insurance**

The organisers, prior to the event, shall provide Council with a copy of a \$20,000,000 public liability policy naming Woollahra Municipal Council Moscow Circus as insured under the policy.

#### **D.8 Notification of Surrounding Residents**

The organisers shall advise all residents of O'Sullivan Road, Elanora Road, Iluka Street and Manion Avenue of the Circus's activities by way of letter box drop a minimum of two weeks prior to the event. This must include details of a contact person should any complaints arise with regards to the operation of the event.

#### **D.9 Acoustic Measures**

The recommended acoustical controls and management controls detailed in Section 4 & 5 of the report prepared by Noise and Sound Services of June 2010 (Report No. nss21511 Rev A) titled „Acoustical Control Guidelines for the Moscow Circus, Lyne Park, Rose Bay“ being fully implemented, in particular that sound emission levels be measured by a qualified acoustic consultant prior to the commencement of the Moscow Circus performances to determine compliance or otherwise with the operational noise goal ( $L_{Amax}$  noise level from the circus activities must not exceed 75 dBA at the nearest residential boundary).

#### **D.10 Food Standards & Requirements - Registration**

- a) The events organiser must register with Council and notify the NSW Food Authority of the proposed event. The Food safety Standards require a food business or a temporary event where food is sold to the public must:

- Provide contact details for the food business including the name of the food business and the name and business address of the proprietor of the food business
- The nature of the food business; and
- The location of all food outlets.

Contact details for Council are [www.records@woollahra.nsw.gov.au](mailto:www.records@woollahra.nsw.gov.au) and the NSW Food Authority [www.foodauthority.nsw.gov.au](http://www.foodauthority.nsw.gov.au).

- b) All food to be sold for human consumption must be handled in accordance with the Food Standards Code Section 3.11, 3.22 and 3.2.3. All food displayed must be protected from likely contamination by customers, dust, fumes or insects.
- c) All pre-packaged food products must be clearly labelled with a description of the food, the name and address of the supplier, product lot identification, a list of ingredients, date marking, storage conditions, nutrition information panel and characterising ingredient. The above requirements are outlined in more detail in the Food Standards Code available on the NSW Food Authority's website ([www.foodauthority.nsw.gov.au](http://www.foodauthority.nsw.gov.au)).

#### **D.11 Sanitary Facilities**

Sanitary facilities must be provided on the site in sufficient number to cater for both staff and spectators attending the Moscow Circus shows. Sanitary facilities shall be provided in accordance with Table F2.3 'Class 9b buildings' of the Building Code of Australia. The number of sanitary facilities required being forwarded to Woollahra Council prior to occupation of the site.

#### **D.12 Circus Operations**

1. The organisers shall be responsible for providing staff to control entry to Lyne Park for bump in (arrival) and bump out (departure).
2. The organisers are responsible for security during event times and after hours.
3. Prior to bump in (arrival), the organisers must meet with Council's Team Leader Open Space & Recreational Planning for assessment of Lyne Park and provide a dilapidation report of the area. Council staff will provide an irrigation map of the approximate location of infrastructure.
4. The organisers are responsible for all event waste (including public and private toilets) collection and disposal. The event site must be kept clean and tidy at all times including an area of 50m surrounding the site.
5. The organisers provide Council with a contact person that can be contactable after hours.
6. All accommodating occupants within the park must respect general park users and surrounding residents including all noise related activities.
7. The applicant and/or event organisers must comply with any direction or instruction from Council staff. Failure to do so may result in withdrawal of consent for this event.

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

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

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

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

This condition does not apply:

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

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

**Note:** All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.  
Standard Condition: E1

### **E.2 Requirement to notify about new evidence**

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

Standard Condition: E4

### **E.3 Critical Stage Inspections**

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

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

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

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

Standard Condition: E5

#### E.4 Hours of Work –Amenity of the neighbourhood

- a) No *work* must take place on any Sunday or public holiday,
- b) No *work* must take place before 7am or after 5pm any weekday,
- c) No *work* must take place before 7am or after 1pm any Saturday,
- d) The following *work* **must not** take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday;
  - i) Piling;
  - ii) Piering;
  - iii) Rock or concrete cutting, boring or drilling;
  - iv) Rock breaking;
  - v) Rock sawing;
  - vi) Jack hammering; or
  - vii) Machine excavation,
- e) No loading or unloading of material or equipment associated with the activities listed in part above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday
- f) No operation of any equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday
- g) No rock excavation being cutting, boring, drilling, breaking, sawing , jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

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

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

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

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

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

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

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

#### 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:

Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.

- a) Not use the road or footway for the storage of any article, material, matter, waste or thing.
- b) Not use the road or footway for any *work*.
- c) Keep the road and footway in good repair free of any trip hazard or obstruction.
- d) 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:

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

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

- Part C Management of Waste:
  - a. For fee or reward, transport waste over or under a public place
  - b. Place waste in a public place
  - c. Place a waste storage container in a public place.”
- Part E Public roads:
  - a. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
  - b. Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.”
  - c. Any work in, on or over the Road or Footway requires *Council* Approval and in the case of classified roads the NSW Roads and Traffic Authority. Road includes that portion of the road uses as a footway.

Standard Condition: E7

## 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;



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

### **E.7 Prohibition of burning**

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

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

### **E.8 Tree Preservation**

All persons must comply with Council's Tree Preservation Order (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.

#### General Protection Requirements

- a) There shall be no excavation or work within a TPZ. The TPZ must be maintained during all development work unless otherwise specified within these conditions of consent.
- b) Excavation must cease where tree roots with a diameter exceeding 30mm are exposed. The *principal contractor* must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- c) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

**Note:** Trees must be pruned in accordance with *Australian Standard AS 4373 "Pruning of Amenity Trees"* and *WorkCover NSW Code of Practice Amenity Tree Industry*.  
Standard Condition: E8

### **E.9 Footings in the vicinity of trees**

To minimise the impact on the trees, the positioning of the tent pegs shall remain flexible so that if roots with a diameter of greater than 30mm are encountered the location of the peg shall be moved to facilitate the retention of the root.

### **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)**

No relevant conditions.

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

No relevant conditions.

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

No relevant conditions.

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

### I.1 Hours of use

Each performance shall last a maximum of 2 hours and 15 minutes. The hours in which the performances may take place are limited to the following:

Monday 09 September 2013	Site Arrival	
Tuesday 10 September 2013	Set up & Rehearsals	
Wednesday 11 September 2013	1 Performance	7.30pm to 9.45pm
Thursday 12 September 2013	1 Performance	7.30pm to 9.45pm
Friday 13 September 2013	1 Performance	7.30pm to 9.45pm
Saturday 14 September 2013	3 Performances	1.00pm to 3.15pm 4.00pm to 6.15pm 7.30pm to 9.45pm
Sunday 15 September 2013	2 Performances	12.00pm to 2.15pm 3.00pm to 5.15pm
Monday 16 September 2013	Rest Day	
Tuesday 17 September 2013	Rest Day	
Wednesday 18 September 2013	1 Performance	7.30pm to 9.45pm
Thursday 19 September 2013	1 Performance	7.30pm to 9.45pm
Friday 20 September 2013	1 Performance	7.30pm to 9.45pm
Saturday 21 September 2013	3 Performances	1.00pm to 3.15pm 4.00pm to 6.15pm 7.30pm to 9.45pm
Sunday 22 September 2013	2 Performances	12.00am to 2.15pm 3.00pm to 5.15pm
Monday 23 September 2013	Rest Day	
Tuesday 24 September 2013	1 Performance	2.00pm to 4.15pm
Wednesday 25 September 2013	2 Performance	2.00pm to 4.15pm 7.30pm to 9.45pm
Thursday 26 September 2013	2 Performances	2.00pm to 4.15pm 7.30pm to 9.45pm
Friday 27 September 2013	2 Performances	2.00pm to 4.15pm 7.30pm to 9.45pm
Saturday 28 September 2013	3 Performances	1.00pm to 3.15pm 4.00pm to 6.15pm 7.30pm to 9.45pm
Sunday 29 September 2013	2 Performances	12.00am to 2.15pm 3.00pm to 5.15pm
Monday 30 September 2013	Rest Day	
Tuesday 01 October 2013	1 Performance	2.00pm to 4.15pm
Wednesday 02 October 2013	2 Performances	2.00pm to 4.15pm 7.30pm to 9.45pm
Thursday 03 October 2013	2 Performances	3.00pm to 5.15pm 7.30pm to 9.45pm
Friday 04 October 2013	1 Performances	7.30pm to 9.45pm

Saturday 05 October 2013	No Performances	No Performances
Sunday 06 October 2013	2 Performances	12.00am to 2.15pm 3.00pm to 5.15pm
Monday 07 October 2013	1 Performance	12.00am to 2.15pm

**Note:** Deliveries to or dispatches from the site must not be made outside these hours. Trading Hours may be more onerous than these general hours of use. This condition does not apply to activities such as cleaning which takes place wholly within the building and which are not audible within any adjoining residential dwelling. If internal activities are audible within any adjoining residential dwelling such that they cause a nuisance to the occupiers of such dwelling than such internal activities must not occur outside these hours of use. This condition does not restrict the operation of noise pollution laws.

## I.2 Maximum capacity for the temporary structures

The number of persons using the temporary structures shall not exceed the applicable loads prescribed by the Building Code of Australia, as approved under the construction certificate. The approved method to calculate that the authorised capacity is not exceeded is by the issue of numbered tickets to patrons upon admission, together with regular head counts at intervals during the hours of operation.

## I.3 Waste Water

All waste water from caravan and food vans shall be disposed to the sewer by either direct disposal to the sewer system or collection in tanks for disposal to the sewer.

## I.4 Lighting

Any lighting on the site shall be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill. All lighting shall comply with the Australian Standard AS 4282:1997 *The Control of Obtrusive Effects of Outdoor Lighting*.

## I.5 Noise from mechanical plant and equipment

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

The *background noise level* is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed.

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

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

## I.6 Outdoor lighting – Sports Lighting

No sports lighting must operate after 10.15pm.

This condition has been imposed to control the obtrusive effects of outdoor lighting, to limit the hours of use to protect the amenity of neighbours and to maintain safe conditions for the recreational use of the park.

**Note:** The height of the poles as proposed may be too low to comply with both AS4282 and AS2560. Where this is disclosed, it will be necessary to seek an amendment to this consent if it is proposed to increase the height of the poles and lights to achieve compliance with both standards.

**Note:** Council may consider, subject to an appropriate section 96 application relaxation of this condition where it can be demonstrated, by expert report, that the level of lighting in the existing area already exceeds the above criteria, where physical shielding is present or physical shielding is reasonably possible.  
Standard Condition: I40

## I.7 Circus Operations

1. The organisers shall be responsible for providing staff to control entry to Lyne Park for bump in (arrival) and bump out (departure).
2. The organisers are responsible for security during event times and after hours.
3. Prior to bump in (arrival), the organisers must meet with Council's Team Leader Open Space & Recreational Planning for assessment of Lyne Park and provide a dilapidation report of the area. Council staff will provide an irrigation map of the approximate location of infrastructure.
4. The organisers are responsible for all event waste (including public and private toilets) collection and disposal. The event site must be kept clean and tidy at all times including an area of 50m surrounding the site.
5. The organisers provide Council with a contact person that can be contactable after hours.
6. All accommodating occupants within the park must respect general park users and surrounding residents including all noise related activities.
7. The applicant and/or event organisers must comply with any direction or instruction from Council staff. Failure to do so may result in withdrawal of consent for this event.

## I.8 Offensive Noise

The use of the premises must not give rise to the transmission of offensive noise to any place of different occupancy. Offensive noise is defined in the Protection of the Environment Operations Act 1997.

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

**Note:** Council will generally enforce this condition in accordance with the Noise Guide for Local Government (<http://www.environment.nsw.gov.au/noise/nlg.htm>) and the Industrial Noise Guidelines (<http://www.environment.nsw.gov.au/noise/industrial.htm>) published by the Department of Environment and Conservation. Other state government authorities also regulate the Protection of the Environment Operations Act 1997.

**Useful links:**

**Community Justice Centres**—free mediation service provided by the NSW Government ([www.cjc.nsw.gov.au](http://www.cjc.nsw.gov.au)).

**Department of Environment and Conservation NSW**, Noise Policy Section web page ([www.environment.nsw.gov.au/noise](http://www.environment.nsw.gov.au/noise)).

**New South Wales Government Legislation** home page for access to all NSW legislation, including the Protection of the Environment Operations Act 1997 and the Protection of the Environment Noise Control Regulation 2000 ([www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)).

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

**Association of Australian Acoustical Consultants**—professional society of noise related professionals ([www.aaac.org.au](http://www.aaac.org.au)).

**Department of Gaming and Racing** - ([www.dgr.nsw.gov.au](http://www.dgr.nsw.gov.au)).

Standard Condition: I50 (Autotext I150)

### **I.9 Sound System – time limitations**

The use of the sound system shall cease no later than 20 minutes after each show finishes. This condition has been imposed to protect the amenity of the neighbourhood.

### **I.10 Food Standards & Requirements**

The events organiser must register with Council and notify the NSW Food Authority of the proposed event. The Food safety Standards require a food business or a temporary event where food is sold to the public must:

- Provide contact details for the food business including the name of the food business and the name and business address of the proprietor of the food business
- The nature of the food business; and
- The location of all food outlets.

Contact details for Council are [www.records@woollahra.nsw.gov.au](mailto:www.records@woollahra.nsw.gov.au) and the NSW Food Authority [www.foodauthority.nsw.gov.au](http://www.foodauthority.nsw.gov.au).

All food to be sold for human consumption must be handled in accordance with the Food Standards Code Section 3.11, 3.22 and 3.2.3. All food displayed must be protected from likely contamination by customers, dust, fumes or insects.

All pre-packaged food products must be clearly labelled with a description of the food, the name and address of the supplier, product lot identification, a list of ingredients, date marking, storage conditions, nutrition information panel and characterising ingredient. The above requirements are outlined in more detail in the Food Standards Code available on the NSW Food Authority's website ([www.foodauthority.nsw.gov.au](http://www.foodauthority.nsw.gov.au)).

### **I.11 Environmental Protection**

Throughout the duration of the circus performances all appropriate environmental precautions shall be taken so that no harm or „pollution incident“ is caused to the surrounding deemed an offence under the Protection of the Environment Operations Act 1997.

### **I.12 Waste Management - Commercial**

Waste Management must comply with the *approved Waste Management Plan*.

This condition does not apply to the extent that Activity Approval exists under the Local Government Act 1993 or the Roads Act 1993 and subject that all conditions of such approval(s) are complied with.

Standard Condition: I15

### **I.13 Sanitary Facilities**

Sanitary facilities must be provided on the site in sufficient number to cater for both staff and spectators attending the Moscow Circus shows. Sanitary facilities shall be provided in accordance with Table F2.3 'Class 9b buildings' of the Building Code of Australia. The number of sanitary facilities required being forwarded to Woollahra Council prior to occupation of the site.

### **I.14 Advertisements on Public Open Space**

No marketing, sales or promotions of any kind shall be undertaken within the Park during the period of use unless the prior written approval of Council is provided.

### **I.15 Compliance with the Traffic Management Plan**

The organisers shall comply with the controls and conditions specified within the approved Traffic Management Plan, **reference A1012155N, prepared by ML Traffic Engineers, dated June 2010, as amended by Traffic Management Plan, reference A101215N TMP (Version 1a), prepared by ML Traffic Engineers, dated September 2010.** Any works or amendments required to the road network, signage, parking controls, parking meters must be completed prior to the event commencing. All costs associated with these changes must be borne by the applicant.

**It is noted that the plan which accompanies Traffic Management Plan, reference A101215N TMP (Version 1a), prepared by ML Traffic Engineers, dated September 2010 shall be amended to include a 'Temporary No Right Turn Sign' at the intersection of Vickery Avenue and New South Head Road.**

Any amendments to the approved Traffic Management Plan arising from altered traffic conditions and/or the organisers' requirements after the event commences are subject to Council approval.

### **I.16 The provision of Traffic Controller**

The organisers of the event must provide a traffic controller on weeknights to guide people (parents and especially young children) in crossing New South Head Road at the signalised junction at Lyne Park Road.

## **J. Miscellaneous Conditions**

### **J.1 Damage to Public Open Space**

Lyne Park shall be fully restored following the event. Restoration works include vertidrain, sand topdressing, fertilising and returfing. The organisers, Michael Edgley's Moscow Circus, shall fund the full cost of these works. The restoration works are to be completed within four weeks of the end of the event. Council staff will conduct a pre and post assessment of the open space to ascertain any damage and restoration required. The organisers shall prepare a Dilapidation Report of the park to be signed off by Council staff before being granted access.

## K. Advisings

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

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

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

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

#### Warnings as to potential maximum penalties

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

#### Warning as to enforcement and legal costs

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

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

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

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

Standard Advising: K1

### K.2 Dial before you dig



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

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

Standard Advising: K2

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

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

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

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

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

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

Standard Advising: K3

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

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

Council and Police approval is required prior to a partial or full temporary road closure. If you are seeking a partial or full temporary road closure you must comply with the relevant conditions of this consent and you must also gain the approval of the Traffic Sergeant, Paddington Police Station, 16 Jersey Road, Paddington. Phone No.: 0283568299 or Fax No.: 0283568211.

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

Standard Advising: K4

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

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

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

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

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

Standard Condition: K5



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

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

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

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

The Guide can be down loaded from:

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

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

Standard Condition: K6

## K.7 Workcover requirements

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

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

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

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

Standard Condition: K7

## K.8 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Eleanor Smith, Assessment Officer, on (02) 9391 7090

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

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

Standard Condition: K14

### **K.9 Release of Security**

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

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

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

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

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

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

### **K.10 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](http://www.woollahra.nsw.gov.au) or you may contact Council on 9391-7000 for further advice.

Standard Condition: K19

### **K.11 Site Constraints**

There may be constraints regarding the site conditions and the proposed construction method. A detailed history of the site below a depth of 600mm is not available. There is a possibility that landfill or concrete slabs will be intercepted below this depth.

### **K.12 Construction Certificate**

Based on the fire analysis provided you will need to engage an appropriately qualified Private Certifying Authority (PCA) to process the required Construction Certificate.

### **K.13 The Provision of Transport from Edgecliff Station**

The Circus is to consider the provision of a mini-bus from Edgecliff Station to the venue at Lyne Park Rose Bay.

*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 Bennett  
Councillor Boskovitz  
Councillor Elsing  
Councillor Kirillova  
Councillor Levenston  
Councillor Marano  
Councillor O'Regan  
Councillor Petrie  
Councillor Thomas  
Councillor Wise  
Councillor Wynne  
Councillor Zeltzer  
Councillor Zulman

Nil

***13/0***

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**Item No:** R2 Recommendation to Council  
**Subject:** **23 Derby Street, Vaucluse – Section 96 Application – Proposed modification internal & external – 7/6/2010**  
**Author:** David Booth – Senior Assessment Officer  
**File No:** DA338/2009 part 3  
**Reason for Report:** In accordance with Council’s meeting procedures and policy this matter has been called to full Council by The Mayor Councillor Petrie to expedite determination of the matter due to previously deferred Site Inspection Meetings. (This matter was the subject of a DCC Site Inspection on 7 August 2013)

**Note:** Councillor Wynne declared a Significant Non-Pecuniary Interest in this Item as she knows one of the objectors and has been to their house. Councillor Wynne left the meeting and did not participate in the debate or vote on the matter. Councillor Wynne also declared that she was on the previous Council with the Architect for the Applicant, former Councillor Chris Howe.

**Note:** Councillor Zeltzer declared a Non-Significant, Non-Pecuniary Interest in this Item as the Architect for the Applicant was a Liberal Party Councillor on the last Council. Councillor Zeltzer does not believe it would affect her vote.

**Note:** Councillor Elsing declared a Non-Significant Non-Pecuniary interest in this Item as in the late correspondence one of the advisors is also advising a number of objectors in relation to some court proceedings in relation to her own property. Councillor Elsing does not believe it would affect her vote.

**Note:** Councillor Boskovitz declared a Significant Non-Pecuniary Interest in this Item as the owner of the property is the wife of a director of a company which his firm of solicitors acts for. Councillor Boskovitz left the meeting and did not participate in debate or vote on the matter. Councillor Boskovitz also declared a Non-Significant Non-Pecuniary Interest in this matter as the Architect for the Applicant was a Liberal Party Councillor on the last Council.

**Note:** The Mayor Councillor Petrie declared a Non-Significant, Non-Pecuniary Interest in this Item as the Architect for the Applicant was a Liberal Party Councillor on the last Council. The Mayor, Councillor Petrie does not believe it would affect his vote.

**Note:** Late correspondence as tabled at the meeting from Chris Howe, (2 pieces), Andrew Demetriou (2 pieces) and Robyn Caldwell.

**Motion moved by Councillor Zeltzer  
Seconded by Councillor Thomas**

That the recommendation from the DCC Site Inspection for approval of the application be adopted subject to:

1. Condition C.1n being amended to read “*In order to mitigate unreasonable view loss to 17 John Dykes Avenue, the proposed atrium clerestory structure shall be lowered by 0.4 m to RL63.8. The proposed high atrium parapet shall be lowered to the general parapet level at RL63.65.*”

2. Inclusion of new condition D.9 to read “*The fig tree located in the rear yard is to be pruned and maintained at the approved RL of 62.60 prior to the commencement of any development work*”.

### Adopted

(Zeltzer/Thomas)

## 8/12 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. 338/2009 part 3 for the demolition of the existing dwelling house, the construction of a new dwelling house and swimming pool, landscaping and site works on land at 23 Derby Street, Vaucluse in the following manner:

### The modification of the following conditions:

#### A.3a Approved Amended (s96) Plans

Those acting upon or under this amended consent must carry out all work and maintain the use and works in accordance with the approved plans and supporting documents listed in the original consent, as amended by the amended approved plans and supporting documents as submitted by the Applicant and to which is affixed a Council stamp “**Approved S96 Plans**” listed below otherwise than modified by further condition(s). Where the plans relate to amendments, alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
1-06-1-10, 2-05, 2-06, 2-09, 2-10 & 3-05	Architectural Plans	Howe Architects P/L	17 & 31/8/12

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

#### C.3 BASIX commitments

The *applicant* must submit to the *Certifying Authority* *BASIX Certificate* 445238S with any application for a *Construction Certificate*.

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

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

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

## H.2 Fulfillment of BASIX commitments – Clause 154B of the Regulation

All BASIX commitments must be effected in accordance with the BASIX Certificate 445238S.

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

## I.2 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate 445238S.

**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.

### The addition of the following conditions:

**C.1n)** In order to mitigate unreasonable view loss to 17 John Dykes Avenue, the proposed atrium clerestory structure shall be lowered by 0.4 m to RL63.8. The proposed high atrium parapet shall be lowered to the general parapet level at RL63.65.

## C.17 Checking Construction Certificate plans & protecting assets owned by the Sydney Water Corporation

The approved plans must be submitted to a Sydney Water Quick Check agent to determine whether the development will affect any Sydney Water wastewater and water mains, stormwater drains and/or easement, and any requirements need to be met. Plans will be appropriately stamped.

Please refer to the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- Quick Check agents details – see Building and Development then Quick Check and
- Guidelines for Building Over/Adjacent to Sydney Water Assets – see Building and Development then Building and Renovating

**Note:** Further information can be obtained from the Sydney Water Corporation by visiting their web site: <http://www.sydneywater.com.au> or telephone 13 20 92.

## D.9 Pruning of fig tree

The fig tree located in the rear yard is to be pruned and maintained at the approved RL of 62.60 prior to the commencement of any development work.

### The deletion of the following conditions:

**C.1d)** *The kitchen awning window on the southern elevation of the ground floor is to be a hopper window glazed with translucent glass and fitted with winder mechanisms which allow a maximum opening of 300mm.*

**C.1e)** *For clarity, ground floor plan A104 Rev A shall be amended to depict the ground floor WC frosted awning window shown on the northern side elevation plan A107 Rev B.*

- C.1f) *For clarity, first floor plan A105 Rev B shall be amended to depict the first floor ensuite frosted windows shown on the southern side elevation plan A107 Rev B.*
- C.1g) *For clarity, the southern and northern side elevation plan A107 Rev B is to be amended to depict the front setback of the ground floor to be 5.7m.*
- C.1h) *The garage width is to be no greater than 6.5m.*
- C.1i) *The proposed basement, including the garage, is to present an unarticulated length (comprised of slatted timber) of 6.5m to the street.*
- C.1m) *The current gable facing the street shall be amended to a pitch roof form, with the lowest level of the pitch to be consistent with the eaves and falling away from the street.*

*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 Bennett  
Councillor Elsing  
Councillor Kirillova  
Councillor Levenston  
Councillor Marano  
Councillor O'Regan  
Councillor Petrie  
Councillor Thomas  
Councillor Wise  
Councillor Zeltzer  
Councillor Zulman

Nil

***11/0***

- Item No:** R3 Recommendation to Council
- Subject:** **29-53 Victoria Road, Bellevue Hill (North-eastern section of The Scots College) – Section 96 Application – Proposed modifications internal & external – 15/4/2013**
- Author:** David Booth – Senior Assessment Officer
- File No:** DA545/2005 part 3
- Reason for Report:** In accordance with Council’s meeting procedures and policy this matter has been called to full Council by The Mayor Councillor Petrie for the following reason:
- That original refusal was a decision by Full Council, and each Councillor should have a say in final decision.

**Note:** Councillor Thomas declared a Significant Non-Pecuniary Interest in this Item as a former long term employer and friend of hers is a part of the Concerned Scots Neighbours. Councillor Thomas left the meeting and did not participate in the debate or vote on the matter.

**(Boskovitz/Marano))**

- 9/12** THAT Council 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**

**In Closed Session**

- 10/12** **Note:** The Council discussed the confidential report and legal advice and adopted a resolution.

**(Boskovitz/Wynne)**

- 11/12** That Council move into “Open Session”.

**Adopted**

**In Open Session**

**(Boskovitz/Robertson)**

- 12/12** **Resolved:**
- A. That based on the advice received, Council resolves to enter into consent orders with regards the Section 96 Application.
  - B. That the recommendations that were adopted in the closed session be adopted.



*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 Bennett  
Councillor Boskovitz  
Councillor Kirillova  
Councillor Levenston  
Councillor Marano  
Councillor O'Regan  
Councillor Robertson  
Councillor Wise  
Councillor Wynne  
Councillor Zeltzer  
Councillor Zulman

***Against the Motion***

Councillor Elsing  
Councillor Petrie

***11/2***

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- Item No:** R4 Recommendation to Council
- Subject:** **751-755, 757 & 759 New South Head Road, & 12 & 14 Richmond Road, Rose Bay – Section 96 Application – Proposed modification substation – 16/8/2012**
- Author:** Eleanor Smith – Senior Assessment Officer
- File No:** DA845/2008 part 2
- Reason for Report:** In accordance with Council’s meeting procedures and policy this matter has been called to full Council by Councillor Robertson for the following reasons:
1. The DA was originally determined (and deferred) at full Council.
  2. High number of objector concerns
  3. Broader public interest.
  4. The staff assessment report notes "that the substation is setback 1.45m from the eastern boundary, and the western side of the fire resistant blast wall is setback 0.85m from the eastern boundary". This is significantly non-compliant with the conditions imposed in the original grant of consent pursuant to section C7.

(Boskovitz/Wynne)

**13/12 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. 845/2008 part 2 for the adaptive use of No. 751-755 (former car showroom) and No. 757 (former Post Office) New South Head Road for a retail use as a Woolworths supermarket, and the demolition of the pair of semi-detached dwellings at No. 12 and No. 14 Richmond Road to provide off-street car parking for 25 vehicles, with egress for service vehicles via 759 New South Head Road (Crystal Car Wash) on land at 751-755, 757 and 759 New South Head Road, and 12 and 14 Richmond Road, Rose Bay in the following manner:

**A. General Conditions**

**A.6 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 Section 96 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)
60051050	Acoustic Report	Aecom	02.11.2012
1 of 3 2 of 3 3 of 3	Technical Details	DEP Consulting Ltd	Received 20.11.2012
LDA-001 2	Landscape Plan	Scott Carver	30.10.2012
101 B	Architectural Plan	Scott Carver	30.10.2012

**Note:** These plans and supporting documentation may be subject to conditions modifying the development imposed under section 80A(1)(g) of the *Act* (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)  
Standard Condition: A6

*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 Bennett  
Councillor Boskovitz  
Councillor Elsing  
Councillor Kirillova  
Councillor Levenston  
Councillor Marano  
Councillor O'Regan  
Councillor Petrie  
Councillor Thomas  
Councillor Wise  
Councillor Wynne  
Councillor Zeltzer  
Councillor Zulman

Nil

***13/0***

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## Urban Planning Committee

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### Items with Recommendations from the Committee Meeting of Monday 22 July 2013 Submitted to the Council for Determination

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**Item No:** R1 Recommendation to Council  
**Subject:** **Licensed Premises Development Control Plan**  
**Author:** Peter Kauter, Executive Planner  
**File No:** 1259.G  
**Reason for Report:** To obtain a resolution from Council to proceed with the preparation of the Licensed Premises Development Control Plan

**Note:** Late correspondence was tabled at the meeting from Council's Executive Planner, Peter Kauter and Councillor Toni Zeltzer.

(Zeltzer/O'Regan)

**14/12 Resolved:**

- A. That the Council resolve to proceed with the preparation of a Licensed Premises Development Control Plan in accordance with **Annexure A** of the report to the Urban Planning Committee meeting on 22 July 2013 subject to the following:
- i. The 7<sup>th</sup> control under Objective O 4.2.1 (Minimise the impact of licensed premises on the amenity of residents or other sensitive land uses) be amended to read "the density of licensed premises in the vicinity of the proposed development."
  - ii. Inclusion in Part 4.1.2 (Purpose of this chapter) of the following paragraph:

There are controls in this chapter which relate directly and indirectly to the density of licensed premises in the consideration of DAs and other related applications. This is because studies have demonstrated that there is a connection between areas with higher densities of licensed premises and increases in the incidence of alcohol-related anti-social behaviour. The assessment of DAs and other related applications for licensed premises will include consideration of the density of existing licensed premises in the vicinity and any incidences of alcohol-related anti-social behaviour. Situations may arise where it is not possible to support additional licensed premises in areas where high densities occur and where anti-social behaviour is causing unacceptable impacts on the surrounding community.
  - iii. At the end of control 4.2.4, delete the periods for reviewing extended trading hours and insert:
    - 1 year following the initial trial period, and
    - every 2 years after the first review.
- B. That the draft plan be included in the forthcoming Comprehensive DCP.

*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 Bennett  
Councillor Boskovitz  
Councillor Elsing  
Councillor Kirillova  
Councillor Levenston  
Councillor Marano  
Councillor O'Regan  
Councillor Petrie  
Councillor Robertson  
Councillor Thomas  
Councillor Wise  
Councillor Wynne  
Councillor Zeltzer  
Councillor Zulman

Nil

***14/0***

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## Community & Environment Committee

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### Items with Recommendations from the Committee Meeting of Monday 22 July 2013 Submitted to the Council for Determination

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**Item No:** R1 Recommendation to Council  
**Subject:** **Community and Cultural/Environmental Grants 2013 /2014**  
**Author:** Romi Scodellaro, Melissa Sellen  
**File No:** 30.G, 2012, 1142.G/Education  
**Reason for Report:** To give consideration to applications for Section 356 Community and Cultural Grants and Community Environmental Grants from local community groups /services /schools.

(Thomas/Zeltzer)

**15/12 Resolved without debate:**

- A. That Council approve the selection panel's recommendations for the successful 2013/14 Community and Cultural Large Grants and the first round of the Small Grants Program.
- B. That Council approve the selection panel's recommendations for successful 2013/14 Community Environmental Grants.
- C. That a contribution equivalent to the amount provided to the Rose Bay Chamber of Commerce is given to the Queen Street and West Woollahra Association on an annual basis.

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**Item No:** R3 Delegated to Committee  
**Subject:** **Newcastle Street - Angle Parking**  
**Author:** Cathy Edwards-Davis, Manager Engineering Services  
**File No:** 900.G  
**Reason for Report:** Response to Council Resolution

**Note:** In accordance with Council's meeting procedures and policy this matter has been called to full Council by Councillor Boskovitz, so that it can be determined in conjunction with a Notice of Motion.

**Motion moved by Councillor Boskovitz**  
**Seconded by Councillor Bennett**

That consideration of the matter be deferred.

**Amendment moved by Councillor Robertson  
Seconded by Councillor Zulman**

That the recommendation from the Community and Environment Committee be adopted.

**The Amendment was put and Lost  
The Motion was put and Adopted**

**(Boskovitz/Bennett)**

**16/12 Resolved:**

That consideration of the matter be deferred.

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**Item No:** R4-Y2 Traffic Matters on Local Roads – Recommendation to C&E for consideration.

**Subject:** **Albermarle Avenue & Wilberforce Avenue, Rose Bay – Boats and Trailers**

**Author:** Cathy Edwards-Davis – Manager Engineering Services

**File No:** 900.G

**Reason for Report:** Council Resolution

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

**(Thomas/Wynne)**

**17/12 Resolved:**

- A. Note the Recommendation from the Traffic Committee that no further action be taken with regards to the installation of parking restrictions in Albermarle Avenue and Wilberforce Avenue, Rose Bay for the reasons outlined in the report.
- B. That Council advertise a proposal to implement the following parking restrictions in Albermarle Avenue and Wilberforce Avenue, Rose Bay: *"1 Hour Parking 9am – 11am Mon Resident Permit Holders Excepted"* and *unrestricted at other times* - and a further report be presented to the Community & Environment Committee advising of feedback received.

## Notice of Motion

**Item No:** 1  
**From:** Councillors Robertson and Elsing  
**Date:** 1 August 2013  
**File No:** 900.G

**(Robertson/Elsing)**

That Council:

Requests staff to prepare on behalf of Woollahra Council a submission to the NSW government's statutory review of the *Liquor Act 2007* and the *Gaming and Liquor Administration Act 2007*, including but not limited to:

- (a) the adequacy of the Act's current provisions relating to Community Impact Statements
- (b) the adequacy of the Act's current provisions creating an interplay between Councils' power to grant development consent to new alcohol venues, and the Independent Liquor and Gaming Authority's power to grant accompanying liquor licences, and the impact of this interplay on our municipality.

**Lost**

**Note:** A Division was called by Councillor Robertson and the Mayor, Councillor Petrie

*For the Motion*

Councillor Robertson  
Councillor Elsing  
Councillor Kirillova

*Against the Motion*

Councillor Boskovitz  
Councillor Bennett  
Councillor Wynne  
Councillor Zulman  
Councillor Levenston  
Councillor Marano  
Councillor O'Regan  
Councillor Thomas  
Councillor Zeltzer  
Councillor Wise  
Councillor Petrie

**3/11**



## Questions for Next Meeting

**Item No:** 13  
**Subject:** Questions for Next Meeting  
**Author:** Gary James, General Manager  
**File No:** 467.G/Q 10  
**Reason for Report:** To allow Councillors to ask Questions for Next Meeting in accordance with Council's Code of Meeting Practice.

**(Boskovitz/Bennett)**

**18/12** That Councillors ask Questions for Next Meeting in accordance with Council's Code of Meeting Practice.

**Adopted**

**The following questions were asked:-**

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**Councillor Wynne asking:**

Would it be possible to approach the RMS regarding improving signage along Old South Head Road from the Watsons Bay roundabout to the roundabout at Old South Head Road and New South Head Road regarding the speed?

The speed limit is 50 km/h however there is very little signage indicating that and perhaps paint on the road may be a better option given the open nature of the road.

**Director Technical Services in response:**

We can do that.

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**Councillor Kirillova asking:**

Could the Council consider cleaning the footpaths and landscaped areas around Edgecliff Station, in particular removing rubbish in McLean Street and undertaking as necessary some pest control measures?

**Director Technical Services in response:**

On notice.

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**Councillor Kirillova asking:**

I am grateful for the swift action taken by Council to improve safety at intersections in Double Bay, at the corner of William and Bay Streets and at the Cross Street/Bay Street intersections.

Could Council consider what steps could be taken to improve safety at Darling Point Road, near Etham Avenue (near The Village Store) as this intersection is busy and could benefit from a roundabout or other safety measures.

**Director Technical Services in response:**

On notice.

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**Councillor Wise asking:**

Has staff given any consideration to assessing the cost and priorities of extending the free Wi-Fi facilities granted to the Double Bay retail area to other retail centres in the Municipality, which are also in dire need of support and revitalisation?

If the answer is in the negative, would such an assessment be possible?

**General Manager in response:**

At this point we haven't. Double Bay for a variety of reasons was a real opportunity because there was an opportunity for heavy subsidisation there. It's not just a case of pro rataing this, it's a case of load and the way in which we installed it. By that I mean you need areas where there are the shoppers that will sit, that will stay, it's not the face to face where there is any benefit in Double Bay, there is quite a number of those. In the smaller shopping centres I suspect that if you were to do a business study the cost of the installation would probably outweigh the benefit. But we are waiting to see what the outcome is for Double Bay and then we will look at the opportunities elsewhere.

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**Councillor Robertson asking:**

Will staff please update Council on the compliance issues and subsequent court proceedings in relation to the development being carried out at 61 Wentworth Road, Vaucluse?

I note that this development has caused a very high degree of concern for neighbouring residents.

**Acting Director Planning and Development in response:**

We will.

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**Councillor Robertson asking:**

This question is in response to staff's answer to my question of 22 July regarding the installation of a traffic bollard at the zebra crossing on Boundary Street at Glenview Street, Paddington.

May I thank staff for the timely installation of the two "keep left" signs, however point out that if they went missing, it was quite some time ago.

Does the installation of the two "keep left" signs mean that the bollard ought to be removed to ensure the safest traffic signage on our roads?

If so, does Council intend to remove the bollard?

And in such case, will Council have to ascertain who installed the bollard in the first place?

**Director Technical Services in response:**

I think it will be prudent to check who put them in before we removed them. We will undertake to do both of those things.

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**Councillor Wynne asking:**

Would the Director please pass on to the staff the thanks that I received from Kinkoppal Rose Bay with regard to their thanks for the hard work with getting the installation of the crossing and raised speed hump on Vaocluse Road to help slow traffic for Kinkoppal, as well as thanks for the assistance staff gave our member for Vaocluse in ensuring flashing lights were implemented also on Vaocluse Road communicating a school zone.

**Director Technical Services in response:**

I will be delighted to do that.

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There being no further business the meeting concluded at 9.44pm.

*We certify that the pages numbered 2519 to 2569 inclusive are the Minutes of the Ordinary Meeting of Woollahra Municipal Council held on 12 August 2013 and confirmed by Council at the ordinary Meeting of Council on 26 August 2013 as correct.*

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**General Manager**

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**Mayor**