

Development Control Committee Minutes

Monday 4 August 2014

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Development Control Committee Minutes

**Minutes of the Meeting held on
Monday 4 August 2014 at 6.00pm**

Present: Her Worship the Mayor, Councillor Toni Zeltzer ex-officio (Items D1, part D2-D7)
Councillors Greg Levenston (Chair)
Ted Bennett
Luise Elsing
James Keulemans (Items part D2-D7)
Anthony Marano
Katherine O'Regan
Matthew Robertson

Staff: Allan Coker (Director – Planning & Development)
Nick Economou (Acting – Manager Development Control)
Sue O'Connor (Secretarial Support - Governance)
David Waghorn (Team Leader)

Session One: 6.00pm to 7.35pm
Session Two: Nil

Also in Attendance: Councillor Susan Wynne (Item D2)

Leave of Absence

Leave of Absence previously granted by Council: Nil

Apologies: Nil

Late Correspondence

Late correspondence was submitted to the committee in relation to Items: Nil

Declarations of Interest

Councillor Elsing declared a Non-Significant, Non-Pecuniary Interest in Item D3 (8-16 Queen Street, Woollahra (Hughenden Boutique Hotel), as her son works for the Hotel. Councillor Elsing does not believe it would affect her vote.

Items Decided by this Committee using its Delegated Authority (Items D1 to D6)

Item No: D1 Delegated to Committee
Subject: **Confirmation of Minutes of Meeting held on 21 July 2014**
Author: Les Windle, Manager - Governance
File No: See Council Minutes
Reason for Report: The Minutes of the Meeting of Monday 21 July 2014 were previously circulated. In accordance with the guidelines for Committees' operations it is now necessary that those Minutes be formally taken as read and confirmed.

(Elsing/Bennett)

Resolved:

That the Minutes of the Development Control Committee Meeting of 21 July 2014 be taken as read and confirmed.

D2 DA142/2014 – 3/84-86 Wolseley Road, Point Piper – Construction of stair to the northern side of the site – 174/2014

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

- Given the history of the matter in the Land & Environment Court
 - The interest from many Councillors not on the Development Control Committee (See Item R1)
-

D3 DA129/2014 - 8-16 Queen Street, Woollahra (Hughenden Boutique Hotel) – Alterations to the guest lounge at the Hughenden, including new roof & changes to fenestration, landscaping works – 10/4/2014

Note: Councillor Elsing declared a Non-Significant, Non-Pecuniary Interest in this Item, as her son works for the Hotel. Councillor Elsing does not believe it would affect her vote.

(Bennett/Robertson)

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. 129/2014 for alterations to the guest lounge at the Hughenden, including new roof and changes to fenestration and landscaping works on the land at 8-16 Queen Street, Woollahra, 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, piling, 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)
DA.01, DA.02, DA.03, DA.04.	Architectural Plans	EDAA	8 April 2014
Appendix A	Site Waste Management Plan	Denis Smith	7 April 2014

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

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

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

The owner must procure the repair, replacement or rebuilding of all road pavement, kerb, gutter, footway, footpaths adjoining the site or damaged as a result of work under this consent or as a consequence of work under this consent. Such work must be undertaken to Council's satisfaction in accordance with Council's “Specification for Roadworks, Drainage and Miscellaneous Works” dated February 2012 unless expressly provided otherwise by these conditions at the *owner's* expense.

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

A.5 NSW Police Requirements

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

- a) The use of CCTV, with cameras placed to achieve maximum capture of facial recognition and storage of images captured storable and downloadable for four (4) weeks prior to overwriting
- b) Lighting to the front and rear of the premises of a standard while allows CCTV to capture good facial recognition images outside of daylight hours
- c) Vegetation plantings not creating concealment areas or predator traps, with low foliage or tall trees, with no hedging above 1.2m in height
- d) Provision of lockable storage for staff members personal belongings

Note: This condition reflects the requirements of the NSW Police Service sought following the referral of the proposal to the local NSW Police Service's Community Safety Officer under a memorandum of understanding between the NSW Police Service and Council. These requirements are imposed to improve natural surveillance and community safety.
Standard Condition: A26

A.6 Tree Preservation and Approved Landscaping Works

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

Ref No	Species	Location	Dimension
1	<i>Robinia pseudoacacia</i> Robinia	West carpark adjacent to the Guest Lounge entry	10 x 7 metres

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

B.1 Construction Certificate required prior to any demolition

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

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

B.2 Identification of Hazardous Material

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

- a) all hazardous materials identified on the site
- b) the specific location of all hazardous materials identified
- c) whether the hazardous materials are to be removed from the site as part of the works to be undertaken
- d) safety measures to be put in place

Note: This condition is imposed to protect the health and safety of all persons while works are being undertaken and to ensure all safety measures have been identified and are in place to protect all parties in the immediate vicinity of the site.
Standard Condition: B6

B.3 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

Ref No	Species	Location	Radius from Centre of Trunk*
1	<i>Robinia pseudoacacia</i> Robinia	West carpark adjacent to the Guest Lounge entry	Fence exiting planter bed

- b) Tree Protection Zones shall be fenced with a 1.8 metre high chainmesh or weldmesh fence and secured to restrict access. The fence shall be established prior to any materials being bought onto the site and before the commencement of works including demolition. The area within the fence shall be mulched and maintained to a depth of 75mm. The soil within the TPZ shall be kept in a moist condition for the duration of the construction works. Unless approved by the site arborist there shall be no access within the TPZ.
- c) 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.
- d) 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.
- e) All site personnel and contractors must be made aware of all tree protection requirements associated with these conditions of consent.

B.4 Permissible work within Tree Protection Zones

The following works are permissible within the Tree Protection Zone:

Ref No	Species	Radius from Trunk	Approved works
1	<i>Robinia pseudoacacia</i> Robinia	2 metres	Reconstruct west and south walls of planter bed. Install stormwater drain access cover

The project arborist shall provide written certification of compliance with the above condition.

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

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

The *approved plans* and the *Construction Certificate* plans and specification, required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation*, must show disabled access in accordance with AS1428.1:2009 between the guest lounge and the carpark.

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

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

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

Standard Condition: C4

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

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

Description	Amount	Indexed	Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation or use online calculator	No	
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit - making good any damage caused to any <i>Council</i> property	\$4,264	No	T115
INSPECTION FEES under Section 608 of the Local Government Act 1993			
Security Administration Fee	\$185	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$4,449 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.3 Checking Construction Certificate plans and 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 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.
Standard Condition: C24

C.4 Soil and Water Management Plan – Submission & Approval

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

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

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

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

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

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

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

C.5 Tree Management Details

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

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

Standard Condition: C30

C.6 Structural Adequacy of Existing Supporting Structures

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

Note: This condition is imposed to ensure that the existing structure is able to support the additional loads proposed.
Standard Condition: C35

C.7 Professional Engineering Details

The *Construction Certificate* plans and specifications, required by clause 139 of the Regulation, must include detailed *professional engineering* plans and/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.8 Stormwater discharge to existing *Stormwater Drainage System*

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

- a) The location of the existing *Stormwater Drainage System* including all pipes, inspection openings, surface drains, pits and their discharge location,
- b) The state of repair of the existing *Stormwater Drainage System*,
- c) Any remedial works required to upgrade the existing *Stormwater Drainage System* to comply with the BCA,
- d) Any remedial works required to upgrade the existing *Stormwater Drainage System* crossing the footpath and any new kerb outlets,
- e) Any new *Stormwater Drainage System* complying with the BCA,
- f) Interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath,
- g) Any rainwater tank (See Note Below) required by BASIX commitments including their overflow connection to the *Stormwater Drainage System*, and
- h) General compliance with the Council's draft Development Control Plan Stormwater Drainage Management (Draft Version 1.1, Public Exhibition Copy dated 14 December 2006)

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

All *Stormwater Drainage System* work within any road or public place must comply with Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* dated February 2012.

- Note:** Clause F1.1 of Volume 1 and Part 3.1.2 of Volume 2 of the BCA provide that stormwater drainage complying with AS/NZS 3500.3 Plumbing and drainage - Part 3: Stormwater drainage is deemed-to-satisfy the BCA. Council's specifications apply in relation to any works with any road or public place.
- Note:** The collection, storage and use of rainwater is to be in accordance with *Standards Australia HB230-2008 "Rainwater Tank Design and Installation Handbook"*.
- Note:** Stormwater Drainage Systems must not discharge to any Sewer System. It is illegal to connect stormwater pipes and drains to the sewerage system as this can overload the system and cause sewage overflows. See:
<http://www.sydneywater.com.au/Publications/Factsheets/SewerfixLookingAfterYourSewerPipes>
- Note:** Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* dated January 2003 and Council's draft Development Control Plan Stormwater Drainage Management (Draft Version 1.1, Public Exhibition Copy dated 14/12/2006) can be downloaded from Council's website:
www.woollahra.nsw.gov.au
Standard Condition: C49

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

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

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

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

This condition does not apply:

- a) to the extent to which an exemption is in force under *the Home Building Regulation 2004*,
- b) to the erection of a temporary building.

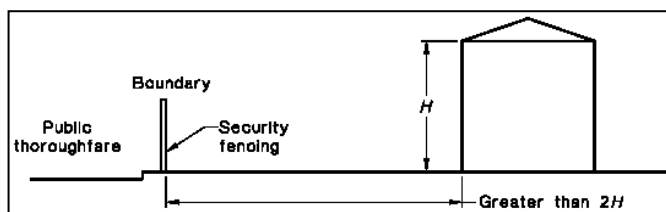
In this condition, a reference to the *BCA* is a reference to that code as in force on the date the application for the relevant construction certificate is made.

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

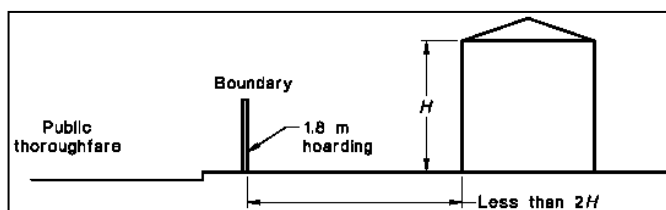
Note: All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.
Standard Condition: D1

D.2 Security Fencing, Hoarding and Overhead Protection

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



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

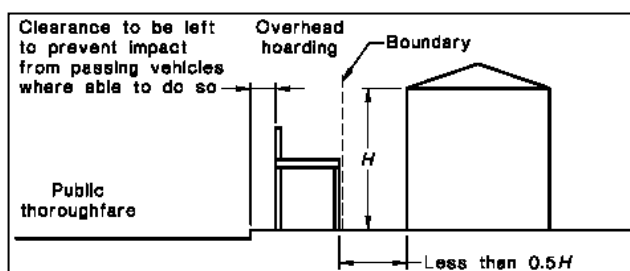


Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an *overhead protective structure* and the facing facade protected by heavy-duty scaffolding, unless either:

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

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

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



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

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

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

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

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

D.3 Site Signs

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

Clause 98A of the Regulation provides:

Erection of signs

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

Clause 227A of the Regulation provides:

Signs on development sites

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

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

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

Note: If *Council* is appointed as the *PCA* it will provide the sign to the *principal contractor* or *owner builder* who must ensure that the sign is erected and maintained as required by Clause 98A and Clause 227A of the *Regulation*.

Standard Condition: D12

D.4 Toilet Facilities

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

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

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

In this condition:

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

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

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

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

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

Standard Condition: D13

D.5 Erosion and Sediment Controls – Installation

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

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

Where there is any conflict The Blue Book takes precedence.

- Note:** The International Erosion Control Association – Australasia (<http://www.austieca.com.au/>) lists consultant experts who can assist in ensuring compliance with this condition. Where Soil and Water Management Plan is required for larger projects it is recommended that this be produced by a member of the International Erosion Control Association – Australasia.
- Note:** The “Do it Right On Site, Soil and Water Management for the Construction Industry” publications can be downloaded free of charge from www.woollahra.nsw.gov.au.
- Note:** A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the *Protection of the Environment Operations Act 1997* **without any further warning**. It is a criminal offence to cause, permit or allow pollution.
- Note:** Section 257 of the *Protection of the Environment Operations Act 1997* provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”

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

Standard Condition: D14

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

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

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

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

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

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

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

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

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 Compliance with Australian Standard for Demolition

Demolition of buildings and structures must comply with Australian Standard AS 2601—2004: The Demolition of Structures, published by Standards Australia.

Standard Condition: E2

E.3 Requirement to notify about new evidence

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

Standard Condition: E4

E.4 Critical Stage Inspections

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

Work must not proceed beyond each critical stage until the PCA is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the *Act*.

Critical stage inspections means the inspections prescribed by the *Regulations* for the purposes of section 109E(3)(d) of the *Act* or as required by the *PCA* and any *PCA Service Agreement*.

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

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

Standard Condition: E5

E.5 Hours of Work –Amenity of the neighbourhood

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

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

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

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

- Note:** The delivery and removal of plant, equipment and machinery associated with wide loads subject to RTA and Police restrictions on their movement 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/nlg.htm> .
- Note:** see http://www.epa.nsw.gov.au/resources/ci_build_sheet7.pdf
Standard Condition: E6

E.6 Public Footpaths – Safety, Access and Maintenance

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

- a) Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.
- b) Not use the road or footway for the storage of any article, material, matter, waste or thing.
- c) Not use the road or footway for any *work*.
- d) Keep the road and footway in good repair free of any trip hazard or obstruction.
- e) Not stand any plant and equipment upon the road or footway.
- f) Provide a clear safe pedestrian route a minimum of 1.5m wide.
- g) Protect street name inlays in the footpath which are not to be removed or damaged during development.

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

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

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

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

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

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

- Part C Management of Waste:
 - a. For fee or reward, transport waste over or under a public place
 - b. Place waste in a public place
 - c. Place a waste storage container in a public place.”

- Part E Public roads:
 - a. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
 - b. Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.”
 - c. Any work in, on or over the Road or Footway requires *Council* Approval and in the case of classified roads the NSW Roads and Traffic Authority. Road includes that portion of the road uses as a footway.
Standard Condition: E7

E.7 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) Excavation must cease where tree roots with a diameter exceeding 30mm are exposed. The *principal contractor* must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- b) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

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

E.8 Maintenance of Environmental Controls

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

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

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

E.9 Support of adjoining land and buildings

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

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

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

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

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

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

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

Standard Condition: E13

E.10 Erosion and Sediment Controls – Maintenance

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

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

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



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

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

Warning: Irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of the occupation of the land being developed whether or not they actually cause the pollution.

Standard Condition: E15

E.11 Disposal of site water during construction

The principal contractor or owner builder must ensure:

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

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

Standard Condition: E17

E.12 Filling of site

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

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

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

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

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

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

Note: Additional information is available from the following websites:

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

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

Standard Condition: E18

E.13 Site Cranes

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

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

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

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

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

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

Standard Condition: E19

E.14 Placement and use of Skip Bins

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

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

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

Standard Condition: E21

E.15 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.16 Dust Mitigation

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

This generally requires:

- a) Dust screens to all hoardings and site fences.
- b) All stockpiles or loose materials to be covered when not being used.
- c) All equipment, where capable, being fitted with dust catchers.
- d) All loose materials being placed bags before placing into waste or skip bins.

- e) All waste and skip bins being kept covered when not being filled or emptied.
- f) The surface of excavation work being kept wet to minimise dust.
- g) Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

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

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

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

E.17 Site waste minimisation and management – Demolition

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

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

When implementing the SWMMP the applicant must ensure:

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

Note: Materials that have an existing reuse or recycling market should not be disposed of in a landfill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.
Standard Condition: E31

E.18 Site waste minimisation and management – Construction

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

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

Standard Condition: E32

E.19 Asbestos Removal

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

- be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (restricted) Asbestos License";
- carried out in accordance with National Occupational Health and Safety Commission (NOHSC): "*Code of Practice for the Safe Removal of Asbestos*";
- No asbestos products may be reused on the site; and
- No asbestos laden skip or bins shall be left in any public place.

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

Standard Condition: E39

E.20 Classification of Hazardous Waste

Prior to the exportation of hazardous waste (including hazardous fill or soil) from the site, the waste materials must be classified in accordance with the provision of the *Protection of the Environment Operations Act 1997* and the NSW DECC *Waste Classification Guidelines, Part 1: Classifying Waste* (April 2008).

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

Standard Condition: E40

E.21 Disposal of Asbestos and Hazardous Waste

Asbestos and hazardous waste, once classified in accordance with **Condition E.20** above must only be transported to waste facilities licensed to accept asbestos and appropriate classifications of hazardous waste.

Note: This condition is imposed to ensure that asbestos and other Hazardous waste is disposed of lawfully under the Protection of the Environment Operations Act 1997 and relevant EPA requirements.
Standard Condition: E41

E.22 Asbestos Removal Signage

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

Note: This condition is imposed to ensure awareness of any hazard to the health and safety of persons working on the site and public.
Standard Condition: E42

E.23 Notification of Asbestos Removal

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

Note: This condition has been imposed to ensure that local residents are informed and have adequate communication facilitated for incidents of asbestos removal.
Standard Condition: E43

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

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

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

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

F.2 Commissioning and Certification of Systems and Works

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

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

- a) Certification from the supervising professional engineer that the requirement of the Geotechnical / Hydrogeological conditions and report recommendations were implemented and satisfied during development work.
- b) All flood protection measures.
- c) All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1 – "Off-Street car parking."

- d) All stormwater drainage and storage systems.
- e) All mechanical ventilation systems.
- f) All hydraulic systems.
- g) All structural work.
- h) All acoustic attenuation work.
- i) All waterproofing.
- j) Such further matters as the Principal Certifying Authority may require.

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

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

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

Standard Condition: F7

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

Not applicable.

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

H.1 Removal of Ancillary Works and Structures

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

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

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

Standard Condition: H12

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

I.1 Maintenance of Landscaping

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

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

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

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

I.2 Waste Management - Commercial

The owner and/or occupier must comply with the approved Site Waste Minimisation and Management Plan (SWMMP) and with Council's Site Waste Minimisation and Management Development Control Plan 2010.

All waste must be presented for collection in a receptacle. Waste receptacles must be presented no earlier than the close of business on the day before collection. Waste and recycling bins/crates must be removed from the road or footpath within 1 hour of collection or otherwise is accordance with the approved SWMMP.

Receptacles are not to be stored in any public place at any time. Waste and recycling receptacles must be stored at all times within the boundaries of the site.

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.

This condition has been imposed to ensure that the provisions of the approved SWMMP and of Council's Site Waste Minimisation and Management Development Control Plan 2010 are complied with during the ongoing operations of the development.

Note: No waste will be collected by Council that isn't presented properly. The waste must be presented with lid closed to reduce littering.
Standard Condition: 115

I.3 Annual Fire Safety Statements (Class 1b to 9c buildings inclusive)

Each year, the owner of a building to which an *essential fire safety measure* is applicable must provide an *annual fire safety statement* to Council and the Commissioner of the NSW Fire Brigades. The *annual fire safety statement* must be prominently displayed in the building.

Note: *Essential fire safety measure* has the same meaning as in clause 165 of the *Regulation*. *Annual fire safety statement* has the same meaning as in clause 175 of the *Regulation*. Part 9 Division 5 of the *Regulation* applies in addition to this condition at the date of this consent. Visit Council's web site for additional information in relation to fire safety www.woollahra.nsw.gov.au.
Standard Condition: 122

I.4 Removal of Graffiti

All graffiti must be removed or obliterated from buildings and fences within 72 hours.

This condition has been imposed to ensure the quality of our urban environment is not degraded by the accumulations of graffiti.

Note: Procedures for working with graffiti are contained in a special training program available from the Master Painters Australia NSW Association Inc. See: <http://www.masterpainters.com.au/>
Standard Condition: I26

I.5 Outdoor lighting – Commercial

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

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

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: I43

I.6 Noise Control

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/nglg.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).

Department of Environment and Conservation NSW, Noise Policy Section web page (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).

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

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

Department of Gaming and Racing - (www.dgr.nsw.gov.au).

Standard Condition: I50

I.7 Noise from licensed premises

The L_{A10} noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8k Hz inclusive) by more than 5dB(A) between 07:00 am and 12:00 midnight at the boundary of any affected residence.

The L_{A10} noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8k Hz inclusive) between 12:00 midnight and 07:00 am at the boundary of any affected residence.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 am.

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

Note: dB(A) is a value used for 'A-weighted' sound pressure levels 'A' frequency weighting is an adjustment made to approximate the response of the human ear.

Note: *Licensed premises* means premises licensed under the *Liquor Act 2007*

Note: For the purposes of this condition, the L_{A10} is the A-weighted sound pressure level that is exceeded for 10% of the time over which a given sound is measured.

Note: The *background noise level* is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the L_{A90} level measured by a sound level meter over the applicable period.

Note: This condition is identical to the minimum standard condition imposed by the Casino Liquor and Gaming Control Authority (the Authority). The Authority may specify other standards in respect of the above condition under the *Liquor Act 2007*, and associated Regulations. Section 79 of the *Liquor Act 2007* provides an informal mechanism for complaints to be made (by residents, Police, local consent authorities and others) where the amenity of local neighbourhoods is unduly disturbed by the conduct of licensed premises including registered clubs (or their patrons). The Director of Liquor and Gaming is responsible for resolving such complaints and may impose temporary or permanent conditions on any licence. For further information go to the NSW Office of Liquor and Gaming and Racing's website:

(www.olgr.nsw.gov.au).

Note: Interior noise levels of licensed premises which exceed safe hearing levels are not supported or condoned by Council.

Standard Condition: I52

I.8 Noise from mechanical plant and equipment

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

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

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

Note: Words in this condition have the same meaning as in the:

NSW Industrial Noise Policy (http://www.environment.nsw.gov.au/resources/ind_noise.pdf)

ISBN 0 7313 2715 2, dated January 2000, and

Noise Guide for Local Government (<http://www.environment.nsw.gov.au/noise/nglg.htm>)

ISBN 1741370671, dated December 2004.

Standard Condition: I53

I.9 Neighbourhood Amenity – Licensed Premises

The management of the premises:

- a) Shall ensure persons entering and leaving the premises do not crowd or loiter in the vicinity of the premises in such manner that pedestrian movement is obstructed or hindered.

- b) Shall ensure that the manner in which the business of the premises is conducted and/or the behaviour of persons entering and leaving the premises does not cause undue disturbance to the amenity of the neighbourhood. In this regard, the management shall be responsible for the control of noise and litter generated by persons and/or premises operations. If so directed by Council or by NSW Police, the Management is to employ private security staff to ensure that this condition is complied with.
- c) Shall record in a Register full details of any disturbance complaint/s made by a person to management or staff in respect to the manner in which the business of the premises is conducted and/or the behaviour of persons entering or leaving the premises. Such recording will include time, date, nature of the complaint/s and any complainant details if provided.
- d) Shall respond to any disturbance complaint/s in a timely and effective manner. All actions undertaken by management / staff to resolve such complaint/s shall be recorded in the Register.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

Note: The lead agency for the enforcement of this condition is NSW Police.
Standard Condition: I10

I.10 Litter Patrols

Litter patrols are to be undertaken to collect and dispose of all litter and waste in the public areas adjacent to the licensed premises. Such patrols will take place intermittently during the hours of operation with the final patrol conducted at the cessation of trade. A litter patrol Register must be maintained and kept on the premises at all times detailing date, time of patrol, staff member responsible, and manager's signature.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.
Standard Condition: I11

I.11 Copies of Consents, Registers and Management Plans – Licensed Premises

A full copy of all current development consents (including approved plans) for the operation of the premises, any Registers required and any required Plan of Management must be kept on the premises and made available for inspection immediately upon request by Council Officers, Police Officers and/or Office of Liquor Gaming and Racing Authorised Officers.
Standard Condition: I12

I.12 Garbage Collection

The garbage area must be maintained at all times to ensure that a breeding ground is not created for pests and must be capable of being easily and effectively cleaned.

All garbage containers must have tight fitting lids and be large enough or in sufficient numbers to contain all the waste produced by the business while awaiting the next removal from the premises.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.
Standard Condition: I16

I.13 Glass sorting or collection

Glass must not be emptied or transferred from one receptacle to another anywhere in a public place. All glass must be emptied/transferred within the premises and removed in containers.

No bottle or glass sorting, recycling or collection shall take place between 8.00pm and 8.00am Sunday to Friday and between 9.00pm Saturday and 10am Sundays and Public Holidays.

This condition is imposed to protect the amenity of neighbouring residents.

Standard Condition: I17

I.14 NSW Police requirements (Licensed Premises)**Incidents involving acts of violence**

Immediately after the person in charge of the licensed premises becomes aware of an incident involving an act of violence causing an injury to a person on the premises, the person must:

- a) Take all practical steps to preserve and keep intact the area where the act of violence occurred
- b) Retain all material and implements associated with the act of violence in accordance with the Crime Scene Preservation Guidelines issued by the NSW Police
- c) Make direct and personal contact with the Local Area Commander or his/her delegate and advise the Commander or delegate of the incident, and comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred

Safety and security measures

The following safety and security measures must be complied with:

- a) CCTV cameras are to be placed to achieve maximum capture of facial recognition and storage of images captured storable and downloadable for four (4) weeks prior to overwriting
- b) Lighting to the front and rear of the premises is to be of a standard that allows CCTV to capture good facial recognition images outside of daylight hours
- c) The licensed premises are to be supervised during all hours of trade.
- d) An incident register is to be utilised and maintained on a daily basis solely for the purpose of the ground floor restaurant during all hours of trade.

Designated taxi phone service

A designated taxi phone line or similar service is to be located at the bar service area and maintained by management during all hours of trade and is to be implemented from the date of commencement of the restaurant use.

Other Conditions

Vegetation plantings not creating concealment areas or predator traps, with low foliage or tall trees, with no hedging above 1.2m in height.

Lockable storage is to maintained for staff members personal belongings.

Note: The lead agency for enforcement is NSW Police.
Standard Condition: I19

J. Miscellaneous Conditions

Not applicable.

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.

Standard Advising: K1

K.2 Dial before you dig



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

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

Standard Advising: K2

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

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

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

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

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

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

Standard Advising: K3

K.4 Builders Licences and Owner Builders Permits

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

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

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

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

Standard Condition: K5

K.5 Building Standards - Guide to Standards and Tolerances

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

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

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

The Guide can be down loaded from:

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

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

Standard Condition: K6

K.6 Workcover requirements

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

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

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

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

Standard Condition: K7

K.7 Asbestos Removal, Repair or Disturbance

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

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

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

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

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

Standard Advising: K8

K.8 Lead Paint

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

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

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

Standard Advising: K9

K.9 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Mr D Reynolds, Assessment Officer, on (02) 9391 7157.

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

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

Standard Condition: K14

K.10 Release of Security

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

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

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

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

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

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

K.11 Recycling of Demolition and Building Material

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

Standard Condition: K17

K.12 Owner Builders

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

Standard Condition: K18

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

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

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

Standard Condition: K19

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 Keulemans
Councillor Levenston
Councillor Marano
Councillor O'Regan
Councillor Robertson
Councillor Zeltzer

Nil

8/0

D4 DA209/2014 – 2A & 2C/5-11 Thornton Street, Darling Point – Enclosure of the existing balconies of two existing apartments – 22/5/2014

(Bennett/Robertson)

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

THAT the Council, as the consent authority, is of the opinion that the objection under State Environmental Planning Policy No. 1 – Development Standards to the 1:1 Floor Space Ratio development standard under Clause 11 of Woollahra LEP 1995 is well founded. The Council is also of the opinion that strict compliance with the development standards are unreasonable and unnecessary in the circumstances of this case as the development will not create any unacceptably adverse impacts on the adjoining sites or locality in general and will achieve the objectives of the standards.

AND

THAT the Council, as the consent authority, grant development consent to Development Application No. 209/2014 for the enclosure of the existing balconies of two existing apartments on land at 2A&2C/5-11 Thornton Street Darling Point, 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)
DA01(B), DA02(B) DA03(B), DA04(B)	Architectural Plans	Architectural Projects	20/05/2014

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

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

B.1 Construction Certificate required prior to any demolition

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

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

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

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

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

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation or use online calculator	No	

SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit -making good any damage caused to any property of the <i>Council</i>	\$2132	No	T115
Security Administration Fee	\$185	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$2317 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 Structural Adequacy of Existing Supporting Structures

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

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

Standard Condition: C35

C.3 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.4 Submission of a Site Waste Minimisation and Management Plan (SWMMP)

A SWMMP, prepared in accordance with Council's Site Waste Minimisation and Management Development Control Plan 2010, is to be submitted to Council for approval prior to a Construction Certificate being issued.

Standard Condition: C68

C.5 Building upgrade (Clause 94 of the Regulation)

Council considers pursuant to clause 94 of the *Regulation* that it is appropriate to require the existing building to be brought into total or partial conformity with the *BCA*.
The *Construction Certificate* plans and specification required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation* must detail building upgrade works required by this condition.

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

- a) That the existing sprinkler system installed throughout the building shall be extended to the terrace/balcony areas of apartments 2A & 2C in accordance with the requirements of Clause E1.5 of the *BCA* & AS 2118.1-1999
- b) That smoke alarms shall be installed throughout apartments 2A & 2C in accordance with the requirements of Specification E2.2a Clause 3 of the *BCA*
- c) That the balustrades on the balconies of apartments 2A & 2C shall comply with the requirements of Clause D2.16 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 *the Home Building Regulation 2004*,
- b) to the erection of a temporary building.

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

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

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

D.2 Site Signs

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

Clause 98A of the Regulation provides:

Erection of signs

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

Clause 227A of the Regulation provides:

Signs on development sites

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

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

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

Note: If *Council* is appointed as the *PCA* it will provide the sign to the *principal contractor* or *owner builder* who must ensure that the sign is erected and maintained as required by Clause 98A and Clause 227A of the *Regulation*.

Standard Condition: D12

D.3 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

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

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

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

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

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

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

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

Standard Condition: D15

D.4 Notification of Home Building Act 1989 requirements

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

Standard Condition: D17

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 Compliance with Australian Standard for Demolition

Demolition of buildings and structures must comply with Australian Standard AS 2601—2001: The Demolition of Structures, published by Standards Australia, and as in force at 13 September 2001.

Standard Condition: E2

E.3 Requirement to notify about new evidence

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

Standard Condition: E4

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 d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- f) No operation of any equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday
- g) No rock excavation being cutting, boring, drilling, breaking, sawing , jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

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

- Note:** The use of noise and vibration generating plant and equipment and vehicular traffic, including trucks in particular, significantly degrade the amenity of neighbourhoods and more onerous restrictions apply to these activities. This more invasive work generally occurs during the foundation and bulk excavation stages of development. If you are in doubt as to whether or not a particular activity is considered to be subject to the more onerous requirement (9am to 4pm weekdays and 9am to 1pm Saturdays) please consult with Council.
- Note:** Each and every breach of this condition by any person may be subject to separate penalty infringement notice or prosecution.
- Note:** The delivery and removal of plant, equipment and machinery associated with wide loads subject to RTA and Police restrictions on their movement outside the approved hours of work will be considered on a case by case basis.
- Note:** Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the *Protection of the Environment Operations Act 1997*, the *Protection of the Environment Operations (Noise Control) Regulation 2000*.
- Note:** EPA Guidelines can be downloaded from <http://www.epa.nsw.gov.au/noise/nglg.htm> .
- Note:** see http://www.epa.nsw.gov.au/resources/ci_build_sheet7.pdf
Standard Condition: E6

E.5 Public Footpaths – Safety, Access and Maintenance

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

- a) Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.
- b) Not use the road or footway for the storage of any article, material, matter, waste or thing.
- c) Not use the road or footway for any *work*.
- d) Keep the road and footway in good repair free of any trip hazard or obstruction.
- e) Not stand any plant and equipment upon the road or footway.
- f) Provide a clear safe pedestrian route a minimum of 1.5m wide.
- g) Protect street name inlays in the footpath which are not to be removed or damaged during development.

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

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

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

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

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

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

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

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

This generally requires:

- a) Dust screens to all hoardings and site fences.
- b) All stockpiles or loose materials to be covered when not being used.
- c) All equipment, where capable, being fitted with dust catchers.
- d) All loose materials being placed bags before placing into waste or skip bins.
- e) All waste and skip bins being kept covered when not being filled or emptied.

- f) The surface of excavation work being kept wet to minimise dust.
- g) Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

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

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

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

E.9 Placement and use of Skip Bins

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

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

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

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

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

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

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

F.2 Fire Safety Certificates

In the case of a *final occupation certificate* to authorise a person:

- a) to commence occupation or use of a *new building*, or
- b) to commence a change of building use for an existing building,

a *certifying authority* must be satisfied that a final fire safety certificate has been issued for the building.

In the case of an *interim occupation certificate* to authorise a person:

- a) to commence occupation or use of a partially completed *new building*, or
- b) to commence a change of building use for part of an existing building,

a *certifying authority* must be satisfied that a final fire safety certificate or an interim fire safety certificate has been issued for the relevant part of the building.

Note: This condition does not apply to a class 1a or class 10 building within the meaning of clause 167 of the Regulation.

Note: In this condition:

interim fire safety certificate has the same meaning as it has in Part 9 of the Regulation.

final fire safety certificate has the same meaning as it has in Part 9 of the Regulation.

new building has the same meaning as it has in section 109H of the Act.

Standard Condition: F4

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

Nil.

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

H.1 Removal of Ancillary Works and Structures

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

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

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

Standard Condition: H12

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

I.1 Noise Control

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).

Department of Environment and Conservation NSW, Noise Policy Section web page

(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).

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

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

Department of Gaming and Racing - (www.dgr.nsw.gov.au).

Standard Condition: I50

J. Miscellaneous Conditions

Nil.

K. Advising

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

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

Standard Advising: K1

K.2 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.3 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.4 Building Standards - Guide to Standards and Tolerances

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

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

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

The Guide can be down loaded from:

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

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

Standard Condition: K6

K.5 Workcover requirements

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

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

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

office: Location: Workcover NSW, 92-100 Donnison Street, GOSFORD 2250 Postal address:

WorkCover NSW, Locked Bag 2906, LISAROW 2252, Phone (02) 4321 5000, Fax (02) 4325 4145.

Standard Condition: K7

K.6 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Ms Zoe Wilkinson, Assessment Officer, on (02) 9391 7067

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.7 Release of Security

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

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

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

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

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

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.8 Recycling of Demolition and Building Material

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

Standard Condition: K17

K.9 Owner Builders

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

Standard Condition: K18

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 Keulemans
Councillor Levenston
Councillor Marano
Councillor O'Regan
Councillor Robertson
Councillor Zeltzer

Nil

8/0

D5 DA233/2014 - 58 Wentworth Road, Vaucluse – Alterations & additions – 6/6/2014

Note: George Karavanas, Consultant Planner & the Architect, for the Applicant, addressed the Committee.

Motion moved by Councillor Keulemans

Seconded by Councillor Bennett

That the staff recommendation for approval with conditions be adopted.

Amendment moved by Councillor Robertson

That the matter be refused for the following reasons:

- The proposal is contrary to the requirements stipulated under SREP 2005, Clauses 25(b)(c) and 26(a)(c).
- The development breaches Council's Foreshore Building Line
- The development does not comply with Council's height control
- The development breach Council's number of storeys control as prescribed under WRCDP 2003 and is inconsistent with desired future character objectives for the precinct
- Insufficient deep soil landscaping
- Non compliances with Council's FSR and setback controls
- The front fence height is excessive

The Amendment lapsed for want of a Seconder

(Keulemans/Bennett)

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

THAT the Council, as the consent authority, is of the opinion that the objections under State Environmental Planning Policy No. 1 – Development Standards to the following development standards:

- Height under Clause 12 of Woollahra LEP 1995, and
- Foreshore building Line under Clause 22 of Woollahra LEP 1995,

are well founded. The Council is also of the opinion that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of this case as the proposal upholds the objectives set out under Clause 12AA and Clause 22 of Woollahra LEP 1995.

AND

THAT the Council, as the consent authority, being satisfied that the objection under SEPP No. 1 is well founded and also being of the opinion that it is consistent with the aims of the Policy, grant development consent to Development Application No. 233/2014 for alterations and additions on land at 58 Wentworth Road Vaucluse, subject to the following conditions:

A. General Conditions

A.1 Conditions

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

Standard Condition: A1

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, piling, 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)
Site context plan 002 B Roof and upper level plan 003 B Mid level and lower level plan 004 B Side elevations 005 B Streetscape and rear elevation 006 B Sections 007 B	Architectural Plans	Tobias Partners	23/5/14
A186445	BASIX Certificate	NSW Department of Planning and Infrastructure	27/5/14
Plan No. s MB_S2_58WR_01/B, MB_S2_58WR_02/B, MB_S2_58WR_03/B, MB_S2_58WR_04/B	Landscape Plan	Myles Baldwin Design	22/5/14
Site Waste Minimisation and Management Plan	Site Waste Minimisation and Management Plan	Alvaro Bros	Undated
Attachment A		Tobias Partners	23/9/14
Condition C.1, part b modification to the height of the entry bridge pavilion A and B	Plan of Condition C.1, part b modification to the height of the entry bridge pavilion	Council Officer	24/7/14

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

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

Standard Condition: A5

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

The owner must procure the repair, replacement or rebuilding of all road pavement, kerb, gutter, footway, footpaths adjoining the site or damaged as a result of work under this consent or as a consequence of work under this consent. Such work must be undertaken to Council's satisfaction in accordance with Council's "Specification for Roadworks, Drainage and Miscellaneous Works" dated February 2012 unless expressly provided otherwise by these conditions at the *owner's* expense.

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

Standard Condition: A8

A.5 Tree Preservation & Approved Landscaping Works

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

a) The following trees shall be retained

- Trees on Council Land

Council Ref No	Species	Location	Dimension (metres)
1	<i>Robinia pseudoacacia</i> 'Frisia' Golden Robinia	Council verge	5 x 3

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

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

B.1 Construction Certificate required prior to any demolition

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

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

B.2 Identification of Hazardous Material

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

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

Note: This condition is imposed to protect the health and safety of all persons while works are being undertaken and to ensure all safety measures have been identified and are in place to protect all parties in the immediate vicinity of the site.
Standard Condition: B6

B.3 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

Council Ref No	Species	Location	Radius from Centre of Trunk (Metres)*
1	<i>Robinia pseudoacacia</i> 'Frisia' Golden Robinia	Council verge	2

Note: Where this condition relates to street trees and the fence cannot be placed at the specified radius, the fencing shall be positioned so that the entire verge (nature strip) area in front of the subject property, excluding existing driveways, footpaths and bus stops is protected.

Note: Where this condition relates to trees on private property the radial distance of fencing shall be positioned only within the subject property.

- b) Tree Protection Zones shall be fenced with a 1.8 metre high chainmesh or weldmesh fence and secured to restrict access. The fence shall be established prior to any materials being brought onto the site and before the commencement of works including demolition. The area within the fence shall be mulched and maintained to a depth of 75mm. The soil within the TPZ shall be kept in a moist condition for the duration of the construction works. Unless approved by the site arborist there shall be no access within the TPZ.
- c) 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.
- d) 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.
- e) Establishment of Ground protection
Temporary access within the TPZ for pedestrian and machinery movements shall only be permitted with the approval of the site arborist or unless specified in Condition B.2 of this consent. Appropriate ground protection shall be installed under the supervision of the site arborist.
- f) All site personnel and contractors must be made aware of all tree protection requirements associated with these conditions of consent.
- g) The project arborist shall provide written certification of compliance with the above condition.

Standard Condition: B5

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

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

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

- a) To ensure a satisfactory streetscape outcome, no approval is granted for any modifications to the existing sandstone fence to the front boundary. Any replacement fence infill above the existing sandstone wall shall be the same dimensions as the existing fence infill.
- b) To ensure a satisfactory streetscape outcome, the height of the entry bridge pavilion shall be reduced in height by 0.8m for a length of 5.9m in accordance with plan references 'Condition C.1, part b modification to the height of the entry bridge pavilion A. and B', dated 24.07.2014.

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

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

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

Standard Condition: C4

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

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

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm	Contact LSL Corporation or use online calculator	No	
SECURITY under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit -making good any damage caused to any property of the <i>Council</i>	\$54,855.73	No	T115
DEVELOPMENT LEVY under Woollahra Section 94A Development Contributions Plan 2011 This plan may be inspected at Woollahra Council or downloaded at www.woollahra.nsw.gov.au .			
Development Levy (Section 94A)	\$23,740.87 + Index Amount	Yes, quarterly	T96
INSPECTION FEES under Section 608 of the Local Government Act 1993			
Security Administration Fee	\$185.00	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$78,781.60 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.

How will the section 94A levy be indexed?

To ensure that the value the development levy is not eroded over time by increases in costs, the proposed cost of carrying out development (from which the development levy is calculated) will be indexed either annually or quarterly (see table above). Clause 3.13 of the Woollahra Section 94A Development Contributions Plan 2011 sets out the formula and index to be used in adjusting the s.94A levy.

Do you need HELP indexing the levy?

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

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

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

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

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

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

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

Standard Condition: C5

C.3 BASIX commitments

The *applicant* must submit to the *Certifying Authority BASIX Certificate* No. A186445 with any application for a *Construction Certificate*.

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

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

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

Standard Condition: C7

C.4 Tree Management Details

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

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

Standard Condition: C30

C.5 Structural Adequacy of Existing Supporting Structures

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

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

Standard Condition: C35

C.6 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.7 Stormwater discharge to existing *Stormwater Drainage System* (Clause 25(2) WLEP 1995)

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

- a) The location of the existing *Stormwater Drainage System* including all pipes, inspection openings, surface drains, pits and their discharge location,
- b) The state of repair of the existing *Stormwater Drainage System*,
- c) Any remedial works required to upgrade the existing *Stormwater Drainage System* to comply with the BCA,
- d) Any remedial works required to upgrade the existing *Stormwater Drainage System* crossing the footpath and any new kerb outlets,
- e) Any new *Stormwater Drainage System* complying with the BCA,
- f) Interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath,
- g) Any rainwater tank (See Note Below) required by BASIX commitments including their overflow connection to the *Stormwater Drainage System*, and
- h) General compliance with the Council's draft Development Control Plan Stormwater Drainage Management (Draft Version 1.1, Public Exhibition Copy dated 14 December 2006)

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

All *Stormwater Drainage System* work within any road or public place must comply with Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* dated February 2012.

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

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

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

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

Note: Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* dated January 2003 and Council's draft Development Control Plan Stormwater Drainage Management (Draft Version 1.1, Public Exhibition Copy dated 14/12/2006) can be downloaded from Council's website: www.woollahra.nsw.gov.au
Standard Condition: C49

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

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

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

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

This condition does not apply:

- a) to the extent to which an exemption is in force under *the Home Building Regulation 2004*,
- b) to the erection of a temporary building.

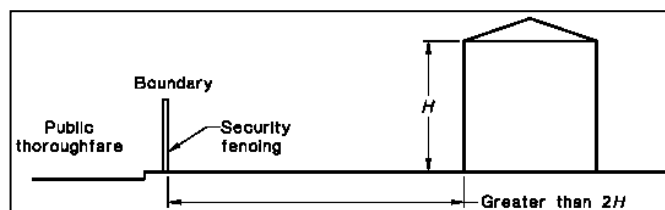
In this condition, a reference to the *BCA* is a reference to that code as in force on the date the application for the relevant construction certificate is made.

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

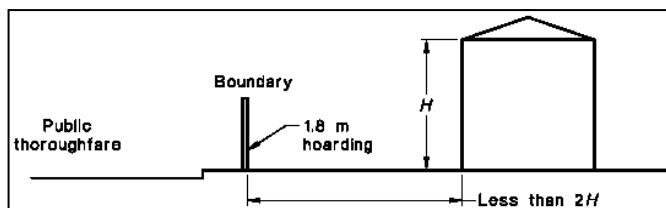
Note: All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.
Standard Condition: D1

D.2 Security Fencing, Hoarding and Overhead Protection

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



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

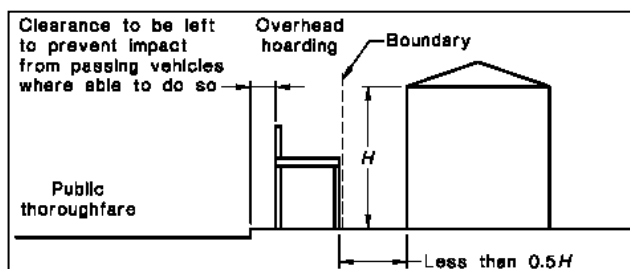


Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an *overhead protective structure* and the facing facade protected by heavy-duty scaffolding, unless either:

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

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

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



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

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

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

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

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

D.3 Site Signs

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

Clause 98A of the Regulation provides:

Erection of signs

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

Clause 227A of the Regulation provides:

Signs on development sites

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

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

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

Note: If *Council* is appointed as the *PCA* it will provide the sign to the *principal contractor* or *owner builder* who must ensure that the sign is erected and maintained as required by Clause 98A and Clause 227A of the *Regulation*.

Standard Condition: D12

D.4 Toilet Facilities

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

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

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

In this condition:

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

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

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

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

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

D.5 Erosion and Sediment Controls – Installation

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

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

Where there is any conflict The Blue Book takes precedence.

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

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

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

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

Warning: Irrespective of this condition any person occupying the site may be subject to proceedings under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.
Standard Condition: D14

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

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

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

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

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

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

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

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

Standard Condition: D15

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

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

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

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

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

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 Compliance with Australian Standard for Demolition

Demolition of buildings and structures must comply with Australian Standard AS 2601—2001: The Demolition of Structures, published by Standards Australia, and as in force at 13 September 2001.

Standard Condition: E2

E.3 Requirement to notify about new evidence

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

Standard Condition: E4

E.4 Critical Stage Inspections

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

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

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

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

Standard Condition: E5

E.5 Hours of Work –Amenity of the neighbourhood

- a) No *work* must take place on any Sunday or public holiday,
- b) No *work* must take place before 7am or after 5pm any weekday,
- c) No *work* must take place before 7am or after 1pm any Saturday,
- d) The following *work* **must not** take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday;
 - i) Piling;
 - ii) Piering;
 - iii) Rock or concrete cutting, boring or drilling;
 - iv) Rock breaking;
 - v) Rock sawing;
 - vi) Jack hammering; or
 - vii) Machine excavation,
- e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- f) No operation of any equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday

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

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

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

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

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

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

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

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

E.6 Public Footpaths – Safety, Access and Maintenance

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

- a) Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.
- b) Not use the road or footway for the storage of any article, material, matter, waste or thing.
- c) Not use the road or footway for any *work*.
- d) Keep the road and footway in good repair free of any trip hazard or obstruction.
- e) Not stand any plant and equipment upon the road or footway.
- f) Provide a clear safe pedestrian route a minimum of 1.5m wide.
- g) Protect street name inlays in the footpath which are not to be removed or damaged during development.

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

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

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

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

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

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

- Part C Management of Waste:
 - a. For fee or reward, transport waste over or under a public place
 - b. Place waste in a public place
 - c. Place a waste storage container in a public place.”
- Part E Public roads:
 - a. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
 - b. Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.”
 - c. Any work in, on or over the Road or Footway requires *Council* Approval and in the case of classified roads the NSW Roads and Traffic Authority. Road includes that portion of the road uses as a footway.
Standard Condition: E7

E.7 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.8 Maintenance of Environmental Controls

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

- a) Erosion and sediment controls,
- b) Dust controls,
- c) Dewatering discharges,

- d) Noise controls;
- e) Vibration monitoring and controls;
- f) Ablutions;

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

E.9 Erosion and Sediment Controls – Maintenance

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

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

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



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

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

Warning: Irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of the occupation of the land being developed whether or not they actually cause the pollution.

Standard Condition: E15

E.10 Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum

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

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

- a) Upon the completion of foundation walls prior to the laying of any floor or the pouring of any floor slab and generally at damp proof course level;
- b) Upon the completion of formwork for floor slabs prior to the laying of any floor or the pouring of any concrete and generally at each storey;
- c) Upon the completion of formwork or framework for the roof(s) prior to the laying of any roofing or the pouring of any concrete roof;
- d) Upon the completion of formwork and steel fixing prior to pouring of any concrete for any ancillary structure, flood protection work, swimming pool or spa pool or the like;
- e) Upon the completion of formwork and steel fixing prior to pouring of any concrete for driveways showing transitions and crest thresholds confirming that driveway levels match Council approved driveway crossing levels and minimum flood levels.;
- f) Stormwater Drainage Systems prior to back filling over pipes confirming location, height and capacity of works.
- g) Flood protection measures are in place confirming location, height and capacity.

Note: This condition has been imposed to ensure that development occurs in the location and at the height approved under this consent. This is critical to ensure that building are constructed to minimum heights for flood protection and maximum heights to protect views and the amenity of neighbours.
Standard Condition: E20

E.11 Dust Mitigation

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

This generally requires:

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

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

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

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

E.12 Site waste minimisation and management – Demolition

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

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

When implementing the SWMMP the applicant must ensure:

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

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

Standard Condition: E31

E.13 Site waste minimisation and management – Construction

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

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

- k) Retain all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as council, Department of Environment and Climate Change (DECC) or WorkCover NSW
Standard Condition: E32

E.14 Asbestos Removal

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

- be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (restricted) Asbestos License,
- carried out in accordance with National Occupational Health and Safety Commission (NOHSC): "*Code of Practice for the Safe Removal of Asbestos*",
- No asbestos products may be reused on the site
- No asbestos laden skip or bins shall be left in any public place

Note: This condition is imposed to protect the health and safety of persons working on the site and the public
Standard Condition: E39

E.15 Classification of Hazardous Waste

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

Note: This condition is imposed to ensure that where hazardous waste will be removed from a site an Asbestos Licensed contractor can definitively determine where the waste may be legally taken for disposal.
Standard Condition: E40

E.16 Disposal of Asbestos and Hazardous Waste

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

Note: This condition is imposed to ensure that asbestos and other Hazardous waste is disposed of lawfully under the Protection of the Environment Operations Act 1997 and relevant EPA requirements.
Standard Condition: E41

E.17 Asbestos Removal Signage

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

Note: This condition is imposed to ensure awareness of any hazard to the health and safety of persons working on the site and public.
Standard Condition: E42

E.18 Notification of Asbestos Removal

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

Note: This condition has been imposed to ensure that local residents are informed and have adequate communication facilitated for incidents of asbestos removal.
Standard Condition: E43

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

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

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

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

F.2 Compliance Certificate from Sydney Water

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

Note: Please refer to "Your Business" section of Sydney Water's web site at www.sydneywater.com.au then the "e-developer" icon or telephone 13 20 92.
Standard Condition: F5

F.3 Amenity Landscaping

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

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

F.4 Commissioning and Certification of Public Infrastructure Works

The *principal contractor* or *owner builder* must submit, to the satisfaction of Woollahra Municipal Council, certification from a *professional engineer* that all public infrastructure works have been executed in compliance with this consent and with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* dated February 2012.

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

Standard Condition: F9

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))

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

All BASIX commitments must be effected in accordance with the BASIX Certificate No. A186445.

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

Standard Condition: H7

H.2 Landscaping

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

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

Standard Condition: H9

H.3 Removal of Ancillary Works and Structures

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

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

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

Standard Condition: H12

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

I.1 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. A186445.

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

Standard Condition: I7

I.2 Maintenance of Landscaping

All landscaping must be maintained in general accordance with this consent. This condition does not prohibit the planting of additional trees or shrubs subject that they are native species endemic to the immediate locality.

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

Note: This condition also acknowledges that development consent is not required to plant vegetation and that over time additional vegetation may be planted to replace vegetation or enhance the amenity of the locality. Owners should have regard to the amenity impact of trees upon the site and neighbouring land. Further, drought proof vegetation being native species endemic to the immediate locality is encouraged. Suggested native species endemic to the immediate locality are listed in the Brochure Titled "Local Native Plants for Sydney's Eastern Suburbs" published by Woollahra, Waverley, Randwick and Botany Bay Councils.
Standard Condition: I8

J. Miscellaneous Conditions

No relevant conditions.

K. Advisings

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

Failure to comply with this development consent and any condition of this consent is a **criminal offence**. Failure to comply with other environmental laws 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.
Standard Advising: K1

K.2 Dial before you dig



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

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

Standard Advising: K2

K.3 Builders Licences and Owner Builders Permits

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

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

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

Standard Condition: K5

K.4 Building Standards - Guide to Standards and Tolerances

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

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

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

The Guide can be down loaded from:

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

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

Standard Condition: K6

K.5 Workcover requirements

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

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

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

Standard Condition: K7

K.6 Asbestos Removal, Repair or Disturbance

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

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

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

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

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

Standard Advising: K8

K.7 Lead Paint

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

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

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

Standard Advising: K9

K.8 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 or you may contact Council on 9391-7000 for further advice.

Standard Condition: K19

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 Elsing
Councillor Keulemans
Councillor Levenston
Councillor Marano
Councillor O'Regan
Councillor Zeltzer

Against the Motion

Councillor Robertson

7/1

D6 Register of Current Land and Environment Court Matters and Register of Court Proceedings for Building Control, Environmental Control & Health Control

(Robertson/Keulemans)

Resolved:

- A. THAT the attached register of current Land and Environment Court Matters for Development Applications be received and noted.
 - B. THAT the attached register of Court Proceedings for Building Control, Environmental Control and Health Control be received and noted.
-

D7 DA139/2013 part 3 – 6 Dumaresq Road, Rose Bay – Section 96 Application – Proposed modification an extension to the excavated lower ground floor level of the approved dwelling – 4/2/2014

(Zeltzer/Bennett)

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

Adopted

In Closed Session

Note: The Committee discussed the confidential report and legal advice and adopted the recommendation contained in the confidential report.

(Zeltzer/Bennett)

That the Committee move into “Open Session”.

Adopted

In Open Session

(Robertson/Keulemans)

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

- A. THAT in respect of the Section 96 Application to modify the development consent to Development Application No. 139/2013 part 3 for the demolition of the existing duplex and the construction of a new dwelling, swimming pool, and associated site works on land at 6 Dumaresq Road, Rose Bay, the Committee adopt the resolution made in the closed session.
- B. THAT in accordance with Council’s policy of confidentiality, the confidential report remains confidential for a period of six (6) months or until the conclusion of the appeal.

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

R1 DA142/2014 – 3/84-86 Wolseley Road, Point Piper – Construction of stair to the northern side of the site – 174/2014

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

- Given the history of the matter in the Land & Environment Court
- The interest from many Councillors not on the Development Control Committee

Note: Tony Moody, Consultant Planner, representing Mr & Mrs Bischoff, Mr Bischoff & Mr Sahade the Applicant, addressed the Committee.

(O'Regan/Bennett)

Recommendation:

THAT the Council, defer Development Application No. 142/2014 for the construction of a stair in the landscaped area to the northern side of the site on land at 3/84-86 Wolseley Road, Point Piper, to enable the applicant to submit a replacement application, the replacement application being notified to adjoining property owners in accordance with Council's Advertising and Notifications DCP and the application be tabled to a future Development Control Committee.

There being no further business the meeting concluded at 7.35pm.

We certify that the pages numbered 2959 to 3045 inclusive are the Minutes of the Development Control Committee Meeting held on 4 August 2014 and confirmed by the Development Control Committee on 18 August 2014 as correct.

Chairperson

Secretary of Committee