

Woollahra Local Planning Panel (Electronic Meeting)



Agenda

Thursday 17 December 2020 At the Conclusion of Public Meeting Items D1 to D4

Meeting to be held using conferencing technology (refer to details over page)

Compliance with social distancing requirements to limit the spread of COVID-19 virus at Woollahra Local Planning Panel Meetings (Electronic Meetings):

Amendments have been made to the *Local Government Act 1993* to allow councils to meet remotely to reduce the risk of COVID-19 and ensure compliance with the Public Health Order.

Woollahra Council will be holding Woollahra Local Planning Panel (Electronic Meetings) remotely using conferencing technology. The Chair of the panel, members of the Panel and staff will be participating in meetings by an audio-visual link instead of attending in person.

In response to the Directive issued by the Minister for Planning & Public Spaces on 30 June 2020, the Woollahra Local Planning Panel was required to change the way applications are considered from 1 August 2020.

In this regard, the applications listed on this Agenda will not be considered at a public meeting but rather considered electronically by the Panel.

When considering applications electronically, the Panel will be provided with an assessment report, relevant annexures and submissions (including copies of any submissions made by members of the public).

Meetings held electronically by the Panel, are not public meetings, and therefore members of the public are unable to address the panel meeting.

Late correspondence may be submitted for consideration by the Panel. All late correspondence must be received by 12 noon on the day before the meeting. Late correspondence is to be emailed to records@woollahra.nsw.gov.au

The Woollahra Local Planning Panel (Electronic Agenda), including the assessment report on the development application, will be publically available on Council's website six (6) days prior to the meeting at:
www.woollahra.nsw.gov.au/council/meetings and committees/agendas and minutes

Minutes of the Woollahra Local Planning Panel (Electronic Meeting) will be posted to Council's website once finalised.

If you have any questions in relation to the above mentioned changes, please contact Council's Governance department on (02) 9391 7001.

Woollahra Local Planning Panel Membership: 1 Chair, 2 Experts and 1 Community Representative

Quorum: 3 Panel member

Woollahra Municipal Council

Notice of Meeting

9 December 2020

To: Woollahra Local Planning Panel Members

Chair Experts

Community Representative

Dear Panel Members,

Woollahra Local Planning Panel (Electronic Meeting) – 17 December 2020

In accordance with the provisions of the Local Government Act 1993, I request your attendance at Council's **Woollahra Local Planning Panel** (**Electronic Meeting**) to be held via teleconference, **on Thursday 17 December 2020 at At the Conclusion of Public Meeting.**

The safety of our community, Councillors and our staff is Council's number one priority and we thank you for your patience and understanding at this time.

If you have any difficulties accessing the meeting please contact (02) 9391 7001.

Craig Swift-McNair General Manager

Meeting Agenda

Item	Subject	age
1. 2. 3.	Leave of Absence and Apologies Late Correspondence Declarations of Interest	
	Items to be Decided by the Panel	
D1	DA520/2019/1 - 57 Wentworth Road Vaucluse - 20/230674*See Recommendation Page: 41	7
D2	DA375/2020/1 - 11-13 Wentworth Road, Vaucluse - 20/229539	163
D3	DA242/2020/1 - 245 Underwood Street, Paddington - 20/229440	245
D4	DA 496/2019/1 - 398 Oxford Street Paddington - 20/231070	367

LOCAL PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No. D1

FILE No. DA520/2019/1

ADDRESS 57 Wentworth Road VAUCLUSE

COUNCIL WARD Vaucluse SITE AREA 1,008m²

ZONING R2 Low Density Residential

PROPOSAL Demolition of existing dwelling and construction of replacement

dwelling, with associated landscaping and site works

TYPE OF CONSENT Local development

COST OF WORKS \$3,057,665.00

DATE LODGED 23/12/2019 – **Original Submission**

04/05/2020 – First Replacement Application 31/07/2020 – Second Replacement Application 26/11/2020 – Third Replacement Application

APPLICANT Mr J Hunt

OWNER Mr J A & Mrs M J Hunt

AUTHOR Ms T Ward

TEAM LEADER Mr M Moratelli

SUBMISSIONS Eight (8)

RECOMMENDATION Approval, subject to Condition C.1

1. REASON FOR REPORT TO LOCAL PLANNING PANEL (LPP)

The application is to be determined by the Woollahra Local Planning Panel as it falls under the category of:

- Departure from development standards
 - (a) Development that contravenes a development standard imposed by an environmental planning instrument by more than 10%

2. REASONS FOR RECOMMENDATION

The application has been assessed within the framework of the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is recommended for approval because:

- It is considered to be satisfactory with all relevant planning policies including the objectives of WLEP 2014 and WDCP 2015.
- It complies with the key planning provisions of the WDCP 2015, including the setback controls, floorplate control and deep soil landscaping controls.

- It will not have adverse effects on the local built and natural environment nor any adverse social and economic impacts in the locality.
- All likely impacts to adjoining properties including any submissions made have been addressed in the report, or are considered to be satisfactory. Specifically, the Clause 4.6 submission in relation to the non-compliance with the height standard is supported and the view impacts are satisfactory with regards to the case law established in *Tenacity Consulting v Warringah* (2004) NSWLEC 140.
- The proposed roof terrace incorporates separation from adjoining properties in accordance with the visual and acoustic privacy controls within Chapter B3 of the WDCP 2015, and would not have an unreasonable impact on the amenity of adjoining properties.
- The site is suitable for the proposed development.
- The proposal is in the public interest.

3. LOCALITY PLAN



4. PROPOSAL

The proposal involves the demolition of the existing dwelling-house and the construction of a replacement dwelling, with associated landscaping and site works.

The first replacement application was lodged on 04/05/2020 and included the demolition of the existing wall fronting Wentworth Road, and the construction of a new retaining wall at the front boundary.

The **second replacement application was lodged on 31/07/2020** and included modifications to the path and boundary fence/retaining wall adjacent to the western side boundary.

The third replacement application was lodged on 26/11/2020 and included a reduction to the roof terrace.

5. ISSUES

5.1. Exceptions to Development Standards in Woollahra Local Environmental Plan 2014

•	Clause	Development Standard	Departure from Control	Conclusion
]	Part 4.3	Height of Buildings	2.38m or 25.1% departure from the 9.5m control	Satisfactory

PROPERTY DETAILS AND REFERRALS

6. SITE AND LOCALITY

Physical features

The subject site is located on the southern side of Wentworth Road and encompasses an area of 1,008m². The site has a northern side boundary to Wentworth Road of 18.445m, a southern rear boundary of 20.15m, a western side boundary of 60.515m and an eastern side boundary of 49.715m.

Topography

The site falls approximately 7.1m from the rear boundary (RL+35.08) to the front boundary (RL+27.98).

Existing buildings and structures

The site is occupied by a one-storey dwelling-house with a pitched roof. The dwelling-house is located on the high side of Wentworth Road. The double garage below the dwelling presents as a two storeys to Wentworth Road. The rear of the site comprises the main area of private open space and a swimming pool. Vehicular access is granted from Wentworth Road to the driveway that runs parallel with the western side boundary.

Surrounding Environment

The subject site is located within the Vaucluse West Residential Precinct under the provisions of the Woollahra DCP 2015. The adjoining site to the east (59 Wentworth Road) is occupied by a three storey dwelling-house which presents as four storeys to Wentworth Road. The adjoining site to the west (55 Wentworth Road) is also occupied by a three storey dwelling-house which presents as three storeys to Wentworth Road. The adjoining property to the rear (45 Wentworth Road) is occupied by a two storey dwelling-house which presents as two storeys to the rear.



Figure 1: Google Maps 3D Aerial View

7. RELEVANT PROPERTY HISTORY

Current use

Dwelling-house

Requests for Additional Information and Replacement Applications

On 09/01/2020, Council requested revised stormwater management plans, a copy of the DRAINS file, a tree management report, a demolition report, a Clause 4.6 Written request, amended sections and a survey. This information was provided by 18/02/2020.

On 21/04/2020, Council requested additional information required by Council's Technical Services Engineer. This information was provided on 04/05/2020.

On 06/05/2020, Council requested additional information required by Council's Trees and Landscaping Officer. This information was provided on 12/05/2020.

On 13/07/2020, Council requested the following information:

- Updated sections to identify the outline of the existing building and the 7.2m maximum wall height/inclined plane.
- Confirmation of the front setback, rear setback, floorplate, excavation and deep soil landscaping calculations.
- Confirmation of the existing ground level to the western side elevation to demonstrate fence height compliance. This information was provided on 31/07/2020.

On 19/11/2020, Council requested updated excavation calculations to state the proposed volume of fill. This information was provided on 20/11/2020.

On 24/11/2020, Council requested a reduction to the roof terrace and amended plans were provided on 26/11/2020.



Figure 2: Subject site as viewed from Wentworth Road

8. REFERRALS

Referral	Summary of Referral Response	Annexure
Technical Services	Satisfactory, subject to conditions	3
Heritage	Satisfactory, subject to conditions	4
Trees and Landscaping	Satisfactory, subject to conditions	5

ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 include the following:

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

9. ADVERTISING AND NOTIFICATION

9.1. Submissions

The application was advertised and notified from 19/02/2020 to 04/03/2020 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. Submissions were received from:

- 1. Mr T Harris & Mr/Mrs J Zhang C/O Mr J Lidis 43 & 45 Wentworth Road, Vaucluse
- 2. Mr T Harris 43 Wentworth Road, Vaucluse
- 3. Mr and Mrs J Zhang C/O Anthony Betros 45 Wentworth Road, Vaucluse
- 4. Mr J and Mrs J Zhang 45 Wentworth Road, Vaucluse (3 submissions)
- 5. JJ&W Investments 51 Wentworth Road, Vaucluse
- 6. Mr R & Mrs L Levis C/O Mr D Phillips 54 Wentworth Road, Vaucluse
- 7. Mr Peng Zhou 55 Wentworth Road, Vaucluse
- 8. Mr C Schulman 59 Wentworth Road, Vaucluse

The submissions raised the following issues:

• Floorplate and FSR

The proposal complies with Council's floorplate control and upholds the relevant objectives in Part B3.3 of the WDCP 2015. Refer to Section 14.2.2. The FSR standard is not applicable to the subject proposal as per Clause 4.4(2A) of the Woollahra LEP 2014.

• Views (from roof terrace planting as well)

The proposal has been assessed against the view sharing principles contained in Tenacity Consulting v Warringah Council [2004] NSWLEC 140 in Section 14.2.4. The proposal is considered to represent a skilful design which upholds Council's view sharing principals. The overall impact with regards to view loss from 43 Wentworth Road is minor and minor-moderate from 45 Wentworth Road.

• Visual and acoustic privacy

An assessment of the proposal against the relevant objectives and controls for acoustic and visual privacy is provided in Section 14.2.4. It is considered that the proposal, as conditioned, would not result in any significant adverse privacy or amenity impacts to neighbouring properties.

• Insufficient and inaccurate information

Adequate information has been provided to enable an assessment of the application. It is noted that site inspections have been carried out from the subject site and a number of neighbouring properties.

Solar access and overshadowing

As discussed in Section 14.2.4, the proposal complies with Council's requirements for overshadowing and solar access to neighbouring properties private open space and north facing upper level habitable room windows.

• Height, building envelope, bulk, design, amenity, character and streetscape

The height, scale, bulk and design of proposal is consistent with the desired future character objectives and would result in an appropriate streetscape outcome in the Vaucluse West Residential Precinct. Refer to Sections 13 and 14.

• The floor to ceiling heights are excessive

As above.

Excavation

Council's Technical Services Engineer has reviewed the proposal and confirmed the proposal is satisfactory in terms of geotechnical and hydrogeological related issues. An assessment of the relevant objectives and controls is provided in Sections 13.7 and 14.2.3. It is considered that there are sufficient environmental planning grounds for the numeric non-compliance with Council's excavation controls and the proposal upholds the objectives in Clause 6.2 of the WLEP 2014 and Part B3.4 of the WDCP 2015.

• The Clause 4.6 Written Request is not well founded (especially for roof terrace)

For the reasons discussed in Section 13.4, the proposed height non-compliance and the Clause 4.6 Written Request provided by the Applicant satisfy the relevant provisions in Parts 4.3 and 4.6 in the WLEP 2014.

• Glare and view impacts from solar panels

As discussed in Section 14.7, the proposed solar energy system, as conditioned (**C.1b**), is acceptable with regard to the solar energy system controls and objectives in Part E6.3 of the Woollahra DCP 2015.

9.2. Replacement Application

The replacement applications noted in Section 3 were not renotified to surrounding residents and previous objectors under Chapter 6 of the Woollahra Community Participation Plan 2019 because it was considered to have no greater cumulative environmental or amenity impact.

9.3. Statutory Declaration

The applicant has completed the statutory declaration dated 05/03/2020 declaring that the site notice for DA520/2019/1 was erected and maintained during the notification period in accordance with the Woollahra Community Participation Plan.

10. STATE ENVIRONMENTAL PLANNING POLICY 55: REMEDIATION OF LAND

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

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

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

As the site has a long history of residential use, it is considered that the land does not require further consideration under Clause 7 (1) (b) and (c) of SEPP 55. The proposal is therefore acceptable with regard to SEPP 55: Remediation of Land.

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

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

The development application was accompanied by BASIX Certificate 1065553S demonstrating compliance with the SEPP. These requirements are imposed in **Conditions C.3, H.1** and **I.1.**

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

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

13. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

13.1. Part 1.2: Aims of Plan

The proposal is consistent with the aims in Part 1.2(2) of the Woollahra LEP 2014.

13.2. Land Use Table

The proposal is defined as a dwelling-house and is permitted and is consistent with the objectives of the R2 Low Density Residential zone.

13.3. Part 4.3: Height of Buildings

Part 4.3 limits development to a maximum height of 9.5m.

	Proposed	Control	Complies
Maximum Building Height	11.88m	9.5m	NO

The proposal does not comply with Part 4.3 of Woollahra LEP 2014 as detailed and assessed in Part 13.4. The proposal involves a maximum height of 11.88m above the existing ground level. As shown by the red dashed line in **Figure 3** below, sections of the building envelope and roof terrace are located above Council's 9.5m height plane. The proposal represents a non-compliance of 2.38m, and is primarily limited to the front section of the building.

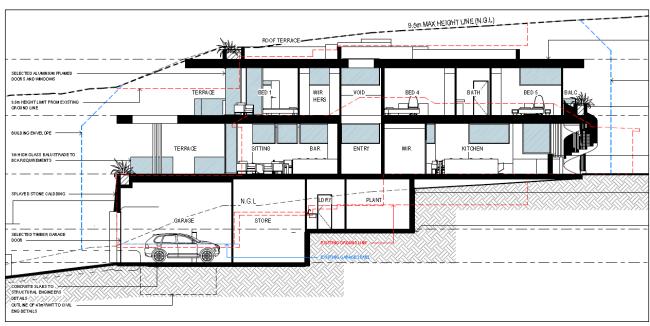


Figure 3: Section A-A Extent of height non-compliance

13.4. Part 4.6: Exceptions to Development Standards

13.4.1. Departure

The proposal involves the following non-compliance with the Woollahra LEP 2014:

• Non-compliance with the 9.5m maximum building height development standard under Part 4.3 as detailed in Section 13.4.

13.4.2. Purpose

Part 4.6 allows a contravention of a development standard with the objectives being to allow an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

13.4.3. Written Request

Clause 4.6(3) requires the consent authority to consider the applicant's written request that seeks to justify the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify the contravention. The applicant has provided a written request in relation to the proposed departure which is found at **Annexure 2**.

13.4.4. Clause **4.6(4)** Assessment

Clause 4.6 (4) Consent must not be granted for development that contravenes a development standard unless:

- *a)* The consent authority is satisfied that:
 - i. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - ii. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- b) The concurrence of the Secretary has been obtained.

13.4.5. Clause 4.6(4)(a)(i) - Assessment

Clause 4.6(4)(a)(i) requires the consent authority to be satisfied that the applicant's written requests, seeking to justify the contravention of the development standard, have adequately addressed the matters required to be addressed by Cl 4.6(3). There are two separate matters for consideration contained within Cl 4.6(3) and these are addressed as follows:

a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Assessment: The applicant's written request has demonstrated that the objectives of the height of buildings development standard are achieved, notwithstanding the non-compliance. In doing so, the applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a). The objectives of the development standards are discussed further in the assessment of Clause 4.6(4)(a)(ii).

a) That there are sufficient environmental planning grounds to justify contravening the development standard.

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be 'environmental planning grounds' by their nature: See Four2Five Pty Ltd. v Ashfield Council. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act including the objects in s1.3 of the EPA Act. '

S1.3 of the EPA Act reads as follows:

1.3 Objects of Act

(cf previous s 5)

The objects of this Act are as follows:

- a. to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources.
- b. to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- c. to promote the orderly and economic use and development of land,
- d. to promote the delivery and maintenance of affordable housing,
- e. to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- f. to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- g. to promote good design and amenity of the built environment,
- h. to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- i. to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- j. to provide increased opportunity for community participation in environmental planning and assessment.

<u>Assessment:</u> The responses regarding how the proposal satisfies the objectives of Clause 4.3 in the excerpt of the written request above are considered to have adequately demonstrated sufficient environmental planning grounds, with regard to the relevant objectives of the Act, to justify contravention of the development standard.

13.4.6. Clause 4.6(4)(a)(ii) – Assessment

Clause 4.6(a)(ii) requires the consent authority to be satisfied that:

ii) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the height of buildings development standards and the objectives of the R2 Zone. An assessment against these objectives is provided below.

Clause 4.3 – Height of Buildings

The proposal is assessed against the *Objective of the Development Standard* prescribed by *Clause 4.3* which states:

(a) To establish building heights that are consistent with the desired future character of the neighbourhood,

Assessment:

The interpretation of height was considered by the Court in Bettar v Council of the City of Sydney [2014] NSWLEC 1070. There was discussion in Bettar concerning the interpretation of 'existing ground level' and 'basement' which are separately defined. The LEP definition of building height requires a measurement from existing ground level, rather than existing basement level. In considering application of the height development standard, it was indicated by the Court that relying on existing basement levels (in this case, the existing lower ground floor level) would result in the height control artificially rising and falling across the site. In Bettar the Court took the approach of measuring height with the intent, in part, of relating the development proposal to its context in the streetscape.

The Court made the following relevant comments:

"It is relevant to consider the objectives of the building height development standard in considering how best to determine the maximum height of the building using the dictionary definitions in LEP 2012....As one of the purposes of the development standard is to relate the proposal to its context, it follows that the determination of the existing ground level should bear some relationship to the overall topography that includes the site...

The definition of basement in LEP 2012 is the space of a building where the floor level of that space is predominantly below existing ground level and where the floor level of the storey immediately above is less than 1 metre above existing ground level [italics added]. From this definition, it does not follow that existing ground level becomes the level of the basement floor or the soil beneath the basement following the construction of a basement. A basement is, by definition, below ground level and so the level of the basement floor cannot be taken to be existing ground level.

For these reasons, I do not accept [the] approach of defining existing ground level as the ground floor level of the existing building and then dropping it down to the basement level in the north-eastern corner of the site where the existing basement is located. This... relates only to a building that is to be demolished and has no relationship to the context of the site...

I prefer [the alternate] approach to determining the existing ground level because the level of the footpath at the boundary bears a relationship to the context and the overall topography that includes the site and remains relevant once the existing building is demolished." (parenthesis added)."

In light of the above judgement, regard has been given to the height of the non-compliant aspect of the proposal above the pre-excavated ground level. In other words, the ground level that existed prior to the excavation works associated with the existing dwelling and the lower ground floor level.

The desired future character statement for the Vaucluse West Residential Precinct stipulates development should be designed to step down and follow the topography. Furthermore, to minimise building bulk and scale to the street, three storey development should generally present as a two storey form to the street. The height of the existing dwelling-house and the proposed roof form present as two storeys to Wentworth Road above the garage and two storeys to the rear which is compatible with development in the street. The proposed height of the building has a satisfactory streetscape presentation and would not result in any significant adverse amenity or visual impacts to neighbouring properties. Furthermore, requiring compliance with the height standard would result in an irregular roof pattern. The proposal provides a good contemporary building incorporating modulation and a varied palette of materials. As such, the height, bulk and scale of the proposed development is consistent with the Vaucluse West Residential Precinct.

(b) To establish a transition in scale between zones to protect local amenity,

Assessment: Not applicable.

(c) To minimise the loss of solar access to existing buildings and open space,

<u>Assessment:</u> The proposal retains the required amount of sunlight to the area of private open space at the neighbouring properties and to neighbouring north facing upper level habitable room windows. Accordingly, the proposal satisfies the overshadowing controls and objectives prescribed in Part B3.5.2 of the Woollahra DCP 2015, thereby upholding the objective.

(d) To minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,

<u>Assessment:</u> As discussed in Section 14.2.4, the proposal satisfies the objective due to the following:

- 1. Views: The proposal is considered to represent a skilful design which upholds Council's view sharing principals and the overall impact with regards to view loss is minor-moderate. The proposal is considered to be satisfactory in this regard.
- 2. Privacy: The non-compliant portion of the proposal would not result in any significant adverse visual or acoustic privacy impacts.
- 3. Overshadowing: Satisfactory, as addressed in the response to objective (c) above.
- 4. The proposal, as conditioned, will not result in any significant adverse visual impacts to the streetscape or neighbouring properties.
- (e) To protect the amenity of the public domain by providing public views of the harbour and surrounding areas.

<u>Assessment:</u> There are no nearby significant public views or vistas that would be impacted by the proposal.

Objectives of the R2 Zone

The proposal is also considered against the objectives applying to the R2 Zone as follows:

• To provide for the housing needs of the community within a low density residential environment.

Assessment: The proposal continues the use of the subject site as a dwelling-house.

• To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Assessment: Not applicable.

• To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.

<u>Assessment:</u> For the reasons set out within section 14.1, it is considered that the proposal upholds this objective.

• To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.

<u>Assessment:</u> As discussed in Section 14, the proposal satisfies the desired future character objectives of the Vaucluse West Residential Precinct.

<u>Conclusion:</u> The proposal satisfies the objectives of Zone R2 Low Density Residential.

13.4.7. Clause 4.6(4)(a)(b) - Assessment

The Department issued Planning Circular No. PS18-003 (dated 21st February 2018) which notified Councils of arrangements "...where the Director General's concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6 ...of the Standard Instrument..." Clause 64 of the EPA Regulations provides that Council may assume the Director-General's [Secretary's] concurrence for exceptions to development standards, thus satisfying the terms of this clause.

13.4.8. Conclusion

The written submission from the applicant has adequately demonstrated that the variation of the development standard prescribed by Clause 4.3 is justified pursuant to the relevant matters for consideration prescribed by Clause 4.6.

The consent authority may be satisfied that the written request has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that sufficient environmental planning ground have been demonstrated to justify the contravention of the standard.

The consent authority may also be satisfied that the proposal is in the public interest, as it is consistent with the objectives of the Height of Buildings development standard and the Low Density Residential (R2) zone.

13.5. Part 5.10: Heritage Conservation

Parts 5.10(2) and 5.10(4) require Council to consider the effect of works proposed to a heritage item, building, work, relic or tree, within a heritage conservation area or new buildings or subdivision in a conservation area or where a heritage item is located.

Council's Heritage Officer has confirmed the proposal is satisfactory, as detailed in the referral response included as Annexure 4.

Subject to the recommended conditions, the proposal is acceptable with regard to the objectives in Parts 5.10 of the Woollahra LEP 2014.

13.6. Part 6.1: Acid Sulfate Soils

Part 6.1 requires Council to consider any potential acid sulfate soil affectation so that it does not disturb, expose or drain acid sulfate soils and cause environmental damage.

The subject site is within a Class 5 area as specified in the Acid Sulfate Soils Map. However, the subject works are not likely to lower the water table below 1.0m AHD on any land within 500m of a Class 1, 2 and 3 land classifications. Accordingly, preliminary assessment is not required and there is unlikely to be any acid sulfate affectation. It is therefore acceptable with regard to Part 6.1.

13.7. Part 6.2: Earthworks

Part 6.2(1) requires Council to ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The proposal involves 335m³ of excavation to accommodate the new dwelling-house. An assessment against the Council's numeric excavation controls is provided in Section 14.2.3.

In terms of geotechnical and hydrogeological related issues, Council's Technical Services Engineer has provided the following comments in relation to the proposed level of excavation:

"A Structural Excavation Advice for Proposed Residential Development, referenced Nob No. 191165, Rev 5, prepared by Greenview Consulting, dated 29 April 2020 and 4th May 2020 addressing Council concerns and considered satisfactory.

A Geotechnical Investigation, Job No: AG-480_1rv1, prepared by Australian Geotechnical, dated 01/05/2020 has been submitted in support of the application. The proposal involves excavation for lower ground floor, garage, store and rainwater tank (base IL 29.2) to a depth of about 3m. *Note: The amended rainwater tank base is IL26.45 however and the Geotechnical Report shall be revised to take the additional depth into consideration.

The report identified the subsurface conditions as:

- *a)* Fill to depth silty sand, fine sand and fine gravel to depths of about 0.3m to 0.7m
- *b)* Sandy clay various densities to depths of about 0.9m to 1.4m.
- c) Bedrock right beneath.
- d) Groundwater appeared not to be an issue. However additional conditions covering ground anchors have been imposed for certainty.
- e) The Structural Excavation Advice stated that ground anchors will not be utilised.
- f) Uncertainty on the use of underpinning. As such conditions covering underpinning have been imposed.

The report made comments and recommendations on the following:

- Excavation and support
- Footings

- Geotechnical/ hydrogeological monitoring program
- Conditions of recommendations

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

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

Note: Use of any Ground Anchors or any retention system extending beyond site boundaries requires the approval of neighbouring properties in writing."

Subject to the recommended conditions requiring the following, it is considered that potential adverse environmental impacts related to the proposed excavation will be minimised as much as is practically possible:

- Structural adequacy of existing supporting structures;
- Adequate dust mitigation;
- The appropriate disposal of excavated material;
- Limiting the times and duration of machine excavation;
- The implementation of a works (construction) zone;
- The maintenance of a safe pedestrian route;
- The structural support of neighbouring buildings and public land during excavation;
- The preparation of dilapidation reports in relation to adjoining development; and
- The implementation of hydrogeological / geotechnical and vibration monitoring programs requiring the adequate supervision/ monitoring of the excavation process by a qualified and practicing geotechnical engineer.

The proposal is therefore acceptable with regard to Part 6.2 of the Woollahra LEP 2014.

13.8. Part 6.3: Flood Planning

Part 6.3 seeks to minimise the flood risk to life and property development, allow development on land that is compatible, consider projected changes as a result of climate change and avoid significant adverse impacts on flood behaviour and the environment in flood prone areas.

The proposal is acceptable with regard to Part 6.3 of Woollahra LEP 2014.

14. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

14.1. Chapter B1: Vaucluse West Residential Precinct

The objectives of the Vaucluse West Residential Precinct require development to respect and enhance the existing elements of the neighbourhood and contribute to the rich mixture of architectural styles and forms. The subject site is located on Wentworth Road which is characterised by a mixture of different architectural styles and roof forms. The existing character of the surrounding residential neighbourhood is typified by three storey dwelling-houses on the high side of the street. The adjoining site to the east (59 Wentworth Road) is occupied by a three storey

dwelling-house which presents as four storeys to Wentworth Road. The adjoining site to the west (55 Wentworth Road) is also occupied by a three storey dwelling-house which presents as three storeys to Wentworth Road. The proposal presents as a two-storey dwelling above a garage, is compatible with the streetscape context and does not result in adverse amenity impacts to adjoining and adjacent residential development.

It is considered that the proposed development represents a skilful design that is well-articulated to step down with the topography of the site and an adequately modulated contemporary design that incorporates adequate landscaping elements. Furthermore, the flat roof form minimises bulk and scale of the dwelling-house which is compatible with the three-storey presentation of the adjoining properties to the southern side of Wentworth Road. The photomontages in **Figures 4-5** below demonstrate the proposed presentation to the streetscape.

The proposal meets the streetscape character and key elements of the precinct and desired future character objectives of the Vaucluse West Residential precinct, as noted in Part B1.10.2 of the Woollahra DCP 2015.



Figure 4: Proposed photomontage looking south-west from Wentworth Road



Figure 5: Proposed photomontage looking south from Wentworth Road

14.2. Chapter B3: General Development Controls

14.2.1. Part B3.2: Building Envelope

Site Area: 1,008m ²	Proposed	Control	Complies
Front Setback (N)	10.4m	10.4m 9.2m	
	3m – Lower Ground Floor		YES
Side Setback (W)	2.5m – Ground Floor	2.3m	YES
Side Selback (W)	2.3m – First Floor	2.3111	YES
	4.1m - Roof Terrace	Roof Terrace	
	2.3m – Lower Ground Floor	Ground Floor	
Side Setback (E)	2.2m – Ground Floor 2.3m		NO
	2.3m – First Floor	2.3111	YES
	3.9m - Roof Terrace		YES
	22.3m-30.9m – Lower Ground Floor		YES
Rear Setback (S)	16m-22.6m – Ground Floor	13.2m-18m	YES
	12m-20.6m – First Floor		NO

Part B3.2.1 Front Setback

The proposal complies with the front setback control and satisfies the relevant objectives of Part B3.2.1.

Part B3.2.3 Side Setback

A side setback control of 2.3m applies to development at the subject site. The proposal involves a negligible 0.1m non-compliance at the ground floor level. This is limited to the fireplace chimney at the eastern side elevation. Accordingly, the proposal upholds the objectives in Part B3.2.3 of the WDCP 2015 in that the chimney would not result in an unreasonable sense of enclosure to the neighbouring property or any significant adverse amenity impacts in terms of views, overshadowing and privacy.

Part B3.2.4 Rear Setback

A rear setback control of 13.2m-18m applies to development at the subject site. The proposal results in a 1.2m non-compliance at the first floor level. This is limited to the corner of the rear balcony and the spiral staircase. Accordingly, the proposal upholds the objectives in Part B3.2.3 of the WDCP 2015 in that the non-compliance would not result in an unreasonable sense of enclosure to the neighbouring property or any significant adverse amenity impacts in terms of views, overshadowing and privacy. Furthermore, the proposed non-compliance does not reduce deep soil landscaping within the rear setback area.

Part B3.2.5 Wall Height and Inclined Plane

C1 specifies a maximum external wall height of 7.2m with an inclined plane of 45 degrees above this height.

C2 A variation to the wall height of 7.2m may be considered where the slope of the site within the building envelope is greater than 15 degrees. The variation will only be considered to walls located nearest to the downslope section of the building envelope, i.e. the section with the lowest existing ground level.

The proposal results in a non-compliance with the 45 degree inclined plane as shown in **Figure 6** below. The slope of the subject site is greater than 15 degrees and thereby C2 stipulates a variation to Council's numeric control may be permitted. Accordingly, the non-compliances are primarily due to the slope of the land and are therefore considered to be acceptable in this instance. Furthermore, the side elevations are adequately articulated such that the proposal, as conditioned, will not result in any adverse impacts upon the adjoining properties, including sense of enclosure, solar access, views and visual privacy.

The proposal satisfies the objectives of Part B3.2.5 of the Woollahra DCP 2015.

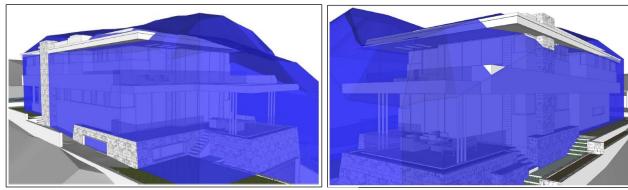


Figure 1: Extent of wall height/incline plane non-compliance

14.2.2. Part B3.3: Floorplates

Site Area: 1,008m ²	Proposed	Control	Complies
Maximum Floor Plate	156% (684m²)	165% (725m²)	YES

The proposal complies with the maximum floorplate control in Part B3.3 of the WDCP 2015.

14.2.3. Part B3.4: Excavation

Site Area: 1,008m ²	Proposed	Control	Complies
Maximum Volume of Excavation	335m^3	251.6m ³	NO

C1 limits the volume of excavation for a dwelling-house (including attached and detached garaging) to 251.6m³.

C4 allows a variation to the maximum volume of excavation permitted, but only for two car parking spaces including any reasonable access thereto and 20m³ of storage.

The proposed construction of the lower ground floor level equates to approximately $335m^3$ of excavated material and results in an $83.4m^3$ non-compliance with Council's numeric control. The side and rear setback areas require $29.4m^3$ of fill material. As such, $29.4m^3$ of excavated material is to be retained as fill on the site. This reduces the number of truck movements required and the net volume of excavated material to be removed from the site is $305.6m^3$. Subject to the re-use of fill on the site, the proposal therefore exceeds the excavation control by $54m^3$.

The proposal upholds the excavation objectives and is satisfactory for the following reasons:

- As described in Section 6, the existing site falls approximately 7.1m from the rear boundary (RL+35.08) to the front boundary (RL+27.98). The proposal represents a skilful design that is well-articulated to step down with the topography of the site in the context of the neighbouring properties. The proposal provides compliant driveway gradients for vehicular access from the dwelling-house to the street at the lower ground floor level.
- The proposed level of excavation provides car parking that is located within the building envelope and screened from the public domain.
- As discussed above, the retention of 29.4m³ of fill reduces the number of truck movements required to remove the excavated material.
- The proposed excavation ensures a high degree of connectivity and level access within the dwelling-house and subject site.
- The proposal is satisfactory with regards to height, bulk, scale, floorplate, streetscape character, landscaping, overshadowing, views and privacy.
- As discussed under Clause 6.2 of the WLEP 2014, Council's Technical Services Engineer has confirmed the proposal is acceptable in regards to geotechnical, structural and hydrogeological related issues.

It is therefore considered that there are sufficient environmental planning grounds to support the numerical excavation non-compliance and the proposal is satisfactory with regard to Part B3.4 of the WDCP 2015.

14.2.4. Part B3.5: Built Form and Context

Part B3.5.1 Streetscape Character

The desired future character of the Vaucluse West Precinct is outlined in B1.10.2 of the Woollahra DCP 2015. As discussed in Section 14.1, it is considered that the proposal is compatible with the prevailing characteristics of the streetscape and does not adversely impact the streetscape character nor the amenity of neighbouring properties. In addition, the proposal contributes to the rich mixture of architectural styles and forms along Wentworth Road and the wider Vaucluse locality. The proposed roof terrace is not considered to result in any adverse streetscape impacts and it is well-integrated into the architecture of the flat roof form.

The proposal achieves the desired future character of the area and is acceptable with regard to the streetscape character controls in Part B3.5.1 of the Woollahra DCP 2015.

Part B3.5.2 Overshadowing

C1(a) stipulates that sunlight is provided to at least 50% of the main ground level private open space to adjoining properties for a minimum of two hours between 9am and 3pm on June 21.

C1(b) states north facing windows to upper level habitable rooms of adjacent dwellings receive at least 3 hours of sun between 9am and 3pm on 21 June over a portion of their surface.

The proposal retains the required amount of sunlight to the area of private open space at the neighbouring properties and C1(a) is satisfied. The orientation of the subject site would not result in a non-compliance with C1(b) and sunlight is maintained to neighbouring north facing upper level habitable room windows.

The proposal is acceptable with regards to the objectives and controls in Part B3.5.2 of the WDCP 2015.

Part B3.5.3 Public and Private Views

C1 states development is to be sited and designed so that significant views and vistas identified in the precinct maps in the Vaucluse West Residential Precinct are maintained or enhanced.

C4 states roof forms on the low side of streets are designed to allow public views and add interest to the scenic outlook.

C5 states development must be sited and designed to enable a sharing of views with surrounding private properties, particularly from habitable rooms.

C7 states the design of the roof form (including roof terraces) must provide for view sharing.

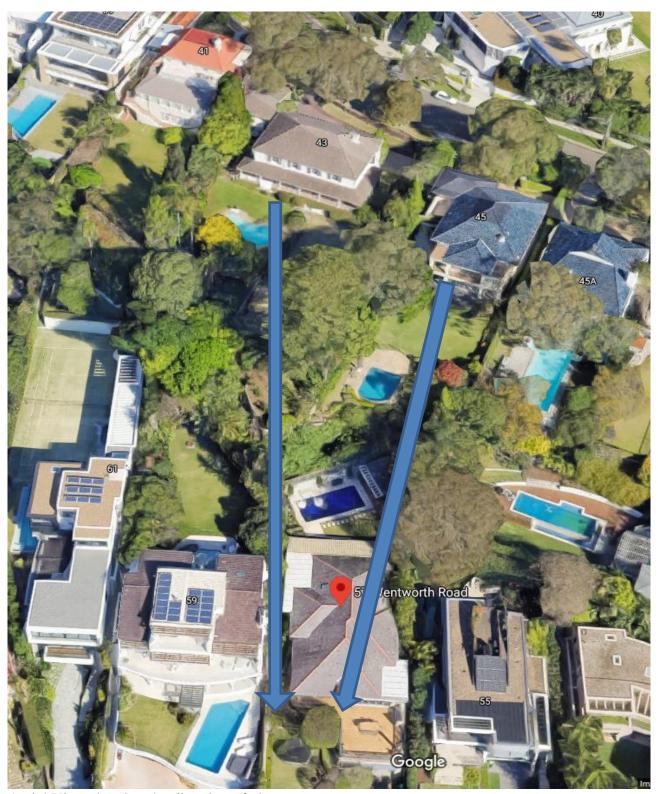
Public Views

The proposed development does not impact any public views.

Private Views

The owners of the following adjoining properties have objected to the proposed development on the basis of view loss:

- 43 Wentworth Road, Vaucluse
- 45 Wentworth Road, Vaucluse



Aerial View showing the direction of views

To enable a view assessment the applicant erected surveyor certified height poles for proposed cabana at the rear of the subject site.

In assessing the reasonableness or otherwise of the degree of view loss, this report has had regard to the case law established by *Tenacity Consulting v Warringah* (2004) *NSWLEC 140* which has established a four step assessment of view sharing. The steps are as follows:

1. The assessment of the views affected

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

- 43 Wentworth Road, Vaucluse: The views affected by the proposal are of the Sydney Harbour land and water interface. The dwelling-house also obtains views of Sydney Harbour, Manly, North Head and Watsons Bay.
- **45 Wentworth Road, Vaucluse:** The views affected by the proposal are of the Sydney Harbour land and water interface. The dwelling-house also obtains views to Manly, Watsons Bay and Middle Head.

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

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

- 43 Wentworth Road, Vaucluse: The affected views are obtained across the rear boundary, adjacent to the rear boundary from a standing position. These views are also obtained across the rear boundary from the ground floor level living rooms, dining room and balcony including the first floor level stair landing, master bedroom, bedroom 2 and bedroom 3.
- **45 Wentworth Road, Vaucluse:** The affected views are obtained across the rear boundary from the swimming pool area and adjacent to the rear boundary from a sitting and standing position. These views are also obtained from the ground floor level private open space, rear balconies, dining room and living room including the first floor level master bedroom, balcony and bedroom 2.

3. What is the extent of the impact?

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

• 43 Wentworth Road, Vaucluse: The extent of the impact upon existing views has been demonstrated by the height poles in Figure 7 below. The proposal would result in a loss of land and water interface to Sydney Harbour adjacent to the rear boundary. Views of Sydney Harbour, Manly, North Head and Watsons Bay will be maintained from the ground floor level living rooms, dining room and balcony (Figure 8) including the first floor level stair landing, master bedroom, bedroom 2 and bedroom 3 (Figure 9). Overall, it is considered the proposal will have a minor impact on views obtained from this property.



Figure 7: Rear boundary views at 43 Wentworth Road



Figure 8: Ground floor level rear balcony views at 43 Wentworth Road



Figure 9: First floor level bedroom 2 views at 43 Wentworth Road

• 45 Wentworth Road, Vaucluse: The impact on existing views has been demonstrated by the height poles in Figures 10-11 below. The proposal would result in a loss of the land and water interface to Sydney Harbour from the swimming pool area and adjacent to the rear boundary from sitting and standing positions including the ground floor level lounge room and rear balconies from a sitting position. Expansive views of Sydney Harbour, Middle Head and Manly will be maintained from the ground floor and first floor levels of the dwelling-house. Overall, it is considered the proposal will have a minor-moderate impact on views obtained from this property.



Figure 10: Swimming pool area views across the rear boundary at 45 Wentworth Road from a standing position



Figure 11: Ground floor level rear kitchen balcony views at 45 Wentworth Road from a standing position



Figure 12: Ground floor level living room views at 45 Wentworth Road from a sitting position

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

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

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

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

• The level of impact upon existing views is based on surveyor certified height poles prepared by the Applicant.

- The partial reduction of the land and water interface to Sydney Harbour is not an iconic element and overall, the proposal will have a minor impact on views obtained from 43 Wentworth Road and a minor-moderate impact on views obtained from 45 Wentworth Road.
- The proposed development presents as a two-storey above garage, dwelling-house to Wentworth Road and two storeys to the rear which is compatible with the neighbouring properties. This is also consistent with the desired future character of the Vaucluse East Residential Precinct.
- The extent of view loss associated with the proposal is considered reasonable on the basis that panoramic views from the ground floor and first floor level of 45 Wentworth Road and 43 Wentworth Road are maintained.
- The 2.3m height non-compliance can be attributed to the sloping topography and excavated ground levels. As such, regard has been given to adopting the approach established in Bettar v Council of the City of Sydney [2014] NSWLEC 1070 that takes into account excavated levels and content in the streetscape when measuring height relating to the development proposal. The height non-compliance is localised at the front of the proposal, and does not give rise to significant additional view impacts above and beyond the compliant elements of the proposal.
- The proposal provides a transitional height between 59 Wentworth Road (RL+42.82) and 55 Wentworth Road (RL+40.26) which is consistent with the desired future character and streetscape.
- The bulk and scale of the proposal including the floor to ceiling heights are considered to be reasonable (the proposal complies with the floorplate control). The proposed dwelling-house will be largely contained within the existing and permissible building envelope except for minor non-compliances with the side setback, rear corner of the building and the maximum wall height/inclined plane control. It is noted that a compliant design with regards to the setbacks and the maximum external wall height/inclined plane control would not significantly improve the view impact.

In light of the above, the proposal is considered to be consistent with the relevant view sharing objectives in Part 3.5.3 of WDCP 2015 and the Planning Principle established by *Tenacity Consulting v Warringah* (2004) *NSWLEC 140*. The proposal is therefore acceptable with regard to views and vistas.

Part B3.5.4 Acoustic and Visual Privacy

C4 states new windows in habitable rooms are to be designed to prevent a direct sightline to the habitable room windows or private open space of an adjacent dwelling within 9m. This can be achieved via window location, layout and separation, screens or translucent glazing to 1.5m sill height.

C5 states windows to bathrooms and toilet areas are to have translucent glazing where direct view to, and from, habitable rooms and private open space on adjoining and adjacent properties.

C7 states private open spaces and the trafficable area of roof terraces (at or below the second storey) are to be suitably located and screened to prevent direct views to neighbouring habitable rooms (including bedrooms) and private open space within 9m.

C8 states the acceptability of any elevated balcony, deck or terrace will depend on the extent of its impact, its reasonableness and its necessity.

C10 states the trafficable area of a roof terrace (above the second storey) must be setback so that there is no direct line of sight, from that part of the building where the terrace or deck is, to: neighbouring private open space within 12m; or windows of habitable rooms in neighbouring dwellings within 12m.

The proposal is considered satisfactory for the following reasons:

- The front and rear facing windows and doors are considered acceptable as no adverse privacy impacts or direct overlooking into neighbouring properties are likely to occur due to the orientation towards the front or rear of the property. The rear elevation windows and doors comply with Council's 9m separation requirement as per C4 above.
- The ground floor level kitchen slot window at the western side elevation is considered satisfactory, subject to **Condition C.1(c)**, which in accordance with C4 above, requires the inclusion of fixed translucent glazing or fixed angled louvres to a height of 1.5m above the floor level.
- The full height floor to ceiling windows at the western side window are to the entry void which is not a habitable room and no adverse privacy impacts are likely to occur.
- The eastern and western side elevation windows (with the exception of the kitchen slot window) are located 1.8m above the finished floor level and are therefore consistent with C4 above.
- The location of the plant room is considered satisfactory with regards to acoustic impacts, subject to **Condition I.6.**
- The private open space at the front and rear of the property are adequately separated from the private open space of adjoining properties through the provision of deep soil landscaping and fences adjacent to the side and rear boundaries. It is considered that the location of the rear private open space generally maintains the existing layout/situation of neighbouring properties and the configuration of the subject site. As such, no significant adverse privacy impacts are envisaged beyond that associated with the existing site configuration.
- The first floor level front and rear facing balconies are not considered to result in any adverse privacy impacts as the size would not support a high intensity of the use, they face the front/rear boundary and are not considered to be the principal private open space area. Furthermore, the northern and southern sides of the balcony includes planter boxes.
- The proposed roof terrace is satisfactory as no sightlines within 12m (as measured horizontally) are obtained to the neighbouring habitable room windows or private open space, as shown in the sightline diagrams at Figure 13, thereby complying with control C10.

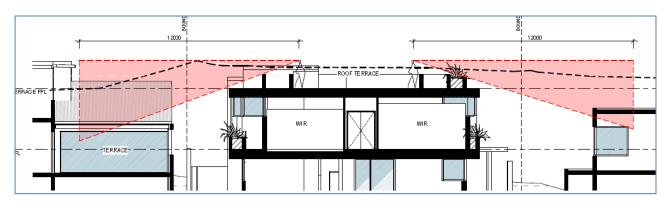


Figure 2 Sightline diagrams showing the overlooking from the proposed roof terrace towards the adjoining properties at 55 and 55 Wentworth Road

• The proposed roof terrace is not considered excessive in area and is not directly accessed off a living or entertaining space. This reduces the intensity of its usage and will reduce its potential to generate an unacceptable acoustic visual or privacy impact.

The proposal, as conditioned, is acceptable with regard to Part B3.5.4 of the WDCP 2015.

14.2.5. Part B3.6: On-Site Parking

C1 states parking must not dominate the street, preserves trees and vegetation and be located within the buildable area.

C4 requires parking to be located within the building envelope.

The proposed dwelling-house includes a two (2) car garage at the lower ground floor level. The proposed on-site parking complies with the relevant objectives and controls in that the garage is located within the building envelope and results in a satisfactory streetscape outcome.

The proposal is acceptable with the objectives and controls in Part B3.6 of the WDCP 2015.

14.2.6. Part B3.7: External Areas

Site Area: 1,821m ²	Proposed	Control	Complies
Deep Soil Landscaping – Overall	60% (353.5m ²)	50% of site external to buildable area (296.9m²)	YES
Deep Soil Landscaping –	53%	40%	YES
Front Setback	(90.4m²)	(68m²)	
Deep Soil Landscaping –	52%	50%	YES
Rear Setback	(148.9m²)	(142.6m²)	

Part B3.7.1 Landscaped Area and Private Open Space

In accordance with Part B3.7.1 of the Woollahra DCP 2015, a minimum area of 50% of the site area outside the buildable area and 40% of the front setback area must be provided as deep soil landscaping. The proposal complies with Council's numeric controls for deep soil landscaping.

The proposed landscaping within the front setback area has been stepped/recessed to reflect the topography and generally follows the existing natural ground levels. The proposal is therefore acceptable with regard to Part B3.7.1 of the WDCP 2015.

Part B3.7.2 Fences

C4 states the height of front fences must not exceed 1.2m if solid and 1.5m if 50% transparent or open.

C9 states side and rear fences must not exceed 1.8m on level sites.

C10 Where there is a difference in ground level in excess of 1.2m either side of the boundary—the height of fences and walls may increase to 1.2m from the level of the high side.

C11 For sloping streets—the height of fences and walls may be averaged and fences and walls may be regularly stepped.

C12 Remnant sandstone and garden walls are retained and adequately maintained.

The proposal includes a 1.5m-2.5m high sandstone retaining wall to the front boundary, a 1.5m high transparent vehicle gate and a 3.2m high entry canopy. The new sandstone wall at the front boundary is considered satisfactory subject to **Condition C.1(a)** which requires the existing sandstone to be incorporated into the new front wall. With regards to the height, the proposed noncompliance with C4 is considered acceptable as the front fence replaces the existing fence of a similar height, is landscaped, and recedes from the street. Furthermore, the proposed fence is compatible with the neighbouring properties and would not result in any adverse visual impacts to the streetscape.

The new side boundary walls step with the sloping topography of the subject site and are consistent with C9 and C11 above. As such, no significant adverse amenity or visual impacts to neighbouring properties are likely to occur and adequate privacy is afforded to the future occupants at the subject site.

The proposal, as conditioned, is acceptable with regard to Part B3.7.2 of the WDCP 2015.

14.3. Chapter E1: Parking and Access

	Proposed	Control	Complies
Max Number of Car Parking Spaces – Dwelling-House	2 Spaces	2 Spaces	YES

Parking for residential uses is calculated using the generation rates specified in E1.4.2.

Council's Technical Services Engineer has confirmed the proposal is satisfactory and provided the following comments:

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

The access and parking layout is generally satisfactory subject to the following condition;

• Driveway splays (inside property boundary) shall be provided in accordance with Figure 3.3 in Section 3.2.4 of AS/NZS 2890.1. Alternatively a fence to a maximum height of 0.9m is permitted in the splay area. Exceptions to this may be accepted where an object in the adjoining property creates an obstruction to visibility within the splay area.

- Stormwater connection to Council's kerb and gutter. Note: the Drainage conduits discharging to Council's kerb and gutter shall not traverse the proposed vehicular crossing.
- The existing boundary wall encroaching over Council's road reserve shall be demolished and relocated inside property boundary.
- Reconstruction of a standard vehicular crossing having a width of 3m at property boundary and perpendicular to the rod carriageway. There shall be a clearance of 10.8m between the proposed vehicular crossing and the existing neighbouring crossing to the east (No. 59 Wentworth Road) layback to layback.

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

The proposal, as conditioned, is acceptable with regard to the objectives and controls in Chapter E1 of the Woollahra DCP 2015.

14.4. Chapter E2: Stormwater and Flood Risk Management

Council's Technical Services Engineer has confirmed the proposal is satisfactory and provided the following comments in relation to stormwater:

"There are no objections to the Stormwater Management Plan, referenced 191165, Rev 5, prepared by Greenview Consulting, dated 01/05/2020 subject to the following conditions;

- Provision of a Rainwater tank having a volume minimum 50m3 and calculated to the top of water level only.
- The permissible site discharge to Council's kerb and gutter shall be limited to 20 l/s and the additional site storage required volume must be determined by using a computer modelling such as DRAINS. The electronic copy together with a hard copy of the Drains model shall be submitted. Note: all details and levels in the model shall be consistent with that depicted on the latest Stormwater Management Plan. The model shall include the entire site area as 'post catchment' together with tank levels and level of the final point of discharge.
- Only roof water shall drain to the rainwater tank. All surface areas and trafficable areas shall bypass the tank.
- Subsoil shall not drain to Councils kerb and gutter. All belowground structures to be tanked.
- The Drainage conduits discharging to Council's kerb and gutter shall not traverse the proposed vehicular crossing.

The concept plan is subject to the submission and approval of Stormwater Management Plan for the site prior to release of the Construction Certificate. Details are to be in accordance with Council's Chapter E2 "Stormwater and Flood Risk Management" DCP and Local Approvals Policy. This is to ensure that site stormwater is disposed in a controlled and sustainable manner.

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

Subject to the recommended conditions, the proposal is acceptable with regard to the objectives and controls in Chapter E2 of the Woollahra DCP 2015.

14.5. Chapter E3: Tree Management

Council's Trees and Landscaping Officer has confirmed the proposal is satisfactory and provided the following comments:

"SUMMARY

- Impacts to existing trees on neighbouring properties. Amendments to the submitted landscaping plan and stormwater management have been recommended to mitigate impacts.
- Additional replacement tree planting recommended to compensate for the loss of existing tree canopy coverage.

COMMENTS

Located within the subject property are a number of trees proposed for removal. The submitted Arboricultural Impact Assessment Report assesses most of the trees within the property as low to medium retention value. Located within the front yard of the subject property however are three Italian Cypress that are visually prominent to the streetscape. The Italian Cypress are proposed for removal. Council's recommendation to include the demolition of the front sandstone retaining wall also makes retention of these trees not possible. Replacement tree planting could compensate for the loss of soft landscaping amenity provided by these trees.

Clarification was sought on the location of a Port Jackson Fig growing adjacent the eastern side boundary of the subject property. Email correspondence from Ander Idestrom from Innovate Architects dated 12/05/2020 has confirmed the location of the Port Jackson fig is within the neighbouring property of 59 Wentworth Road Vaucluse. Accordingly no consent for the removal of the Port Jackson fig has been obtained and successful retention of the fig should be considered. The submitted landscape plans show a proposed masonry fence/retaining wall within the Tree Protection Zone of the fig. This would have negative impacts to the fig. To achieve successful retention of the Port Jackson fig the submitted landscape plan could be amended to include the deletion of proposed fence/retaining walls within the Tree Protection Zone of the fig.

The submitted landscape plan shows proposed masonry fencing and retaining walls along the western side boundary of the subject property. The proposed fencing and walls encroache into the Structural Root Zones of existing trees located within the neighbouring property of 55 Wentworth Road Vaucluse. To avoid negative impacts to Tree No.s 12, 15, 16 and 17 the existing fencing and retaining wall configuration should remain in situ. I have included Condition C.3 to address this issue through the deletion of proposed masonry fencing/walls within a specified distance of Tree No.s 12, 15, 16 and 17.

Located at the front of the subject property is a young Jacaranda tree on the Council verge. The submitted landscape plan does not show the retention of the Jacaranda. In accordance with Council's Street Tree Master Plan 2014 the preferred tree species for Wentworth Road Vaucluse are Syzygium paniculatum, Eucalyptus tereticornis and Angophora costata. Accordingly a replacement tree to be planted on the Council verge at the front of the subject property should be included in an amended landscape plan.

The submitted Stormwater Management plan shows proposed pipes and pits within the Structural Root Zone and Tree Protection Zones of Trees 12, 15, 16 and 17 located in the rear yard eastern side boundary of 55 Wentworth Road Vaucluse. To minimise impacts to the existing trees all proposed pipes and pits should be located at a further distance from the existing trees. Condition E.5 has been included to address this issue."

Subject to the recommended conditions, the proposal is acceptable with regard to the objectives and controls in Chapter E3 of the Woollahra DCP 2015.

14.6. Chapter E5: Waste Management

Chapter E5 is applicable to all development and seeks to establish waste minimisation and sustainable waste management during demolition and construction phases and throughout the ongoing use of the building.

The SWMMP addresses volume and type of waste and recyclables to be generated, storage and treatment of waste and recyclables on site, disposal of residual waste and recyclables and operational procedures for ongoing waste management once the development is complete.

The applicant provided a SWMMP with the development application and it was found to be satisfactory.

14.6.1. Part E5.2: Demolition and Construction Phase

C2 and C3 promote reuse of salvaged and excess construction materials. C4 promotes prefabricated or recycled materials where possible. C5 seeks to minimise site excavation and disturbance.

The proposal is acceptable with regard to Part E5.2 of the Woollahra DCP 2015.

14.6.2. Part E5.3: On-Site Waste and Recycling Controls for all Development

	Proposed	Control	Complies
Garbage and Recycling Areas	Separated	Separated	YES
Location of Garbage and Recycling Areas	Garage	Behind Building Line or Non- Habitable Areas	YES

The proposal is acceptable with regard to Part E5.3 of the Woollahra DCP 2015.

14.6.3. Part E5.4: Dwelling Houses, Semi-Detached Dwellings and Dual Occupancies

The proposal is acceptable with regard to Part E5.4 of the Woollahra DCP 2015.

14.7. Chapter E6: Sustainability

C1 states the solar energy system must meet the following requirements:

- a) Is in line with the roof surface or no more than 300mm above and parallel with the roof surface.
- b) Is located behind the front setback and not visible from the street.
- c) Does not involve mirrors or lenses to reflect or concentrate sunlight.

C2 states the location of the solar energy system must not have an unreasonable visual impact on:

- a) The streetscape and scenic quality of the area.
- b) Visual quality of the area when viewed from the harbour or a public recreation area.
- c) Amenity of adjoining and adjacent properties.
- d) Existing harbour and city views obtained from private properties.

The proposed solar energy panels are to be located on the flat roof surface of the new dwelling-house. Due to the topography of the subject site and neighbouring built form, the proposed panels would be suitably screened from the streetscape. The scenic quality of the area is retained and the proposal does not adversely impact any views obtained from neighbouring properties.

The proposed solar energy panels are therefore satisfactory, subject to **Condition C.1(b)** that requires the panels to be installed in line with roof surface or no more than 300mm above and parallel with the roof surface.

The proposal, as conditioned, is acceptable with regard to the solar energy system controls and objectives in Part E6.3 of the Woollahra DCP 2015.

15. SECTION 7.12 CONTRIBUTION PLANS

15.1. Section 7.12 Contributions Plan 2011

In accordance with Schedule 1, a 1% levy applies with the monies being used for a variety of works as outlined in Schedule 2 of the Section 7.12 Contributions Plan 2011. Refer to **Condition C.2**.

Cost of Works	Rate	Contribution Payable
\$3,057,665	1%	\$30,576.65

16. APPLICABLE ACTS/REGULATIONS

16.1. Environmental Planning and Assessment Regulation 2000

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

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

17. THE LIKELY IMPACTS OF THE PROPOSAL

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

18. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

19. THE PUBLIC INTEREST

The proposal is considered to be in the public interest.

20. CONCLUSION

The proposal is acceptable against the relevant considerations under Section 4.15.

21. DISCLOSURE STATEMENTS

There have been no disclosure statements regarding political donations or gifts made to any Councillor or to any council employee associated with this development application by the applicant or any person who made a submission.

22. RECOMMENDATION: PURSUANT TO SECTION 4.16 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, is of the opinion that the written request from the applicant under Part 4.6 of the Woollahra Local Environmental Plan 2014 to the height development standard under Clause 4.3 of Woollahra LEP 2014 has adequately addressed the relevant matters and the proposed development will be in the public interest because it is consistent with the relevant objectives of the particular standard and the zone. The Panel assumes the concurrence of the Secretary, Department of Planning, Industry and Environment.

AND

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, grant development consent to Development Application No. 520/2019/1 for demolition of existing dwelling and construction of replacement dwelling, with associated landscaping and site works on land at 57 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 4.16 of the *Environmental Planning and 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 4.15 of the *Act*.

Standard Condition: A1 (Autotext AA1)

A.2 Definitions

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

Applicant means the applicant for this consent.

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

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

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

Council means Woollahra Municipal Council

Court means the Land and Environment Court

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

Stormwater drainage system means all works, facilities and documentation relating to:

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

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

Owner-builder has the same meaning as in the Home Building Act 1989.

PC means the Principal Certifier under the Act.

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

Professional engineer has the same meaning as in the BCA.

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

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

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

Site means the land being developed subject to this consent.

Woollahra LEP means Woollahra Local Environmental Plan 2014

Woollahra DCP means Woollahra Development Control Plan 2015

Work for the purposes of this consent means:

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

• the occupation of the *site* by any person unless authorised by an occupation certificate.

Note: **Interpretation of conditions** - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council. Standard Condition: A2 (Autotext AA2)

A.3 Approved Plans and Supporting Documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with both the architectural plans to which is affixed a Council stamp "Approved" and supporting documents listed below as submitted by the Applicant unless modified by any following condition.

Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
1065553S	BASIX Certificate	NSW Department of Planning & Infrastructure	18/12/2019
	Site Waste Minimisation and Management Plan	Innovate Architects	13/12/2019
01 (Issue E)	Site/Roof Plan	Innovate Architects	Nov 2020
02 (Issue D)	Lower Ground Floor Plan		July 2020
03 (Issue D)	Ground Floor Plan		July 2020
04 (Issue E)	First Floor Plan & Roof Terrace Plan		Nov 2020
05 (Issue D)	Elevations		July 2020
06 (Issue D)	Elevations		July 2020
07 (Issue E)	Sections		Nov 2020
191165, Rev 5	Stormwater Management Plan	Greenview Consulting	01/05/2020
191165	Statement - Stormwater Issues for Proposed Residential Development	Greenview Consulting	1 May 2020
Job No: AG- 480_1rv1	Geotechnical Investigation Report	Australian Geotechnical	01/05/2020
Job No. 191165	Structural Excavation Advice for Proposed Residential Development	Greenview Consulting	4 May 2020
Plan No. s 7009 L-01D – L-04D	Landscape Plan	Site Design + Studios	18/12/2019
Ref AIA-20-410	Arboricultural Impact Assessment Report	Matthew Reed	29/01/2020

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 4.17(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*.)

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Standard Condition: A5 (Autotext AA5)

A.4 Ancillary Aspects of Development (section 4.17(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* (2012) unless expressly provided otherwise by these conditions at the Owner's expense.

Note: This condition does not affect the Principal Contractor's or any sub-contractors obligations to protect and preserve public infrastructure from damage or affect their liability for any damage that occurs. Standard Condition: A8 (Autotext AA8)

A.5 No Underpinning works (Special Condition)

This development consent does <u>NOT</u> give approval to any works outside the boundaries of the subject site including any underpinning works to any structures on adjoining properties.

A.6 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 Private Land

Council Ref No.	Species	Location	Dimension (metres)
8	Archontophoenix alexandrae (Alexander palm)	Rear yard eastern side	8 x 3
9	Archontophoenix alexandrae (Alexander palm)	Rear yard eastern side	8 x 3

• Trees on Council Land

Council Ref No.	Species	Location	Dimension (metres)	Tree Value
1	Lagerstroemia indica (Crepe Myrtle)	Council verge	5 x 4	

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

b) The following trees may be removed:

Council Ref No.	Species	Location	Dimension (metres)
1a	Jacaranda mimosifolia (Jacaranda)	Council verge	3.5 x 1.5
2	Pyrus calleryana (Callery Pear)	Front yard	6 x 8
3	Cupressus sempervirens (Italian Cypress)	Front yard	8 x 4
4	Cupressus sempervirens (Italian Cypress)	Front yard	8 x 4
5	Cupressus sempervirens (Italian Cypress)	Front yard	8 x 2
6	Olea europea var. europea (European Olive)	Front yard driveway	5 x 3
7	Ulmus parvifolia (Chinese Weeping Elm)	Front yard	5 x 6
7a	Syagrus romanzoffianum (Cocos palm)*	Front yard eastern side	5 x 3
a	X Cupressocyparis leylandii (Leyland	Eastern side boundary	5 x 2
	Cypress)*		
b	Strelitzia nicolai (Giant Bird of Paradise)*	Eastern side boundary	5 x 3
С	Syagrus romanzoffianum (Cocos palm)*	Eastern side boundary	5 x 3

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

c) Should the following tree require pruning to provide clearance for the proposed development a detailed pruning specification shall be prepared and submitted to Council for assessment and approval. The pruning specification shall be in accordance with *Australian Standard Pruning of Amenity Trees* (AS 4373) and *Workcover NSW Code of Practice Amenity Tree Industry*. Any pruning shall be to the minimum extent necessary to provide clearance to the new development:

Council Ref No.	Species	Location
17	Eucalyptus haemastoma (Scribbly Gum)	Rear yard of 55 Wentworth Road Vaucluse - eastern side

Note: The tree/s required to be pruned should appear coloured blue 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 6.6 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 Principal Certifier, and Notice of Commencement under the *Act*.

Note: See *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125. Standard Condition: B1 (Autotext BB1)

^{*}This species is exempt from the WMC DCP Chapter E.3 - Tree Management and can be removed without consent.

B.2 Identification of Hazardous Material

In accordance with Australian Standard AS2601: *The Demolition of Structures*, the Owner shall identify all hazardous substances located on the site including asbestos, polychlorinated biphenyls (PCBs), lead paint, underground storage tanks, chemicals, etc. per Clause 1.6.1 of the Standard.

In this regard, **prior to the commencement of any work**, Council shall be provided with a written report prepared by a suitably qualified competent person detailing:

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

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

Standard Condition: B6

B.3 Public Road Assets Prior to Any Work/Demolition

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

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

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

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

If the required report is not submitted then Council will assume there was no damage to any infrastructure in the immediate vicinity of the site prior to the commencement of any work under this consent.

Note: If the Applicant or Owner fails to submit the asset condition report required by this condition and damage is occasioned to public assets adjoining the site, Council will deduct from security any costs associated with remedying, repairing or replacing damaged public infrastructure. Nothing in this condition prevents Council making any claim against security held for this purpose Standard Condition: B7

B.4 Aboriginal Objects – Unexpected Findings

If unexpected Aboriginal objects are found during the works covered by this approval, all work must cease immediately in the affected area(s) and the Department of Premier and Cabinet, Community Engagement, Heritage must be notified. Additional assessment and approval pursuant to the National Parks and Wildlife Act 1974 may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

Note: The Definition of Aboriginal object as per the Woollahra Local Environmental Plan 2014: any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.

Standard Condition: B10

B.5 Establishment of Tree Protection Zone (TPZ) Fence

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	Tree Location	Fence Radius from Centre of Trunk (Metres)
1	Lagerstroemia indica (Crepe Myrtle)	Council verge	2
5a	Ficus rubiginosa (Port Jackson Fig)	Front yard, western side boundary of 59 Wentworth Road Vaucluse	2.8
8	Archontophoenix alexandrae (Alexander palm)	Rear yard eastern side	2.4
9	Archontophoenix alexandrae (Alexander palm)	Rear yard eastern side	2.4
12	Schefflera arboricola (Hawaiian Elf Schefflera)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	2.4
15	Cedrus atlantica (Atlantic Cedar)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	3.6
16	Grevillea robusta (Silky Oak)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	6
17	Eucalyptus haemastoma (Scribbly Gum)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	7

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 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) 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 this consent.
- f) The site foreman must be made aware of all tree protection requirements associated with these conditions of consent by the project arborist. Any subsequent site personnel and contractors to the site must be made aware of all tree protection requirements by the site foreman.
- g) The project arborist shall provide written certification of compliance with the above condition.

B.6 Permissible work within Tree Protection Zones

The following works are permissible within the Tree Protection Zone:

Council Ref No.	Species	Radius from Trunk (metres)	Approved works
5a	Ficus rubiginosa (Port Jackson Fig)	2.8	Proposed soft landscaping.
8	Archontophoenix alexandrae (Alexander palm)	2.4	Proposed soft landscaping.
9	Archontophoenix alexandrae (Alexander palm)	2.4	Proposed soft landscaping.
12	Schefflera arboricola (Hawaiian Elf Schefflera)	2.4	Proposed soft landscaping.
15	Cedrus atlantica (Atlantic Cedar)	3.6	Proposed soft landscaping.
16	Grevillea robusta (Silky Oak)	6	Proposed soft landscaping.
17	Eucalyptus haemastoma (Scribbly Gum)	7	Proposed soft landscaping. Proposed dwelling.

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

B.7 Arborists Documentation and Compliance Checklist

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

- A record of the condition of trees to be retained prior to and throughout development;
- Recommended actions to improve site conditions and rectification of non-compliance;
 and
- Recommendations for future works which may impact the trees

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

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

Stage of arboricultural inspection and	Compliance documentation and photos shall be included	
supervision		
Prior to the demolition of any building or construction and prior to the commencement of any development work	• The project arborist shall install or supervise the installation of tree protection fencing.	
During any development work	 The project arborist shall supervise all demolition and excavation works within the Tree Protection Zones of nominated trees listed in this consent. The project arborist shall supervise excavation for retaining walls and stormwater pipes and pits within the Tree Protection Zones of nominated trees listed in this consent, ensuring no roots greater than 50mm diameter are damaged or severed. The project arborist shall ensure pier holes within the Tree Protection Zones or specified distances of nominated trees listed in this consent are positioned to avoid the severance of and damage to roots greater than 50mm diameter. 	
Prior to any occupation or use of the building	• Ensure all trees conditioned to be planted as part of this consent have been planted in accordance with the details prescribed in this consent.	
Prior to the issue of a Final Occupation Certificate	• The project arborist shall supervise the dismantling of tree protection measures	

Stage of arboricultural inspection	Compliance documentation and photos shall be included	
Installation of tree protection fencing	Compliance with tree protection measures	
Demolition of xxx	Condition of exposed roots	
Inspection of pier holes	Piers positioned to avoid the severance of and damage to roots greater than 50mms	
Installation of	Condition of roots and soil	
Inspection of irrigation set out	Appropriate distribution of irrigation water	
Prior to pouring of slab	Condition of roots and soil	
Prior to the issue of a Final Occupation Certificate	Supervise the dismantling of tree protection measures	

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

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

C. Conditions Which Must Be Satisfied Prior to the Issue of Any Construction Certificate

C.1 Modification of Details of the Development (section 4.17(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) The proposed construction of the front boundary must reuse the existing sandstone materials where possible.

- b) In order to minimise the visual impact of the solar energy system, the solar energy panels must be in line with the roof surface and no more than 300mm above and parallel with the roof surface, and must not involve mirrors or lenses to reflect or concentrate sunlight.
- c) In order to maintain visual privacy for occupants and neighbours, the ground floor level kitchen slot window at the western side elevation must incorporate fixed translucent glazing to a height of 1.5m above the finished floor level.
- d) The proposed landscape plan must be amended to delete any proposed masonry retaining walls or masonry fencing within the distances of the following trees:

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
12	Schefflera arboricola	Rear yard of 55 Wentworth	2.4
	(Hawaiian Elf Schefflera)	Road Vaucluse - eastern side	
15	Cedrus atlantica (Atlantic	Rear yard of 55 Wentworth	3.6
	Cedar)	Road Vaucluse - eastern side	
16	Grevillea robusta (Silky Oak)	Rear yard of 55 Wentworth	2.6
		Road Vaucluse - eastern side	
17	Eucalyptus haemastoma	Rear yard of 55 Wentworth	3.7
	(Scribbly Gum)	Road Vaucluse - eastern side	

The landscape plan shall show existing retaining walls to remain in situ within the distances of the following trees. The proposed soft landscaping within these distances shall be modified to adapt to the retention of existing retaining walls:

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
12	Schefflera arboricola	Rear yard of 55 Wentworth Road	2.4
	(Hawaiian Elf Schefflera)	Vaucluse - eastern side	
15	Cedrus atlantica (Atlantic	Rear yard of 55 Wentworth Road	3.6
	Cedar)	Vaucluse - eastern side	
16	Grevillea robusta (Silky Oak)	Rear yard of 55 Wentworth Road	2.6
		Vaucluse - eastern side	
17	Eucalyptus haemastoma	Rear yard of 55 Wentworth Road	3.7
	(Scribbly Gum)	Vaucluse - eastern side	

Additionally to compensate for the loss of existing canopy cover to the subject property and to replace the proposed removal of a Jacaranda on the Council verge the following additional replacement trees shall be included:

Species/Type	Planting/Location	Container Size/Size of Tree (at planting)	Minimum Dimensions at Maturity (metres)
1 x Angophora costata (Sydney Pink Gum), Eucalyptus tereticornis (Forest Red Gum) OR Syzygium paniculatum (Brush Cherry)	Council verge	100 litre	10 x 8
1 x Brachychiton populneus x acerifolius 'Bella Donna', Callistemon citrinus x viminalis 'Harkness' OR Corymbia ficifolia cv.	Front yard lawn area	100 litre	6 x 4

e) Amended Stormwater Management plan. The proposed Stormwater Management plan shall be amended to delete the installation of stormwater pipes and pits within the distances of the following trees:

Council Ref No.	Species	Location	Radius from centre of trunk
			(metres)
12	Schefflera arboricola (Hawaiian	Rear yard of 55 Wentworth Road	2.4
	Elf Schefflera)	Vaucluse - eastern side	
15	Cedrus atlantica (Atlantic Cedar)	Rear yard of 55 Wentworth Road	3.6
		Vaucluse - eastern side	
16	Grevillea robusta (Silky Oak)	Rear yard of 55 Wentworth Road	2.6
		Vaucluse - eastern side	
17	Eucalyptus haemastoma (Scribbly	Rear yard of 55 Wentworth Road	3.7
	Gum)	Vaucluse - eastern side	

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 4.15 of the *Act*.

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

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

Standard Condition: C4 (Autotext CC4)

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

The Certifying Authority must not issue any certificates under section 6.4 of the *Act* 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 www.longservice.nsw.gov.au/bci/levy/other- information/levy-calculator	Contact LSL Corporation or use online calculator	No		
SECURITY under section 4.17(6) of the Environmental Planning and Assessment Act 1979				
Property Damage Security Deposit -making good any damage caused to any property of the Council	\$74,011	No	T115	
Tree Damage Security Deposit – making good any damage caused to any public tree	\$3000	No	T114	
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 7.12)	\$30,576.65 + Index Amount	Yes, quarterly	T96	

INSPECTION FEES under section 608 of the Local Government Act 1993				
Public Tree Management Inspection Fee	\$200	No	T45	
Public Road/Footpath Infrastructure Inspection Fee	\$471	No		
Security Administration Fee	\$194	No	T16	
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$108,452.65 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 Service Corporation or to Council. Further information can be obtained from the Long Service Corporation website www.longservice.nsw.gov.au or the Long Service Corporation on 131 441.

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 7.12 levy (formerly known as 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 levy.

Do you need HELP indexing the levy?

Please contact Council's Customer Service Team on ph 9391 7000. Failure to correctly calculate the adjusted development levy will delay the issue of any certificate issued under section 6.4 of the *Act* and could void any such certificate (eg Construction Certificate, Subdivision Certificate, or Occupation Certificate).

Deferred or periodic payment of section 7.12 levy (formerly known as 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 7.12 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 7.12 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. 1065553S 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 4.55 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 and Assessment Regulation* 2000 provides: "A certifying authority must not issue a Construction Certificate for building work unless it is satisfied of the following matters: (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires".

Standard Condition: C7

C.4 Road and Public Domain Works

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

- a) Stormwater connection to back of Council's kerb and gutter. Note: the Drainage conduits discharging to Council's kerb and gutter shall not traverse the proposed vehicular crossing.
- b) The existing boundary wall encroaching over Council's road reserve shall be demolished and relocated inside property boundary.
- c) Reconstruction of a full width vehicular crossing having a width of **3**m at property boundary and perpendicular to the road carriageway in accordance with Council's standard driveway drawing RF2-D. Note: there shall be a clearance of 10.8m between the proposed vehicular crossing and the existing neighbouring crossing to the east (No. 59 Wentworth Road) layback to layback.

- d) A design longitudinal surface profile for the proposed driveway must be submitted for assessment.
- e) Removal and replacement of all cracked or damaged kerb and gutter for the full width of all property in accordance with Council's standard drawing RF3.
- f) Removal of any driveway crossings and kerb laybacks which will be no longer required.
- g) Reinstatement of footpath, kerb and gutter to match existing.
- h) Where a grass verge exists, the balance of the area between the footpath and the kerb over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of Couch turf.

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

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

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

Note: See condition K24 in *Section K. Advisings* of this Consent titled *Roads Act Application*. Standard Condition: C13

C.5 Soil and Water Management Plan – Submission and 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" 2004 published by the NSW Government (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 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" publication can be downloaded from www.woollahra.nsw.gov.au, and The Blue Book is available at www.environment.nsw.gov.au/stormwater/publications.htm.

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

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, hydrogeological, 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 Geotechnical and Hydrogeological Design, Certification and Monitoring

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

Note: the documented Geotechnical Investigation Report, Job No: AG-480_1rv1, prepared by Australian Geotechnical, dated 01/05/2020 shall be revised to account for the additional excavation required for the proposed rainwater tank with a base invert level of 26.45. These details must be certified by the professional engineer to:

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

Standard Condition: C40 (Autotext: CC40)

C.8 Ground Anchors

This development consent does <u>NOT</u> give approval to any ground anchors encroaching onto adjoining private properties. Use of any Ground Anchors extending beyond site boundaries requires the approval of neighbouring private properties in writing.

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

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

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

If temporary ground anchors under Council land are proposed, a separate application, including payment of fees, must be made to Council under section 138 of the *Roads Act 1993*. Application forms and Council's "Rock Anchor Policy" are available from Council's website. Approval may be granted subject to conditions of consent. Four weeks should be allowed for assessment.

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

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

Note: Clause 20 of the *Roads (General) Regulation 2000* prohibits excavation in the vicinity of roads as follows: "Excavations adjacent to road - A person must not excavate land in the vicinity of a road if the excavation is capable of causing damage to the road (such as by way of subsidence) or to any work or structure on the road." Separate approval is required under the *Roads Act 1993* for any underpinning, shoring, soil anchoring (temporary)) or the like within or under any road. Council will not give approval to permanent underpinning, shoring, soil anchoring within or under any road. Standard Condition: C41 (Autotext: CC41)

C.9 Parking Facilities

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

a) Driveway splays (inside property boundary) shall be provided in accordance with Figure 3.3 in Section 3.2.4 of AS/NZS 2890.1. Alternatively a fence to a maximum height of 0.9m is permitted in the splay area. Exceptions to this may be accepted where an object in the adjoining property creates an obstruction to visibility within the splay area.

Access levels and grades must comply with access levels and grade required by Council under the *Roads Act* 1993.

The *Certifying Authority* has no discretion to reduce or increase the number or area of car parking or commercial parking spaces required to be provided and maintained by this consent. Standard Condition: C45 (Autotext: CC45)

C.10 Stormwater Management Plan

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

- a) General design in accordance with Stormwater Management Plan, referenced 191165, Rev 5, prepared by Greenview Consulting, dated 01/05/2020, other than amended by this and other conditions;
- b) The discharge of stormwater, by direct connection, to back of kerb on Wentworth Road;
 - a. The Drainage conduits discharging to Council's kerb and gutter shall not traverse the proposed vehicular crossing;
 - b. The permissible site discharge to Council's kerb and gutter shall be limited to 20 l/s and the additional site storage required volume must be determined by using a computer modelling such as DRAINS. The electronic copy together with a hard copy of the Drains model shall be submitted. Note: all details and levels in the model shall be consistent with that depicted on the latest Stormwater Management Plan. The model shall include the entire site area as 'post catchment' together with tank levels and level of the final point of discharge.
 - c. Subsoil shall not drain to Councils kerb and gutter. All belowground structures to be tanked.
- c) Any rainwater tank (see Note below) required by BASIX commitments including their overflow connection to the Stormwater Drainage System,
- d) General compliance with Woollahra DCP 2015 Chapter E2 Stormwater and Flood Risk Management, and
- e) Provision of a Rainwater tank having a volume minimum 50m3 and calculated to the top of water level only.
 Only roof water shall drain to the rainwater tank. All surface areas and trafficable areas shall bypass the tank.

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

Layout Plan

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

It must include:

- a) All pipe layouts, dimensions, grades, lengths and material specification,
- b) Location of all stormwater retention systems,
- c) All invert levels reduced to Australian Height Datum (AHD),
- d) Location and dimensions of all drainage pits,
- e) Point and method of connection to Council's drainage infrastructure, and
- f) Overland flow paths over impervious areas.

Retention System Details;

- a) Any potential conflict between existing and proposed trees and vegetation,
- b) Internal dimensions and volume of the proposed retention storage,
- c) Diameter of the outlet to the proposed retention storage basin,
- d) Plans, elevations and sections showing the retention storage basin invert level, centreline level of outlet, top water level, finished surface level and adjacent structures,
- e) Details of access and maintenance facilities,
- f) Construction and structural details of all tanks and pits and/or manufacturer's specifications for proprietary products and,
- g) Details of the emergency overland flow-path (to an approved Council drainage point) in the event of a blockage to the retention systems.

Subsoil drainage

The subsoil drainage is to address:

- a) subsoil drainage details,
- b) clean out points, and
- c) discharge point.

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

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

Standard Condition: C.51 (Autotext CC51)

C.11 Tree Management Plan

The Construction Certificate plans and specifications shall show the following information:

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

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

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 4.17(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 <u>Home Building Act 1989</u> 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, or
- b) to the erection of a temporary building.

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

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

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

D.2 Dilapidation Reports for Existing Buildings

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

These properties must include (but is not limited to)

- No. 55 Wentworth Road
- No. 59 Wentworth Road

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

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

Note: The reasons for this condition are:

- To provide a record of the condition of buildings prior to development being carried out
- To encourage developers and its contractors to use construction techniques that will minimise the risk of damage to buildings on neighbouring land

Also refer to the Dilapidation Report Advising for more information regarding this condition Standard Condition: D4

D.3 Adjoining Buildings Founded on Loose Foundation Materials

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

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

Standard Condition: D6 (Autotext DD6)

D.4 Works (Construction) Zone – Approval and Implementation

A Works Zone may be required for this development. The Principal Contractor or Owner can apply for a works zone. If the works zone is approved the Principal Contractor or Owner must pay all fees for this Works Zone before it can be installed.

The Principal Contractor must pay all fees associated with the application and occupation and use of the road as a Works Zone. All Works Zone signs must have been erected by Council to permit enforcement of the Works Zone by Council's Rangers and NSW Police before commencement of any work. Signs are not erected until full payment of works zone fees.

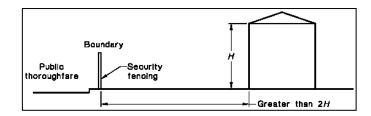
Note: The Principal Contractor or Owner must allow not less than four to six weeks (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under the clause 22 of the *Transport Administration (General) Regulation 2000* to exercise those functions delegated by the Roads and Maritime Services under section 50 of the *Transport Administration Act 1988*.

Note: The enforcement of the works zone is at the discretion of Council's Rangers and the NSW Police Service. The Principal Contractor must report any breach of the works zone to either Council or the NSW Police Service.

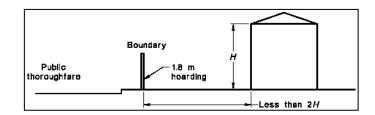
Standard Condition: D10 (Autotext DD10)

D.5 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 1.8m adjacent to the thoroughfare.

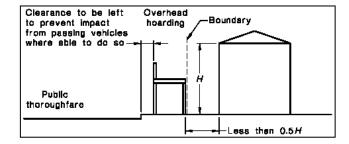


Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure and the facing facade protected by heavy-duty scaffolding, unless either:

- a) the vertical height above footpath level of the structure being demolished is less than 4.0m; 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 2.1m,
- 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 0.5m 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 the NSW "Code of Practice - Overhead Protective Structures 1995". This is code available at www.safework.nsw.gov.au/ data/assets/pdf file/0008/52883/Overhead-protective-structures-Code-of-practice.pdf

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

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

Standard Condition: D11 (Autotext DD11)

D.6 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 4.17(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 Certifier 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 6.28 of the *Act*, to comply with the Building Code of Australia.

Clause 227A of the Regulation provides:

Signs on development sites

If there is a person who is the Principal Certifier 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 Principal Certifier it will provide the sign to the Principal Contractor or Owner-builder who must ensure that the sign is erected and maintained as required by clause 98A and

clause 227A of the *Regulation*. Standard Condition: D12 (Autotext DD12)

D.7 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 SafeWork NSW requirements.

Standard Condition: D13 (Autotext DD13)

D.8 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" 2004 published by the NSW Government (The Blue Book).

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

Note: The International Erosion Control Association – Australasia (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" publication can be downloaded from www.woollahra.nsw.gov.au and *The Blue Book* is available at www.environment.nsw.gov.au/stormwater/publications.htm

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 (Autotext DD14)

D.9 Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 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 Certifier for the building work, and
 - notified the Principal Certifier that the person will carry out the building work as an Owner-builder, if that is the case, and
- c) The Principal Certifier 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 Certifier 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 1.4 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 6.1 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 6.6(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, PC 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 6.6(2) of the *Act*.

Standard Condition: D15 (Autotext DD15)

D.10 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 <u>Home Building Act 1989</u>.
- b) Residential building work within the meaning of the <u>Home Building Act 1989</u> must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - In the case of work for which a *principal contractor* is required to be appointed:
 - the name and licence number of the principal contractor, and
 - the name of the insurer by which the work is insured under Part 6 of that Act,
 - In the case of work to be done by an owner-builder:
 - the name of the owner-builder, and
 - if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- c) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.
- d) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.

Standard Condition: D17 (Autotext DD17)

D.11 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 and Spatial Information 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 Principal Certifier.

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

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

Standard Condition: D18 (Autotext DD18)

E. Conditions Which Must Be Satisfied During Any Development Work

E.1 Compliance with BCA and Insurance Requirements under the *Home Building Act 1989*

For the purposes of section 4.17(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 (BCA),
- b) in the case of residential building work for which the <u>Home Building Act 1989</u> requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

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

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

Note: All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia. Standard Condition: E1 (Autotext EE1)

E.2 Compliance with Australian Standard for Demolition

Demolition of buildings and structures must comply with Australian Standard AS 2601—2001: *The Demolition of Structures*.

Standard Condition: E2 (Autotext EE2)

E.3 Requirement to Notify about New Evidence

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

Standard Condition: E4 (Autotext EE4)

E.4 Critical Stage Inspections

Critical stage inspections must be called for by the Principal Contractor or Owner-builder as required by the Principal Certifier, any PC service agreement, the *Act* and the *Regulation*.

Work must not proceed beyond each critical stage until the Principal Certifier 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 6.5 of the Act or as required by the Principal Certifier and any PC Service Agreement.

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

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

Standard Condition: E5 (Autotext EE5)

E.5 Hours of Work –Amenity of the Neighbourhood

- a) No work must take place on any Sunday or public holiday.
- b) No *work* must take place before 7am or after 5pm any weekday.
- c) No *work* must take place before 7am or after 1pm any Saturday.
- d) The following *work* **must not** take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday:
 - (i) piling,
 - (ii) piering,
 - (iii) rock or concrete cutting, boring or drilling,
 - (iv) rock breaking,
 - (v) rock sawing,
 - (vi) jack hammering, or
 - (vii) machine excavation.
- e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- f) No operation of <u>any equipment</u> 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 a separate penalty infringement notice or prosecution.

Note: The delivery and removal of plant, equipment and machinery associated with wide loads subject to RMS and NSW 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 2017*.

Note: NSW EPA Noise Guide is available at www.epa.nsw.gov.au/noise/nglg.htm Standard Condition: E6 (Autotext EE6)

E.6 Public Footpaths – Safety, Access and Maintenance

The Principal Contractor or Owner-builder and any other person acting with the benefit of this consent must:

- a) Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.
- b) Not use the road or footway for the storage of any article, material, matter, waste or thing.
- c) Not use the road or footway for any *work*.
- d) Keep the road and footway in good repair free of any trip hazard or obstruction.
- e) Not stand any plant and equipment upon the road or footway.
- f) Provide a clear safe pedestrian route a minimum of 1.5m wide.
- g) Protect heritage listed 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 148B of the *Road Transport Act 2013*, section 138 of the *Roads Act 1993* or section 68 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.

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

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. Standard Condition: E7 (Autotext EE7)

E.7 Maintenance of Environmental Controls

The Principal Contractor or Owner-builder must ensure that the following monitoring, measures and controls are maintained:

- a) erosion and sediment controls,
- b) dust controls.
- c) dewatering discharges,
- d) noise controls,

- e) vibration monitoring and controls,
- f) ablutions.
 Standard Condition: E11

E.8 Compliance with Geotechnical / Hydrogeological Monitoring Program

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

The Principal Contractor and any sub-contractor must strictly follow the Geotechnical / Hydrogeological Monitoring Program for the development including, but not limited to:

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

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

Standard Condition: E12 (Autotext EE12)

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 and 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 Regulation 2008* 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 (Autotext EE13)

E.10 Vibration Monitoring

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

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

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

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

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

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

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

Note: professional engineer has the same mean as in clause A1.1 of the BCA.

Note: building has the same meaning as in section 1.4 of the Act i.e. "building includes part of a building and any structure or part of a structure..."

Note: *supported land* has the same meaning as in the *Conveyancing Act 1919*. Standard Condition: E14 (Autotext EE14)

E.11 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" 2004 published by the NSW Government (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 (Autotext EE15)

E.12 Disposal of Site Water During Construction

The Principal Contractor or Owner-builder must ensure:

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

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

Standard Condition: E17 (Autotext EE17)

E.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 and 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 (Autotext EE19)

E.14 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 registered surveyor 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 Principal Certifier'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 (Autotext EE20)

E.15 Placement and Use of Skip Bins

The Principal Contractor or Owner-builder must ensure that all waste storage containers, including but not limited to skip bins, must be stored within the site unless:

- a) Activity Approval has been issued by Council under section 68 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.

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

Standard Condition: E21 (Autotext EE21)

E.16 Prohibition of Burning

There must be no burning of any waste or other materials. The burning of copper chrome arsenate (CCA) or pentachlorophenol (PCP) 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 (Clean Air) Regulation 2010* all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.

Standard Condition: E22 (Autotext EE22)

E.17 Dust Mitigation

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

This generally requires:

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

Note: "Dust Control - Do it right on site" can be downloaded from Council's website 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.safework.nsw.gov.au and www.epa.nsw.gov.au. Other specific conditions and advice may apply.

Note: Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution. Standard Condition: E23 (Autotext EE23)

E.18 Compliance with Council's Specification for Roadworks, Drainage and Miscellaneous Works, Road Works and, Work within the Road and Footway

All work carried out on assets which are under Council ownership or will revert to the ownership, care, control or management of Council in connection with the *development* to which this consent relates must comply with Council's *Specification for Roadworks*, *Drainage and Miscellaneous Works* (2012).

The Owner, Principal Contractor or Owner-builder must meet all costs associated with such works.

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

Note: A copy of Council's *Specification for Roadworks, Drainage and Miscellaneous Works* can be downloaded from Council's website www.woollahra.nsw.gov.au
Standard Condition: E24 (Autotext EE24)

E.19 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, and
- 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 NSW Environment Protection Authority, and relevant occupational health and safety legislation administered by SafeWork NSW, and
- e) evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained.

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

Standard Condition: E31 (Autotext EE31)

E.20 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 and 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, and
- k) retain all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as Council, the NSW EPA or SafeWork NSW.

Standard Condition: E32 (Autotext EE32)

E.21 Asbestos Removal

All asbestos removal work must be carried out safely according to NSW work health and safety legislation.

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

- a) Be undertaken by contractors who hold a current SafeWork NSW "demolition licence" and a current SafeWork NSW "Class A licence" for friable asbestos removal.
- b) Be carried out in accordance with the relevant SafeWork NSW codes of practice.
- c) No asbestos products may be reused on the site.
- d) No asbestos laden skip or bins shall be left in any public place.

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

E.22 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 EPA *Waste Classification Guidelines, Part1: Classifying Waste, 2014.*

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.23 Disposal of Asbestos and Hazardous Waste

Asbestos and hazardous waste, once classified in accordance with **Condition E.22** 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 NSW EPA requirements. Standard Condition: E41

E.24 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.25 Notification of Asbestos Removal

In addition to the requirements for licensed asbestos removalists to give written notice to SafeWork NSW all adjoining properties and those opposite the development site must be notified in writing of the dates and times when asbestos removal is to be conducted.

The notification is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone and facsimile numbers and email addresses.

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

Standard Condition: E43

E.26 Tree Preservation

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

General Protection Requirements

- a) 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 50mm are exposed. The *principal contractor* must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- c) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

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

E.27 Replacement/Supplementary trees which must be planted

Any replacement or supplementary tree shall be grown in accordance with Tree stock for landscape use (AS 2303:2018). The replacement tree shall be planted in a *deep soil landscaped area* and maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council's Tree Preservation Order, it must be replaced with another of the same species which complies with the criteria outlined below.

Species/Type	Planting/ Location	Container Size/Size of Tree (at planting)	Minimum Dimensions at Maturity (metres)
2 x Dracaena draco (Dragon's Blood Tree)	Front yard	100 litre each	4 x 5 each
1 x Tristaniopsis laurina (Water gum)	Front yard	100 litre	8 x 5
1 x Brachychiton populneus x acerifolius 'Bella Donna', Callistemon citrinus x viminalis 'Harkness' OR Corymbia ficifolia cv.	Front yard lawn area	100 litre	6 x 4
1 x Angophora costata (Sydney Pink Gum), Eucalyptus tereticornis (Forest Red Gum) OR Syzygium paniculatum (Brush Cherry)	Council verge	100 litre	10 x 8

The project arborist shall document compliance with the above condition.

E.28 Level changes in the vicinity of trees

No level changes shall occur within the specified radius from the trunks of the following trees.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
5a	Ficus rubiginosa (Port Jackson Fig)	Front yard, western side boundary of 59 Wentworth Road Vaucluse	2.8
8	Archontophoenix alexandrae (Alexander palm)	Rear yard eastern side	2.4
9	Archontophoenix alexandrae (Alexander palm)	Rear yard eastern side	2.4
12	Schefflera arboricola (Hawaiian Elf Schefflera)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	2.4
15	Cedrus atlantica (Atlantic Cedar)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	3.6
16	Grevillea robusta (Silky Oak)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	6
17	Eucalyptus haemastoma (Scribbly Gum)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	7

The project arborist shall document compliance with the above condition.

E.29 Stormwater pipes and pits within tree root zones

No stormwater pipes or pits shall be installed within the specified radius from the trunks of the following trees:

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
12	Schefflera arboricola (Hawaiian Elf	Rear yard of 55 Wentworth Road	2.4
	Schefflera)	Vaucluse - eastern side	
15	Cedrus atlantica (Atlantic Cedar)	Rear yard of 55 Wentworth Road	3.6
		Vaucluse - eastern side	
16	Grevillea robusta (Silky Oak)	Rear yard of 55 Wentworth Road	2.6
		Vaucluse - eastern side	
17	Eucalyptus haemastoma (Scribbly	Rear yard of 55 Wentworth Road	3.7
	Gum)	Vaucluse - eastern side	

Excavation for the installation of stormwater pipes and pits within the specified radius from the trunks of the following trees shall be excavated manually:

Council	Species	Location	Radius from
Ref No.			centre of trunk
			(metres)
12	Schefflera arboricola (Hawaiian Elf	Rear yard of 55 Wentworth	2.4
	Schefflera)	Road Vaucluse - eastern side	
15	Cedrus atlantica (Atlantic Cedar)	Rear yard of 55 Wentworth	3.6
		Road Vaucluse - eastern side	
16	Grevillea robusta (Silky Oak)	Rear yard of 55 Wentworth	6
		Road Vaucluse - eastern side	
17	Eucalyptus haemastoma (Scribbly Gum)	Rear yard of 55 Wentworth	14
	-	Road Vaucluse - eastern side	

Small hand tools such as mattocks or using compressed air or water jetting only shall be used. Roots with a diameter equal to or in excess of 50mm shall not be severed or damaged unless approved in writing by the project arborist. Any pipes shall be inserted under the roots left intact. Any pits shall be located to avoid the severing of roots equal to or in excess of 50mm diameter.

Mechanical excavation is permitted beyond this radius when root pruning by hand along the perimeter line is completed. Exposed roots to be retained shall be covered with mulch or a geotextile fabric and kept in a moist condition and prevented from drying out.

All root pruning must be undertaken in accordance with the Australian Standard 4373 "Pruning of Amenity Trees" and carried out by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent).

The project arborist shall document compliance with the above condition.

E.30 Footings in the vicinity of trees

Footings for any structure (excluding the proposed dwelling) within the specified radius from the trunks of the following trees shall be supported using an isolated pier and beam system.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
12	Schefflera arboricola (Hawaiian Elf Schefflera)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	2.4
15	Cedrus atlantica (Atlantic Cedar)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	3.6
16	Grevillea robusta (Silky Oak)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	6
17	Eucalyptus haemastoma (Scribbly Gum)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	14

Excavations for installation of piers shall be located so that no tree root with a diameter equal to or in excess of 50mm is severed or damaged. The smallest possible area shall be excavated which allows construction of the pier. The beam is to be placed a minimum of 100mm above ground level and is to be designed to bridge all tree roots with a diameter equal to or in excess of 50mm.

The project arborist shall document compliance with the above condition.

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 6.9 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 6.10 of the *Act*) unless an Occupation Certificate has been issued in relation to the building or part.

Note: New building includes an altered portion of, or an extension to, an existing building. Standard Condition: F1 (Autotext FF1)

F.2 Commissioning and Certification of Systems and Works

The Principal Contractor or Owner-builder must submit to the satisfaction of the Principal Certifier works-as-executed (WAE) plans, Compliance Certificates and evidence of suitability in accordance with 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 plans, Compliance Certificates and evidence of suitability in accordance with 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 Certifier 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 PC 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 PC must submit to Council, with any Occupation Certificate, copies of WAE plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA upon which the PC has relied in issuing any Occupation Certificate.

Standard Condition: F7 (Autotext FF7)

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.

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 (Section 6.4 (C))

H.1 Fulfillment of BASIX Commitments – clause 154B of the Regulation

All BASIX commitments must be effected in accordance with the BASIX Certificate No. 1065553S.

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

Standard Condition: H7 (Autotext HH7)

H.2 Removal of Ancillary Works and Structures

The Principal Contractor or Owner must remove from the land and any adjoining public place:

- a) the site sign,
- b) ablutions,
- c) hoarding,
- d) scaffolding, and
- e) waste materials, matter, article or thing.

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

Standard Condition: H12 (Autotext HH12)

H.3 Road Works (including footpaths)

The following works must be completed to the satisfaction of Council, in compliance with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012) unless expressly provided otherwise by these conditions at the Principal Contractor's or Owner's expense:

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

Note: Security held by Council pursuant to section 4.17(6) of the *Act* will not be release by Council until compliance has been achieved with this condition. An application for refund of security must be submitted with the Final Occupation Certificate to Council. This form can be downloaded from Council's website www.woollahra.nsw.gov.au or obtained from Council's customer service centre. Standard Condition: H13 (Autotext HH13)

H.4 Positive Covenant and Works-As-Executed Certification of Stormwater Systems

On completion of construction work, stormwater drainage works are to be certified by a professional engineer with works-as-executed drawings supplied to the Principal Certifier detailing:

- a) Compliance with conditions of development consent relating to stormwater,
- b) The structural adequacy of the Rainwater Tank,
- c) That the works have been constructed in accordance with the approved design and will provide the retention storage volume and attenuation in accordance with the submitted calculations,
- d) Pipe invert levels and surface levels to Australian Height Datum, and
- e) Contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

A positive covenant pursuant to section 88E of the *Conveyancing Act 1919* must be created on the title of the subject property, providing for the indemnification of Council from any claims or actions and for the on-going maintenance of the Rainwater Tank incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered with the NSW Land Registry Services.

Note: The required wording of the Instrument can be downloaded from Council's website www.woollahra.nsw.gov.au. The PC must supply a copy of the WAE plans to Council together with the Final Occupation Certificate.

Note: The Final Occupation Certificate must not be issued until this condition has been satisfied. Standard Condition: H20 (Autotext HH20)

H.5 Landscaping

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

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

I. Conditions Which Must Be Satisfied During the Ongoing Use of the Development

I.1 Maintenance of BASIX Commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. 1065553S.

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: 124

I.2 Ongoing Maintenance of the On-Site-Detention System

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

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

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

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

Standard Condition: 129

I.3 Outdoor Lighting – Residential

Outdoor lighting must comply with AS 4282-1997: *Control of the obtrusive effects of outdoor lighting*. The maximum luminous intensity from each luminare 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.

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

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

Standard Condition: I49

I.4 Occupation and use of roof terraces

a) No umbrellas, umbrella stands, shade structures or the like are permitted on the rooftop terrace.

Reason: To presume view sharing with adjoining and adjacent neighbours.

 b) Landscaping within the rooftop terrace shall not exceed the height of the approved balustrade and shall be managed and maintained to such a level.
 Reason: To presume view sharing with adjoining and adjacent neighbours.

Note: This condition has been imposed to protect the amenity of neighbours and to maintain views across and over the roof terrace.

Note: Temporary structures that may adversely affect views across over the roof terrace must not be erected without Council approval

Standard Condition: II46

I.5 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*.

Note: 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 (www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government) and the NSW Industrial Noise Policy (www.epa.nsw.gov.au/your-environment/noise/industrial-noise) published by the NSW Environment Protection Authority. 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.

NSW Environment Protection Authority— see "noise" section www.environment.nsw.gov.au/noise. NSW Government legislation- access to all NSW legislation, including the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Noise Control Regulation 2000* is available at www.legislation.nsw.gov.au.

Australian Acoustical Society—professional society of noise related professionals www.acoustics.asn.au. **Association of Australian Acoustical Consultants**—professional society of noise related professionals www.aaac.org.au.

Liquor and Gaming NSW—<u>www.liquorandgaming.nsw.gov.au</u>. Standard Condition: I56

I.6 Noise from Mechanical Plant and Equipment

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

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

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

Note: Words in this condition have the same meaning as in the *Noise Policy for Industry* (2017) www.epa.nsw.gov.au/your-environment/noise/industrial-noise/noise-policy-for-industry-(2017)

and *Noise Guide for Local Government* (2013) www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government Standard Condition: 159

J. Miscellaneous Conditions

Nil.

K. Advisings

K.1 Criminal Offences – Breach of Development Consent and Environmental Laws

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

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

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

Warnings as to potential maximum penalties

Maximum penalties under NSW environmental laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

Warning as to enforcement and legal costs

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

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

Note: The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of *the Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. Standard Advising: K1 (Autotext KK1)

K.2 Dial Before You Dig



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

When you contact Dial Before You Dig you will be sent details of all Dial Before You Dig members who have underground assets in the vicinity of your proposed excavation. Standard Advising: K2 (Autotext KK2)

K.3 Builder's Licences and Owner-builders Permits

Section 6.6(2)(d) 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.

The Owner(s) must appoint the Principal Certifier. The Principal Certifier must check that the required insurances are 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.

Note: For more information go to the NSW Fair Trading website www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating
Standard Condition: K5 (Autotext KK5)

K.4 Building Standards - Guide to Standards and Tolerances

The Principal Certifier does not undertake detailed quality control inspections and the role of the Principal Certifier 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 "NSW Guide to Standards and Tolerances 2017" 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 Principal Certifier does not undertake this role.

Council, as the Principal Certifier or otherwise, does not adjudicate building contract disputes between the Principal Contractor, contractors and the Owner.

Note: For more information on the *NSW Guide to Standards and Tolerances* go to the NSW Fair Trading website www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/after-you-build-or-renovate/guide-to-standards-and-tolerances or call 133 220.

Standard Condition: K6 (Autotext KK6)

K.5 SafeWork NSW Requirements

The Work Health and Safety Act 2011 and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

Note: For more information go to the SafeWork NSW website www.safework.nsw.gov.au or call 131 050.

Standard Condition: K7 (Autotext KK7)

K.6 Dividing Fences

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

Note: Further information can be obtained from the NSW Civil and Administrative Tribunal www.ncat.nsw.gov.au/Pages/cc/Divisions/dividing_fences.aspx

Note: Community Justice Centres provide a free mediation service to the community to help people resolve a wide range of disputes, including dividing fences matters. Their service is free, confidential, voluntary, timely and easy to use. Mediation sessions are conducted by two impartial, trained mediators who help people work together to reach an agreement. Around 75% of mediations result in an agreement being reached. Mediation sessions can be arranged at convenient times during the day, evening or weekends. To contact the Community Justice Centres go to www.cjc.nsw.gov.au or call 1800 990 777. Standard Advising: K10 (Autotext KK10)

K.7 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Ms T Ward, Assessment Officer, on (02) 9391 7016.

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

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

Standard Condition: K14 (Autotext KK14)

K.8 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 4.17 of the *Act*.

The securities will not be released until a Final Occupation Certificate has been 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 Refund of Security Bond Application form can be downloaded from

www.woollahra.nsw.gov.au Standard Condition: K15 (Autotext KK15)

K.9 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 (Autotext KK17)

K.10 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 NSW Fair Trading.

Note: For more information go to the NSW Fair Trading website www.fairtrading.nsw.gov.au or call 133 220.

Standard Condition: K18 (Autotext KK18)

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

The Woollahra Development Control Plan 2015 (DCP), Chapter E3 –Tree Management, 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 Woollahra DCP from Council's website www.woollahra.nsw.gov.au or call Council on 9391 7000 for further advice.

Standard Condition: K19 (Autotext KK19)

K.12 Mailboxes

Council has been alerted to an increase in mailbox theft, and as such, all new development, being new dwelling houses and residential flat buildings, are encouraged to have lockable mail boxes.

Standard Advising: K25 (Autotext KK25)

K.13 Dilapidation Report

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

- a) The dilapidation report will be made available to affected property owners on requested and may be used by them in the event of a dispute relating to damage allegedly due to the carrying out of the development.
- b) This condition cannot prevent neighbouring buildings being damaged by the carrying out of the development.
- c) Council will not be held responsible for any damage which may be caused to adjoining buildings as a consequence of the development being carried out.
- d) Council will not become directly involved in disputes between the developer, its contractors and the owners of neighbouring buildings.
- e) In the event that access for undertaking the dilapidation survey is denied the Applicant is to demonstrate in writing to the satisfaction of the Principal Certifier that all reasonable steps were taken to obtain access to the adjoining property. The dilapidation report will need to be based on a survey of what can be observed externally.

 Standard Advising: K23 (Autotext KK23)

K.14 Roads Act 1993 Application

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

- Construction of driveways and/or new or alterations to footpath paving
- Alteration and/or extension to Council drainage infrastructure
- Alteration and/or addition of retaining walls
- Pumping of water to Council's below ground stormwater system
- Installation of soil/rock anchors under the roadway
- Installation of Stormwater outlet pipes across the nature strip

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

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

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

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

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

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

Drainage design works must comply with the Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.

Temporary ground anchors may be permitted, in accordance with Council's "Rock Anchor Policy".

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

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

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

Note: When an application under the *Roads Act* is required, then four (4) weeks is to be allowed for assessment.

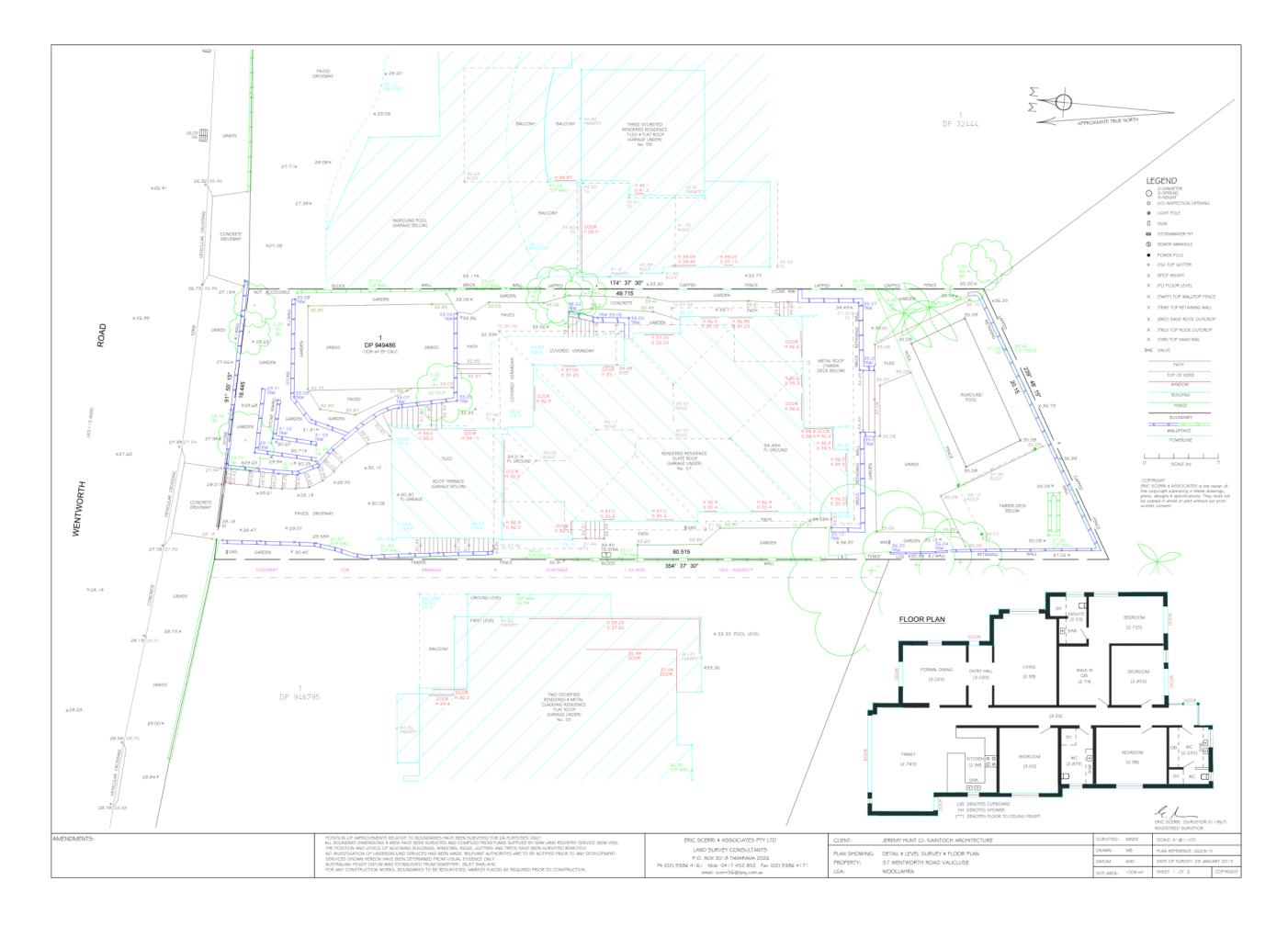
Note: road has the same meaning as in the Roads Act 1993.

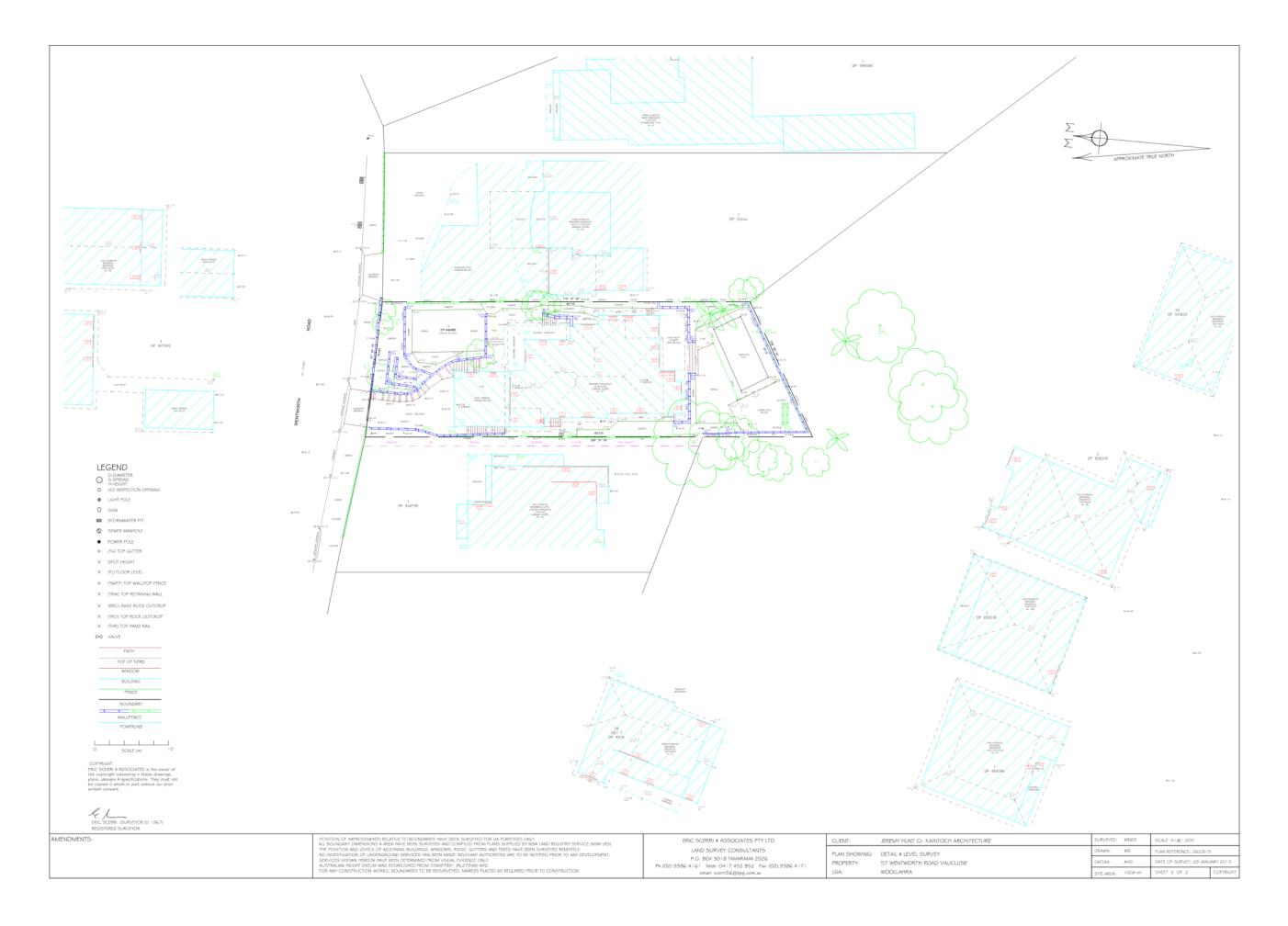
Note: The intent of this condition is that the design of the road, footpaths, driveway crossings and public stormwater drainage works must be detailed and approved prior to the issue of any Construction Certificate. Changes in levels may arise from the detailed design of buildings, road, footpath, driveway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

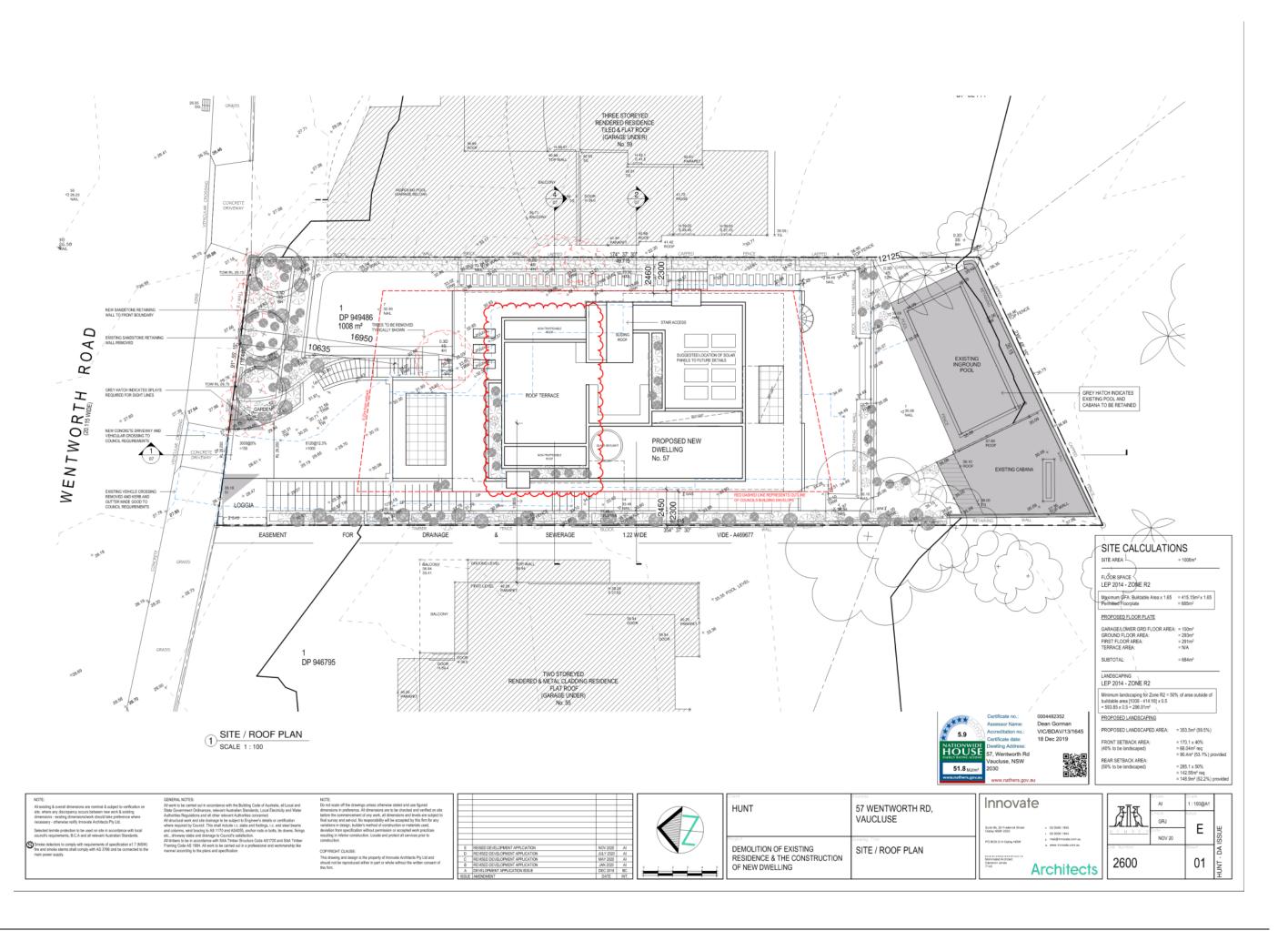
Standard Advising: K24 (Autotext KK24)

Annexures

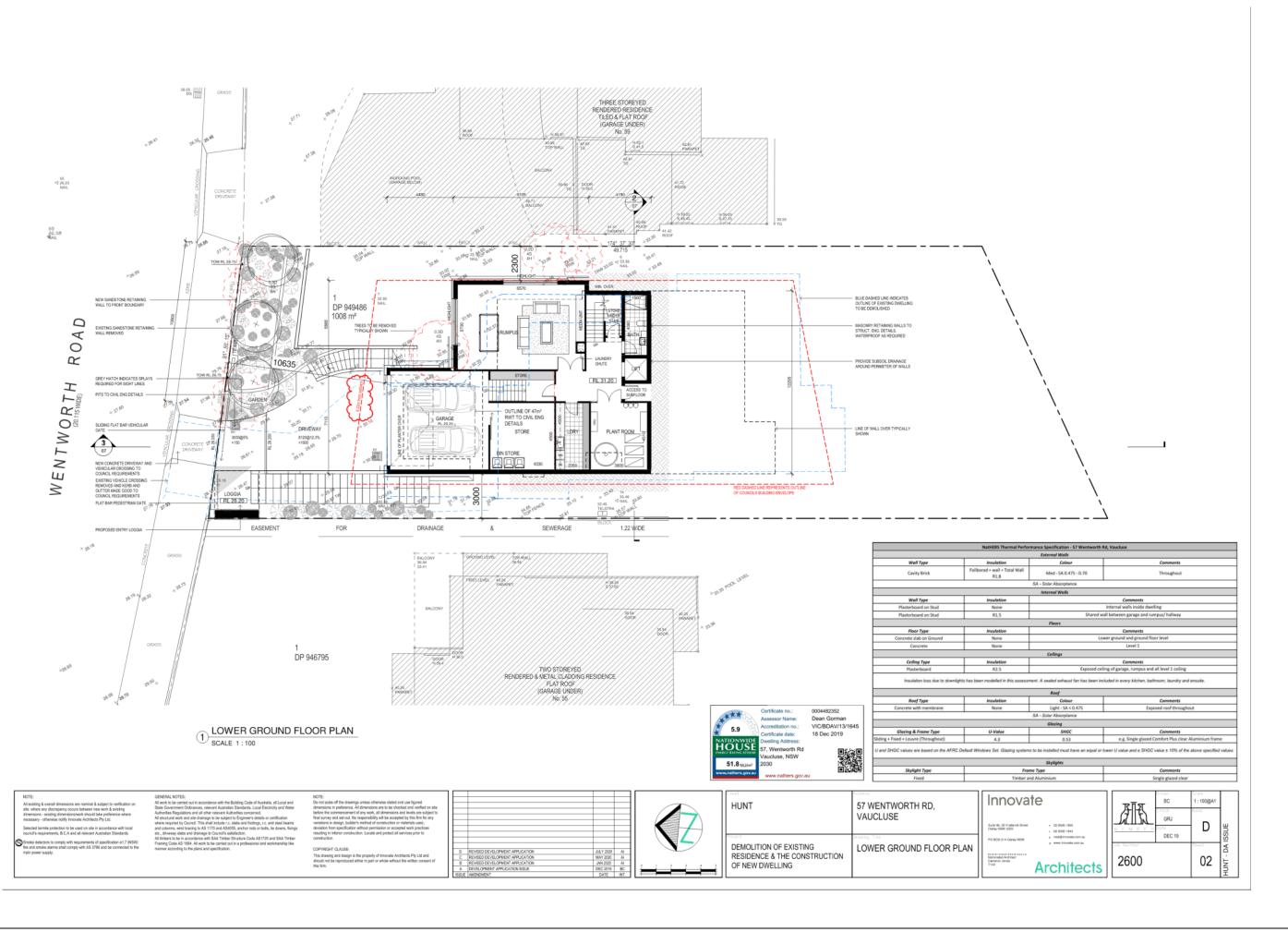
- 1. Survey, Plans and Elevations <u>U</u>
- 2. Clause 4.6 Written Request <u>U</u>
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- 4. Heritage Referral Response $\sqrt{2}$
- 5. Trees and Landscaping Referral Response J

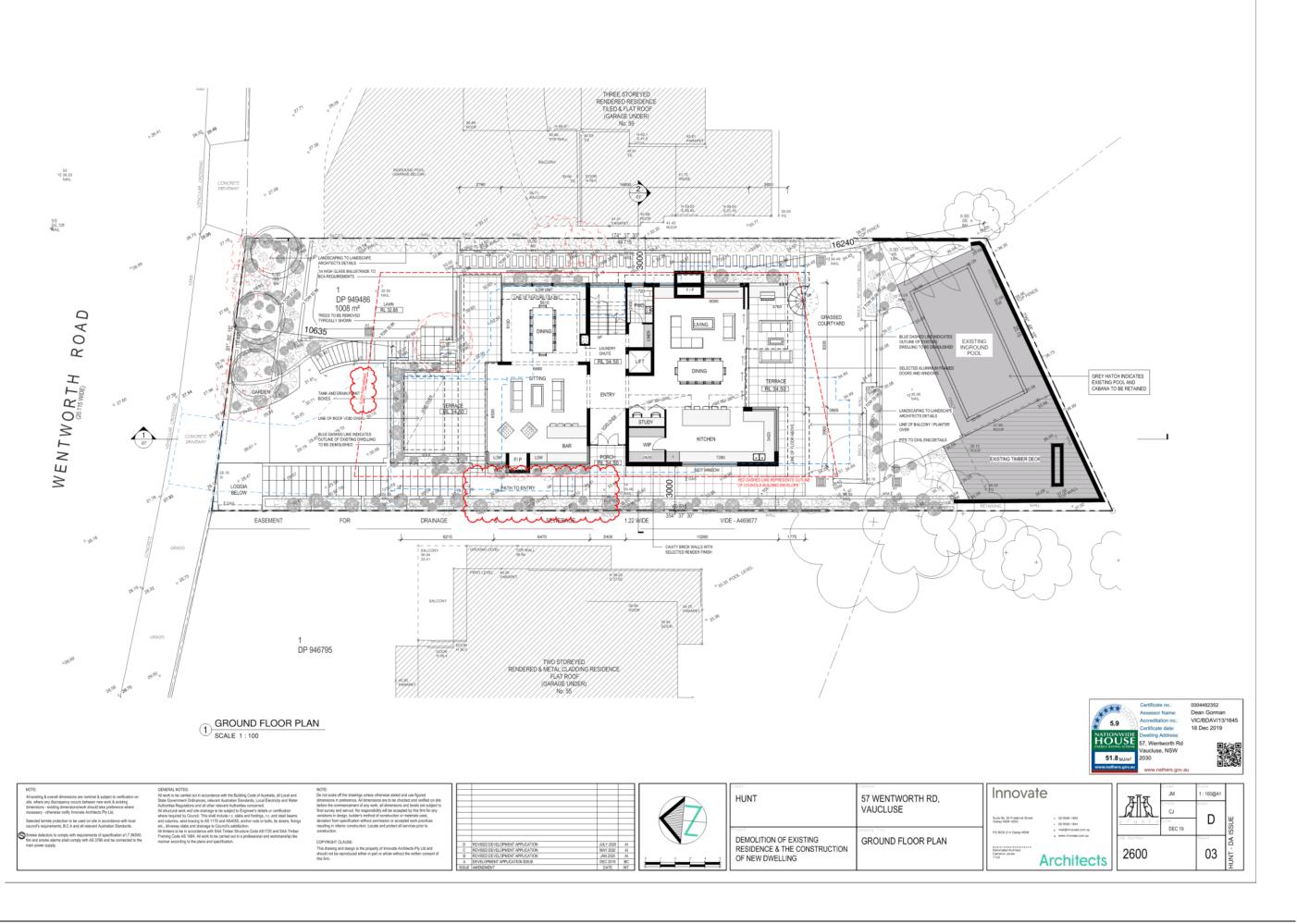


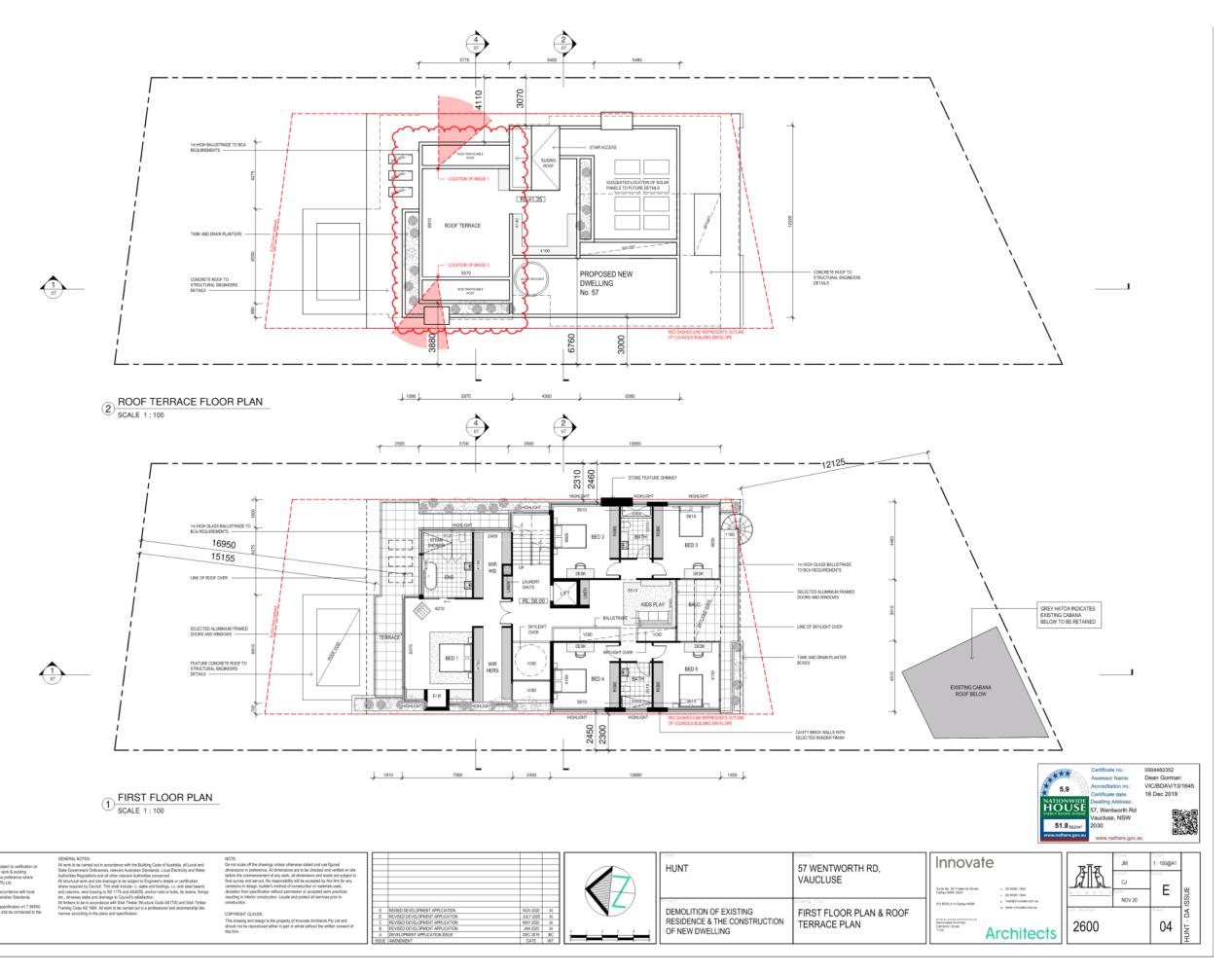


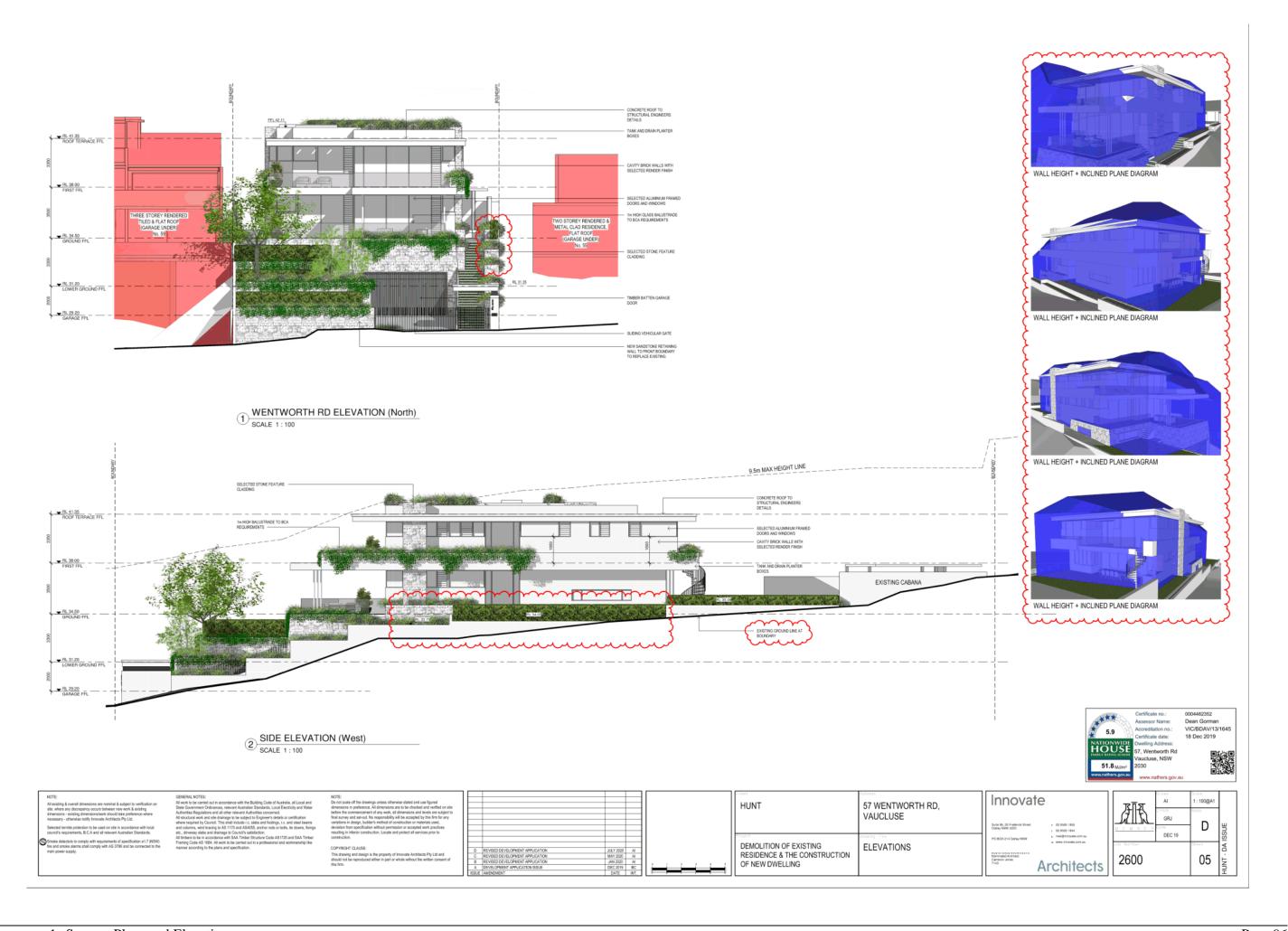


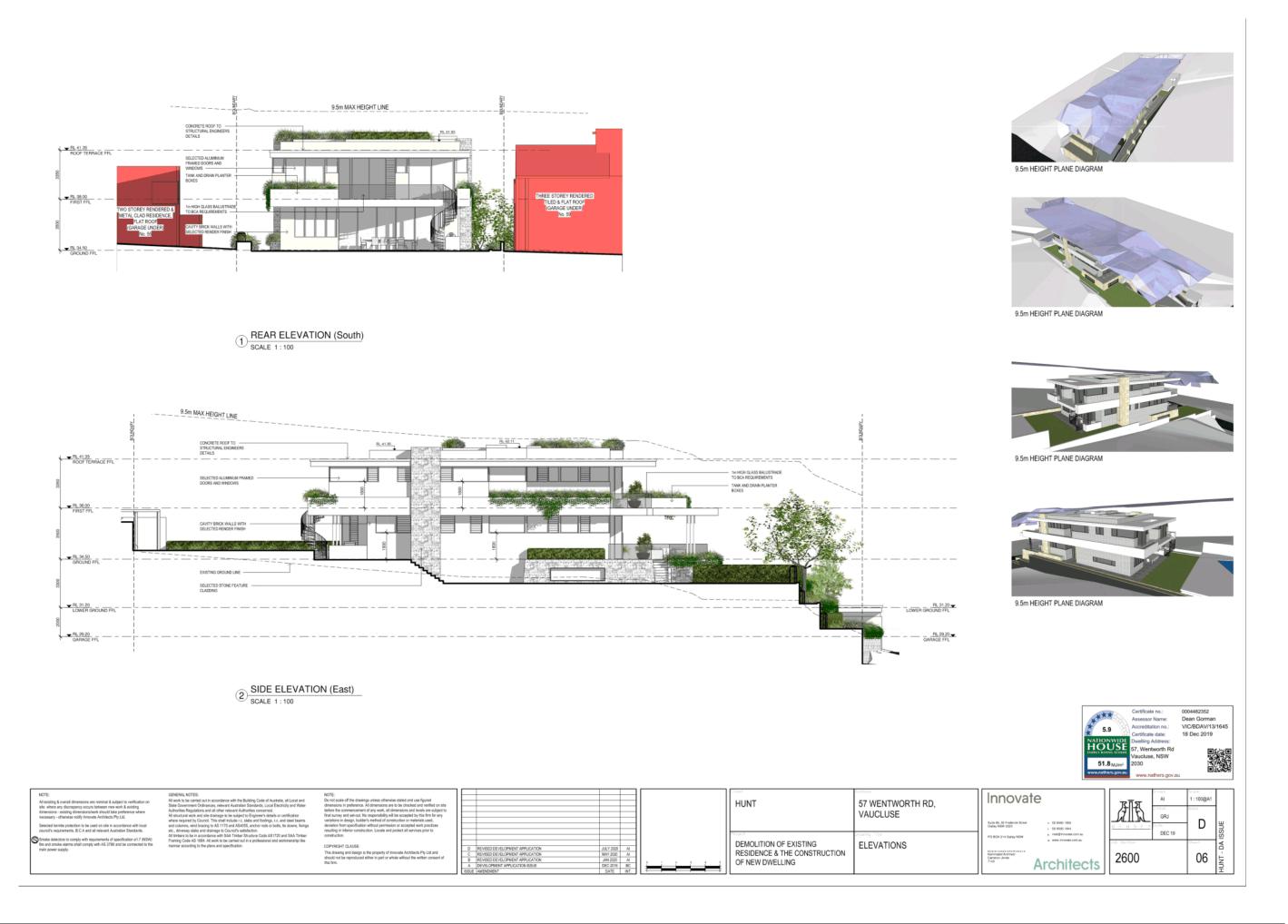
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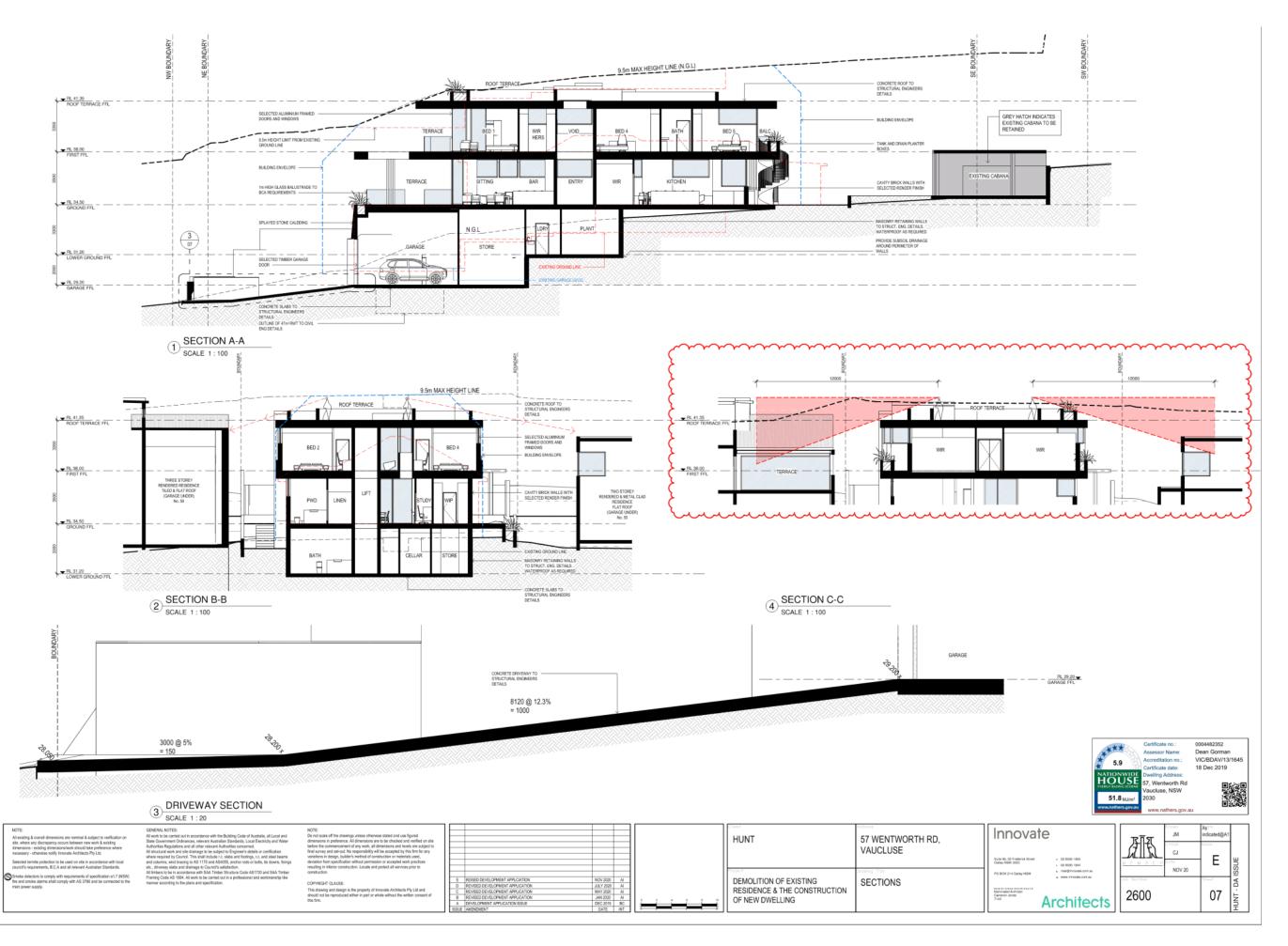




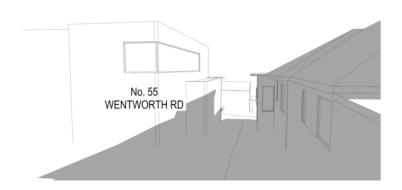








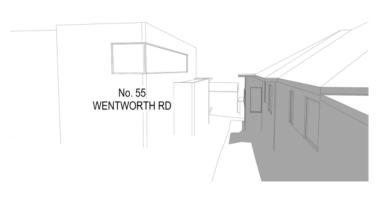




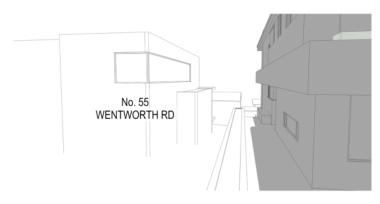
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PROPOSED SHADOWS - 9AM WINTER SOLSTICE (JUNE 21)



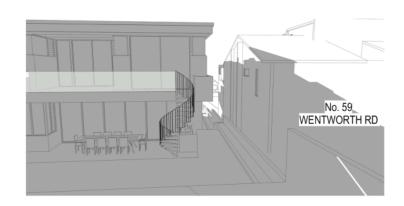
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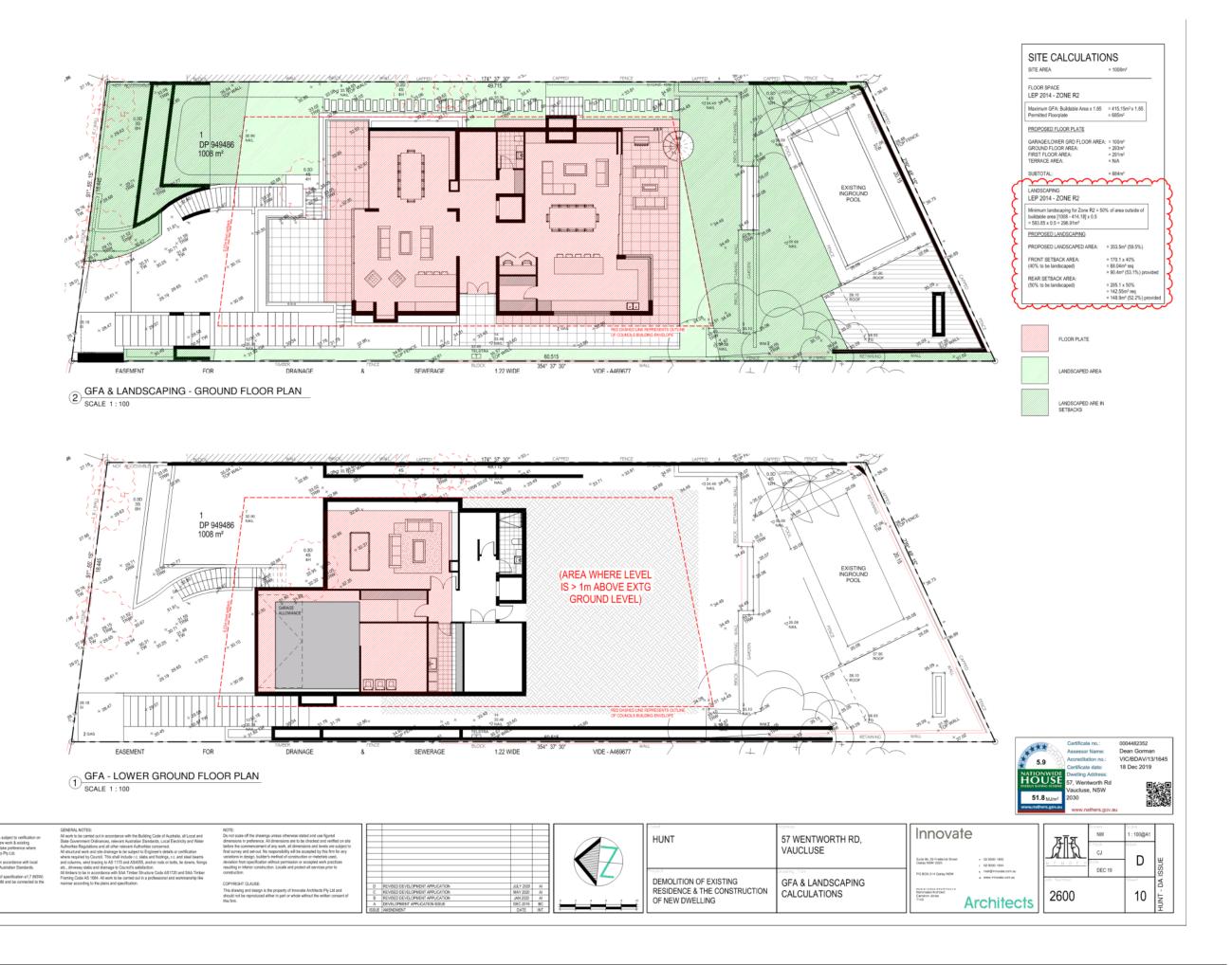
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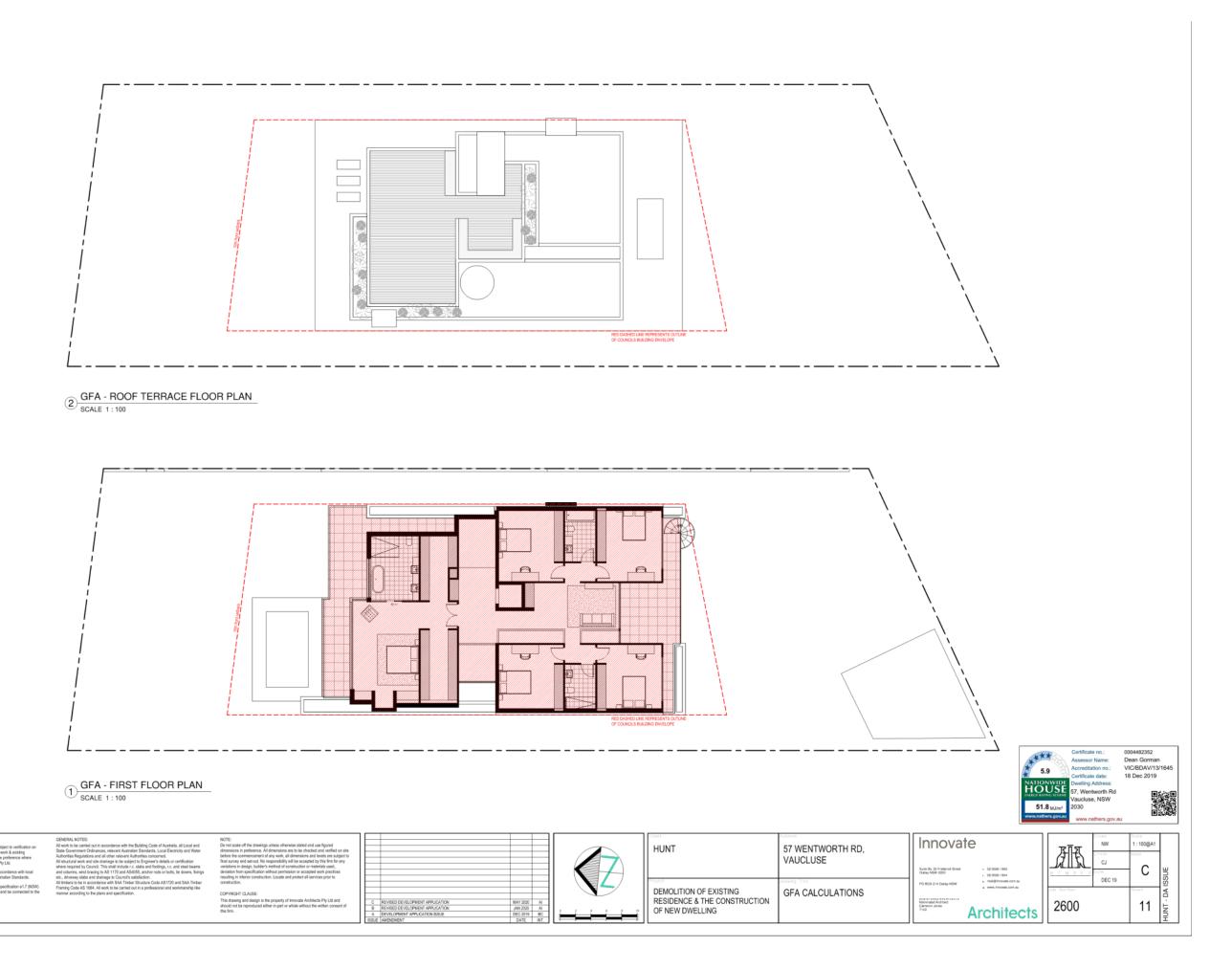
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HUNT	57 WENTWORTH RD, VAUCLUSE
DEMOLITION OF EXISTING RESIDENCE & THE CONSTRUCTION OF NEW DWELLING	SHADOW IMPACT ON NEIGHBOURS - JUNE 21

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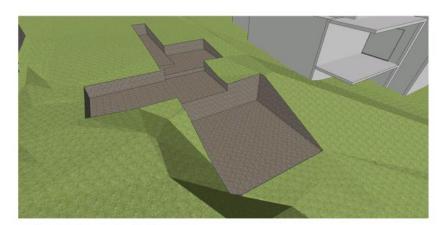




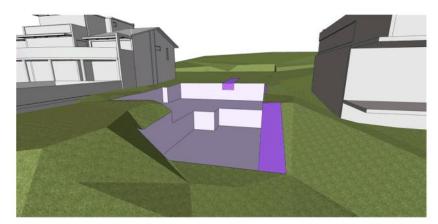
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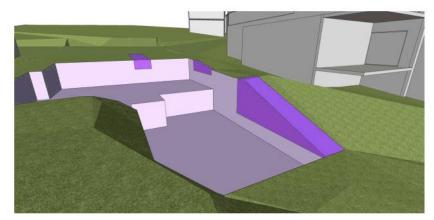
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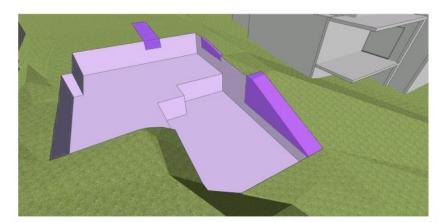
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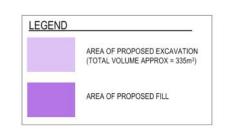
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PROPOSED EXCAVATION & FILL / GROUND LINE



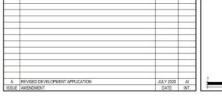


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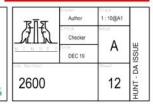


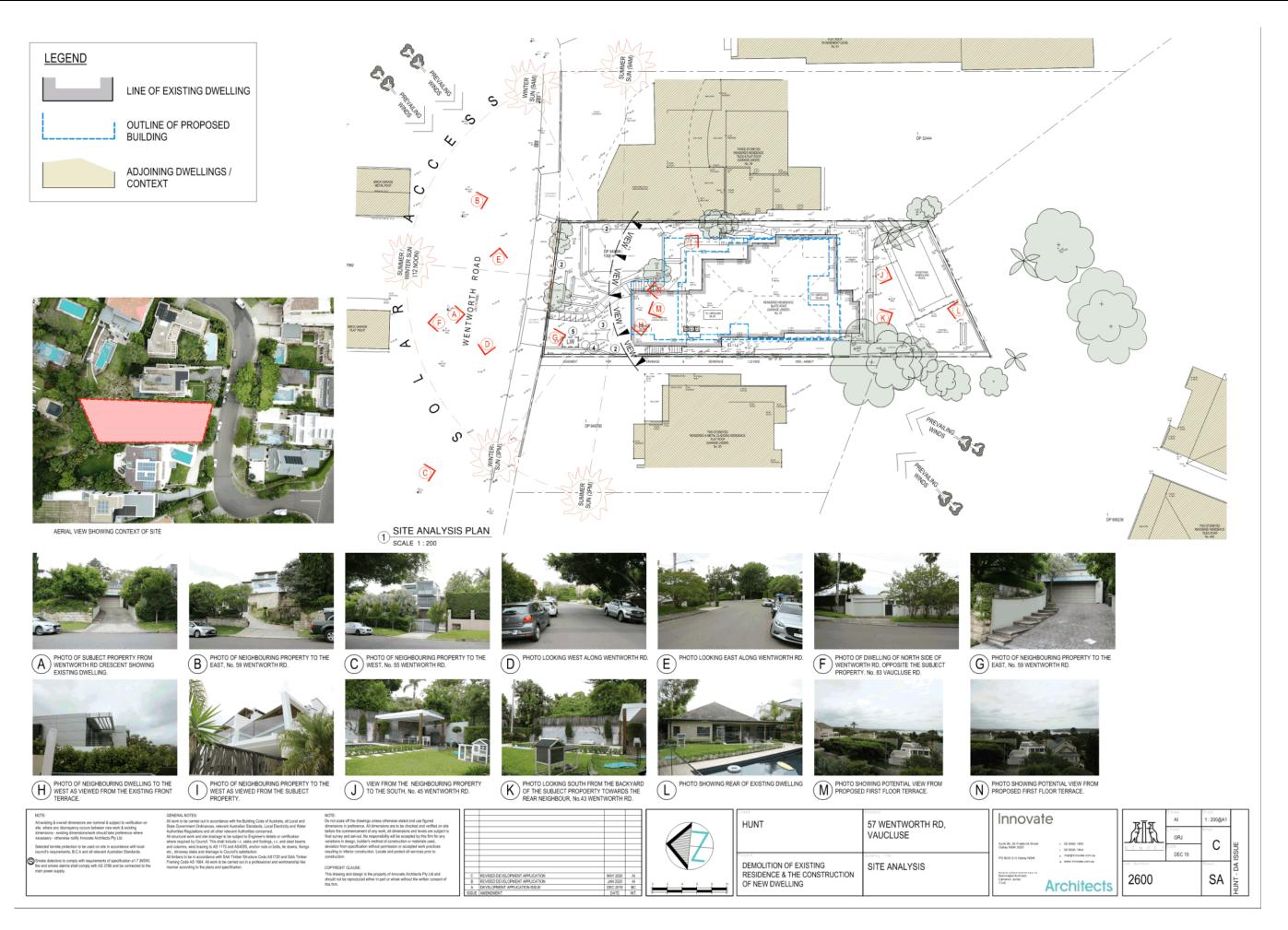
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EXTERNAL FINISHES

57 WENTWORTH RD, VAUCLUSE



EXTERNAL FINISHES

57 WENTWORTH RD, VAUCLUSE



PHOTOGRAPHIC MONTAGE – VIEW LOOKING SOUTHWEST FROM WENTWORTH ROAD.

DEMOLITION OF EXISTING RESIDENCE AND CONSTRUCTION OF A NEW DWELLING
57 WENTWORTH ROAD, VAUCLUSE

DECEMBER 2019





<u>PHOTOGRAPHIC MONTAGE</u> – VIEW LOOKING SOUTH FROM WENTWORTH ROAD.

DEMOLITION OF EXISTING RESIDENCE AND CONSTRUCTION OF A NEW DWELLING
57 WENTWORTH ROAD, VAUCLUSE

DECEMBER 2019



CLAUSE 4.6 REQUEST



For:

Request for Variation of the Height of Buildings Development Standard under Clause 4.6 of Woollahra Local Environmental Plan 2014.

At:

Lot 1 DP 949486, 57 Wentworth Road, Vaucluse

TONY MOODY

BTP (UNSW), LL.B (UTS) (Hons.), MPIA Email: tonymoody@tonymoody.com.au Mobile: 0414 330 807

This Clause 4.6 Request was prepared by:

Director TONY MOODY BTP(UNSW) LL.B (Hons)(UTS) MPIA

Assistant Planner SPYRO GERANGELOS BCPM(UTS)

Reference 19046TM

Tony Moody Planning and Development

1.0 INTRODUCTION

This Clause 4.6 Request is made pursuant to Clause 4.6 of Woollahra Local Environmental Plan 2014 (LEP 2014) and seeks to justify contravention of the Height of Buildings Standard under Clause 4.3 of LEP 2014 in support of a proposed development described as "Proposed Demolition of an Existing Dwelling House and Construction of a New Dwelling House" at 57 Wentworth Road, Vaucluse (subject site).

The architectural plans to which this Clause 4.6 Request relate are the plans drawn by Innovate Architects.

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2.0 FRAMEWORK FOR ASSESSING A CLAUSE 4.6 REQUEST

Clause 4.6 of LEP 2014 provides as follows:

Clause 4.6 - Exceptions to Development Standards

4.6 Exceptions to development standards

- (1) The Objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the Objectives of the particular standard and the Objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:

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- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include all of these zones.

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which <u>State Environmental Planning Policy (Building Sustainability Index:</u> <u>BASIX) 2004</u> applies or for the land on which such a building is situated,
 - (c) clause 5.4.

Comment:

It is noted that the above Clause 4.6 under LEP 2014 is a clause that is part of the Standard Instrument throughout New South Wales.

The provisions of the standard Clause 4.6 have been the subject of judicial consideration in a number of judgements of the Land and Environment Court (Court) and the NSW Court of Appeal.

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A very useful summary of the framework for assessing a Clause 4.6 Request is outlined in the judgement of his Honour, Justice Moore of the Court in *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191 (*Rebel*). At paragraphs 44-47 in the judgement of *Rebel*, Justice Moore sets out "the framework for assessing a Clause 4.6 Request" which is outlined below:

"The framework for assessing a cl 4.6 request

- 44. In his recent decision in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 (Initial Action), Preston CJ addressed the decision-making approach to be undertaken by a consent authority when assessing the adequacy of a request for a dispensation from compliance with a development standard in a local environmental plan. The power to grant such a dispensation is given by cl 4.6 of a local environmental plan. Clause 4.6 is a standard provision in local environmental plans throughout New South Wales. It takes a common form which his Honour set out, at [8], and as I also have, relevantly, earlier at [17].
- 45. His Honour set out (between [5] and [29]) a comprehensive analysis of the approach to be taken to determining a request made pursuant to cl 4.6.
- 46. For me to grant development consent for this development as it contravenes the permitted maximum building height development standard, cl 4.6(4)(a) requires me to be satisfied that:
 - The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development (cl 4.6(3)(a) and cl 4.6(4)(a)(i)); and
 - 2. The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)); and
 - The proposed development will be in the public interest because it is consistent with the objectives of the standard in question - set out in cl 4.3 of the LEP (cl 4.6(4)(a)(ii)); and
 - 4. The proposed development will be in the public interest because it is consistent with the objectives of the R4 High Density Residential Zone (cl 4.6(4)(a)(ii)),
- 47. For the first of the above matters, Preston CJ made it clear, in Initial Action at [25], that the Court need not be directly satisfied that compliance is unreasonable or unnecessary and sufficient environmental planning grounds exist, but rather that it

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"only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed" those matters."

Accordingly, this Clause 4.6 Request must satisfy the following: -

- (1) That the Clause 4.6 Request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development.
- (2) That the Clause 4.6 Request adequately establishes sufficient environmental planning grounds to justify contravening the development standard.
- (3) That the proposed development will be in the public interest because it is consistent with the Objectives of the Height of Buildings Standard.
- (4) That the proposed development will be in the public interest because it is consistent with the Objectives of the Low Density R2 zone.

As noted above, Justice Moore followed the previous decision of his Honour, Chief Justice Preston in *Initial Action* in which the Chief Justice "addressed the decision-making approach to be undertaken by a consent authority when assessing the adequacy of a request for a dispensation from compliance with a development standard in a Local Environmental Plan".

A recent decision in the NSW Court of Appeal has further considered the construction of Clause 4.6 (4)(a)(i), with particular relevance as to state of satisfaction necessary to be held by the consent authority in considering a Clause 4.6 Request (*Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 at [21]-[24]).

More recently, Commissioner Dickson in *Raissis v Randwick City Council* [2019] NSWLEC 1040 (*Raissis*) referred to the seminal decision of his Honour, Chief Justice Preston in *Initial Action*.

As noted in paragraphs 19 and 20 in *Raissis*, Commissioner Dickson advised that: "for there to be power to grant development consent for a development that contravenes a development standard, I must be satisfied that:

- The proposed development will be consistent with the Objectives of the zone (cl 4.6(4)(a)(ii)),
- The proposed development will be consistent with the Objectives of the standard in question (cl 4.6(4)(a)(ii)),

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- The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a) and cl 4.6(4)(a)(i)), and
- The written request adequately demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).
- 20. Further at cl 4.6(4)(a)(ii), the Court must be satisfied that the development will be in the public interest because it is consistent with the Objectives of the Building Separation Standard and the Objectives of the B3 zone: Initial Action v Woollahra Municipal Council [2018] NSWLEC 118 (Initial Action) at [26]."

Clearly, Commissioner Dickson followed the previous Court judgements in *Initial Action* and *Rebel*.

The following sections of this Clause 4.6 Request seek to address the matters listed in (1)-(4) above in the judgement of Justice Moore in *Rebel* in relation to variation of the Height of Buildings Standard.

It is also relevant to consider the Objects of Section1.3 of the Environmental Planning and Assessment Act (the Act) which states as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,

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- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State, (j) to provide increased opportunity for community participation in environmental planning and assessment.

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3.0 THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT

Clause 4.3 Height of Buildings Standard

- (1) The Objectives of this clause are as follows:
 - (a) to establish building heights that are consistent with the desired future character of the neighbourhood,
 - (b) to establish a transition in scale between zones to protect local amenity,
 - (b) to minimise the loss of solar access to existing buildings and open space,
 - (c) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,
 - (d) to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.
- (2A) Despite subclause (2) and clause 4.3A, the maximum height of a dwelling house, dual occupancy or semi-detached dwelling on land in Zone R3 Medium Density Residential is 9.5 metres.
- (2B) Despite subclause (2) and clause 4.3A, the maximum height of a building on a battle-axe lot on land in Zone R3 Medium Density Residential is 9.5 metres.

Comment:

Pursuant to Clause 4.3 of LEP 2014, the Height of Buildings Standard applicable to the proposed development and the subject site is 9.5m.

The term "building height" is defined in the Dictionary of LEP 2014 as follows:

"building height (or height of building) means:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

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including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like."

The term "ground level (existing)" is defined in the Dictionary of LEP 2014 as follows:

"ground level (existing) means the existing level of a site at any point."

Based on the architectural plans prepared by Innovate Architects, the proposed development has a proposed maximum building height of 11.88m above existing ground level which represents a 2.38m breach of the 9.5m Height of Buildings Standard. The breach represents a numerical breach of 25.1%.

For the reasons outlined in this Clause 4.6 Request, I consider that variation of the Height of Buildings Standard is eminently reasonable in the circumstances of the proposed development.

4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

I consider that compliance with the Height of Buildings Standard in Clause 4.3 of LEP 2014 is unreasonable and unnecessary in the circumstances of the proposed development for the following reasons:

- The breach is a numerically significant one but, as you are aware, the degree
 of the breach is not determinative in the final decision as to whether a Clause
 4.6 Request should be supported.
- I particularly note that the great majority of the proposed dwelling is significantly below the 9.5m Height of Buildings Standard. Please refer to the architectural plans which clearly evidence the fact that the great majority of the proposed dwelling is significantly below the 9.5m Height of Buildings Standard.
- The proposed dwelling is strongly articulated.
- The proposed development does not create adverse unreasonable impacts on adjoining properties or the public domain as outlined in this Clause 4.6
 Request and my accompanying Statement of Environmental Effects (SEE),
- I also consider that the proposed development, notwithstanding the breach of the Height of Buildings Standard, will result in positive Planning Outcomes outlined in Section 9.0 of this Clause 4.6 Request and SEE.
- For the reasons outlined in my SEE, the proposed development "is of a height and scale that achieves the desired future character of the neighbourhood" for the following reasons:
 - (i) For the reasons outlined in my SEE, the proposed development will not have an adverse impact on the public domain.
 - (ii) The proposed development represents an improvement in the streetscape character. On this point, the proposed development includes improved landscaped area within the front setback area, and a reduced gradient for the proposed driveway compared to the existing driveway, thus resulting in improved safety for vehicles of future occupants, other vehicles and pedestrians.
 - (iii) The proposed dwelling is significantly modulated/articulated. The proposed development also includes an attractive modern typology and palette of external colours and materials.

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- (iv) There is no impact on the public domain in terms of public views of Sydney Harbour and surrounding areas.
- (v) For the reasons outlined in accompanying SEE, I consider that there is no unreasonable impact on solar access to existing adjoining buildings and their open space areas.
- (vi) For the reasons outlined in accompanying SEE, I consider that there are no unreasonable impacts on views, privacy, overshadowing or visual intrusion/impact on existing adjoining buildings and their open space areas.
- (vii) The proposed dwelling complies with the Front Setback Control, Side Setback Control and Rear Setback Control.
- (viii) According to the "GFA Calculation" plan prepared by the Architects, the proposed dwelling complies with the Floorplate Control.

Please refer to additional comments in my accompanying SEE in support of this Clause 4.6 Request.

5.0 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

In *Initial Action*, his Honour, Chief Justice Preston provides the following guidance in paragraph 23:

"As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be 'environmental planning grounds' by their nature: See Four2Five Pty Ltd. v Ashfield Council. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act including the objects in s1.3 of the EPA Act."

The environmental planning grounds that justify contravening the Height of Buildings Standard include, but are not limited to, the following:

- The great majority of the proposed dwelling is significantly below the 9.5m Height of Buildings Standard. Please refer to the architectural plans.
- The proposed dwelling is strongly articulated.
- The proposed development is consistent with the Object of the Act "to promote
 the orderly and economic use and development of land" as it provides for more
 modern accommodation on the subject site generally within the existing footprint
 whilst respecting the character of the locality and adjoining premises.
- The proposed development will result in an increase in the quantity and quality
 of landscaping on the subject site compared to the existing situation, including
 the front setback area fronting Wentworth Road.
- The visual aesthetics of the proposed development will be significantly improved compared to the existing building. Of particular note is the proposed flat roof which will provide a more visually appealing dwelling.
- The use of attractive external finishes, particularly the proposed flat roof and articulated facades, will positively contribute to the streetscape and the public domain.

6.0 THE PROPOSED DEVELOPMENT WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE PARTICULAR STANDARD.

The Objectives of the Height of Buildings Standard are:

- (1) The Objectives of this clause are as follows:
 - (a) to establish building heights that are consistent with the desired future character of the neighbourhood,
 - (b) to establish a transition in scale between zones to protect local amenity,
 - (c) to minimise the loss of solar access to existing buildings and open space,
 - (d) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,
 - (e) to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.
 - (2) The height of a building on any land is not to exceed the maximum height shown for the land on the <u>Height of Buildings Map</u>.
 - (2A) Despite subclause (2) and clause 4.3A, the maximum height of a dwelling house, dual occupancy or semi-detached dwelling on land in Zone R3 Medium Density Residential is 9.5 metres.
 - (2B) Despite subclause (2) and clause 4.3A, the maximum height of a building on a battle-axe lot on land in Zone R3 Medium Density Residential is 9.5 metres.

Comment:

Notwithstanding the breach of the Height of Buildings Standard, I consider that the Objectives of the Height of Buildings Standard are satisfied for the following reasons:

- (a) The proposed height is consistent with adjoining buildings and the desired future character for the reasons outlined in my SEE and this Clause 4.6 Request.
- (b) The subject site is within the R2 Low Density Residential zone and the proposal is of a height and scale which achieves the desired future character of the neighbourhood.

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- (c) For the reasons outlined in my SEE and this Clause 4.6 Request, the proposed development will not have an adverse impact on the public domain.
- (d) I consider that the proposed development will result in an improvement compared to the existing development in terms of its visual aesthetics when viewed from the public domain.
- **(e)** For the reasons outlined in this Clause 4.6 Request and my SEE, there is no unreasonable impact on the amenity of existing adjoining buildings and their open space areas.

7.0 PROPOSED DEVELOPMENT WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES FOR DEVELOPMENT WITHIN THE ZONE

The Objectives of the R2 Low Density zone are:

Objectives

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.

Comment:

The zoning of the subject site is R2 Low Density Residential.

The proposed residential dwelling is a permissible form of development within the zone.

For the reasons outlined in my SEE, I consider that the proposed development satisfies the relevant Objectives of the R2 Low Density Residential zone. I particularly note the following:

- In relation to the first objective, the proposed development contributes to the housing needs of the community within a low density residential environment.
- The second objective is not applicable.
- In relation to the third objective, I consider that the proposed development is compatible with the character and amenity of the surrounding neighbourhood for the reasons outlined in my SEE and this Clause 4.6 Request.
- In relation to the fourth objective, I consider that the proposed height and scale are eminently reasonable for the reasons outlined in my SEE and this Clause 4.6 Request.
- I consider that the proposed development, notwithstanding the breach of the Height of Buildings Standard, is of a satisfactory height and scale and achieves the desired

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future character of the neighbourhood for the reasons outlined in this Clause 4.6 Request and my SEE.

- Most importantly, the great majority of the proposed dwelling is significantly below the
 9.5m Height of Buildings Standard.
- The proposed dwelling is strongly articulated.

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8.0 STATE OR REGIONAL ENVIRONMENTAL PLANNING SIGNIFICANCE AND THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD

The contravention of the Height of Buildings Standard in the circumstances of this application does not raise any matter of significance for State or regional environmental planning.

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9.0 POSITIVE OUTCOMES OF THE PROPOSED DEVELOPMENT

I consider that the proposed development provides positive outcomes including, but not limited to, the following:

- The proposed development will improve the safety of pedestrians and other
 road traffic, given the proposed lowering of the existing driveway to reduce its
 gradient, which will improve the ability of future occupants of the subject site to
 see any oncoming pedestrians or traffic. Please refer to additional comments
 in my SEE.
- The proposed development will improve the quality and area of landscaping on the subject site.
- The proposed dwelling has significant modulation/articulation.
- The design of the proposed dwelling has an attractive modern typology, with a
 pleasing palette of colours and materials.
- The proposed front façade facing Wentworth Road will result in an improvement in terms of passive surveillance of the road.
- The visual aesthetics of the proposed development will be significantly improved compared to the existing dwelling for the reasons outlined in my SEE and this Clause 4.6 Request.
- The use of attractive external finishes will increase variety to the existing building and positively contribute to the streetscape and the public domain.
- Most importantly, the great majority of the proposed dwelling is significantly below the 9.5m Height of Buildings Standard.
- · The proposed dwelling is strongly articulated.

CONCLUSION

For the reasons outlined in this Clause 4.6 Request, I consider that variation of the Height of Buildings Standard be supported in order to facilitate approval of the proposed development.



TONY MOODY

BTP(UNSW), LL.B (UTS)(Hons.), MPIA

Dated: 10 February, 2020.

Completion Date: 27/06/2020

REFERRAL RESPONSE – DEVELOPMENT ENGINEERING

FILE NO: Development Applications/ 520/2019/1
ADDRESS: Development Applications/ 520/2019/1
57 Wentworth Road VAUCLUSE 2030

PROPOSAL: Demolition of existing dwelling and construction of replacement

dwelling, with associated landscaping and site works

FROM: Mehrnaz Jamali - Development Engineer

TO: Ms T Ward

1. ISSUES

None. Refer to comments and conditions.

2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced 19046TM, prepared by Tony Moody Planning & Development, dated 23 December 2019.
- Architectural Plans, Job No. 2600, Issue C, prepared by Innovate Architects, dated May 2020.
- Survey, referenced 2623/15, prepared by Eric Scerri, dated 29 January 2015.
- Stormwater Management Plan, referenced 191165, Rev 5, prepared by Greenview Consulting, dated 01/05/2020.
- Statement Stormwater Issues for Proposed Residential Development, referenced 191165, prepared by Greenview Consulting, dated 1 May 2020.
- · Drains Model.
- Geotechnical Investigation Report, Job No: AG-480_1rv1, prepared by Australian Geotechnical, dated 01/05/2020.
- Structural Excavation Advice for Proposed Residential Development, Job No. 191165, prepared by Greenview Consulting, dated 29 April 2020 and 4 May 2020. (Both reports are identical).
- Traffic Statement Proposed Driveway, referenced 19.346r01v05, prepared by Traffix, dated 19 December 2019. (Not to be referenced in the consent).
- Council's Team Leader Infrastructure Asset Management comments, Email dated 30/04/2020
- Development Engineering referral response, dated 19/04/2020.

3. ASSESSMENT

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

a. Site Drainage comments

There are no objections to the Stormwater Management Plan, referenced 191165, Rev 5, prepared by Greenview Consulting, dated 01/05/2020 subject to the following conditions;

- Provision of a Rainwater tank having a volume minimum 50m3 and calculated to the top of water level only.
- The permissible site discharge to Council's kerb and gutter shall be limited to 20 l/s and the additional site storage required volume must be determined by using a computer modelling such as DRAINS. The electronic copy together with a hard copy of the Drains model shall be submitted. Note: all details and levels in the model shall be consistent with that depicted on the latest Stormwater Management Plan. The model shall include the entire site area as 'post catchment' together with tank levels and level of the final point of discharge.
- Only roof water shall drain to the rainwater tank. All surface areas and trafficable areas shall bypass the tank.
- Subsoil shall not drain to Councils kerb and gutter. All belowground structures to be tanked
- The Drainage conduits discharging to Council's kerb and gutter shall not traverse the proposed vehicular crossing.

The concept plan is subject to the submission and approval of Stormwater Management Plan for the site prior to release of the Construction Certificate. Details are to be in accordance with Council's Chapter E2 "Stormwater and Flood Risk Management" DCP and Local Approvals Policy. This is to ensure that site stormwater is disposed in a controlled and sustainable manner.

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

b. Flooding & Overland Flow comments

Not affected.

c. Impacts on Council Infrastructure comments

- Stormwater connection to Council's kerb and gutter. Note: the Drainage conduits discharging to Council's kerb and gutter shall not traverse the proposed vehicular crossing.
- The existing boundary wall encroaching over Council's road reserve shall be demolished and relocated inside property boundary.
- Reconstruction of a standard vehicular crossing having a width of 3m at property boundary and perpendicular to the rod carriageway. There shall be a clearance of 10.8m between the proposed vehicular crossing and the existing neighbouring crossing to the east (No. 59 Wentworth Road) layback to layback.

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

d. Traffic comments

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

e. Vehicle Access & Accommodation comments

The access and parking layout is generally satisfactory subject to the following condition;

• Driveway splays (inside property boundary) shall be provided in accordance with Figure 3.3 in Section 3.2.4 of AS/NZS 2890.1. Alternatively a fence to a maximum height of 0.9m is permitted in the splay area. Exceptions to this may be accepted where an object in the adjoining property creates an obstruction to visibility within the splay area.

f. Geotechnical, Hydrogeological and/or Structural comments

A Structural Excavation Advice for Proposed Residential Development, referenced Nob No. 191165, Rev 5, prepared by Greenview Consulting, dated 29 April 2020 and 4th May 2020 addressing Council concerns and considered satisfactory.

A Geotechnical Investigation, Job No: AG-480_1rv1, prepared by Australian Geotechnical, dated 01/05/2020 has been submitted in support of the application. The proposal involves excavation for lower ground floor, garage, store and rainwater tank (base IL 29.2) to a depth of about 3m.

*Note: The amended rainwater tank base is IL26.45 however and the Geotechnical Report shall be revised to take the additional depth into consideration.

The report identified the subsurface conditions as:

- a) Fill to depth silty sand, fine sand and fine gravel to depths of about 0.3m to 0.7m
- b) Sandy clay various densities to depths of about 0.9m to 1.4m.
- c) Bedrock right beneath.
- d) Groundwater appeared not to be an issue. However additional conditions covering ground anchors have been imposed for certainty.
- e) The Structural Excavation Advice stated that ground anchors will not be utilised.
- f) Uncertainty on the use of underpinning. As such conditions covering underpinning have been imposed.

The report made comments and recommendations on the following:

- Excavation and support
- Footings
- Geotechnical/ hydrogeological monitoring program
- Conditions of recommendations

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

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

Note: Use of any Ground Anchors or any retention system extending beyond site boundaries requires the approval of neighbouring properties in writing.

g. Other matters

None.

4. RECOMMENDATION

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

Conditions of Consent

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

A. General Conditions

A.5 Approved Plans & Supporting documents

Reference	Description	Author/Drawn	Date(s)
191165, Rev 5	Stormwater Management Plan	Greenview	01/05/2020
		Consulting	
191165	Statement - Stormwater Issues for	Greenview	1 May 2020
	Proposed Residential Development	Consulting	
Job No: AG-	Geotechnical Investigation Report	Australian	01/05/2020
480_1rv1		Geotechnical	
Job No. 191165	Structural Excavation Advice for	Greenview	4 May 2020
	Proposed Residential Development	Consulting	

A.8 Ancillary Aspect of the Development (Repair Damaged Infrastructure)

A.30 No Underpinning works (Special Condition)

This development consent does <u>NOT</u> give approval to any works outside the boundaries of the subject site including any underpinning works to any structures on adjoining properties.

B. Conditions which must be satisfied PRIOR TO THE DEMOLITION of any building or construction

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

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C. Conditions which must be satisfied <u>PRIOR</u> TO THE ISSUE OF ANY <u>CONSTRUCTION CERTIFICATE</u>

C.5 Payment of Security, Levies and Fees

Property Damage Security Deposit - making good any damage caused to any property of the Council	\$74,011	No	T115
Public Road/Footpath Infrastructure Inspection Fee	\$471	No	T45

C.13 Road and Public Domain Works

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

- a) Stormwater connection to back of Council's kerb and gutter. Note: the Drainage conduits discharging to Council's kerb and gutter shall not traverse the proposed vehicular crossing.
- b) The existing boundary wall encroaching over Council's road reserve shall be demolished and relocated inside property boundary.
- c) Reconstruction of a full width vehicular crossing having a width of 3m at property boundary and perpendicular to the road carriageway in accordance with Council's standard driveway drawing RF2-D. Note: there shall be a clearance of 10.8m between the proposed vehicular crossing and the existing neighbouring crossing to the east (No. 59 Wentworth Road) layback to layback.
- d) A design longitudinal surface profile for the proposed driveway must be submitted for assessment.
- e) Removal and replacement of all cracked or damaged kerb and gutter for the full width of all property in accordance with Council's standard drawing RF3.
- Removal of any driveway crossings and kerb laybacks which will be no longer required.
- g) Reinstatement of footpath, kerb and gutter to match existing.
- h) Where a grass verge exists, the balance of the area between the footpath and the kerb over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of Couch turf.

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

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

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

Note: See condition K24 in Section K. Advisings of this Consent titled Roads Act Application.
Standard Condition: C13

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

C.36 Professional Engineering Details

C.40 Geotechnical and Hydrogeological Design, Certification & Monitoring

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

Note: the documented Geotechnical Investigation Report, Job No: AG-480_1rv1, prepared by Australian Geotechnical, dated 01/05/2020 shall be revised to account for the additional excavation required for the proposed rainwater tank with a base invert level of 26.45.

These details must be certified by the professional engineer to:

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

details a contingency plan.
 Standard Condition: C40 (Autotext: CC40)

C.41 Ground Anchors

This development consent does <u>NOT</u> give approval to any ground anchors encroaching onto adjoining private properties. Use of any Ground Anchors extending beyond site boundaries requires the approval of neighbouring private properties in writing.

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

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

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

If temporary ground anchors under Council land are proposed, a separate application, including payment of fees, must be made to Council under section 138 of the *Roads Act* 1993. Application forms and Council's "Rock Anchor Policy" are available from Council's website. Approval may be granted subject to conditions of consent. Four weeks should be allowed for assessment.

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

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

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

Standard Condition: C41 (Autotext: CC41)

C.45 Parking Facilities

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

a) Driveway splays (inside property boundary) shall be provided in accordance with Figure 3.3 in Section 3.2.4 of AS/NZS 2890.1. Alternatively a fence to a maximum height of 0.9m is permitted in the splay area. Exceptions to this may be accepted where an object in the adjoining property creates an obstruction to visibility within the splay area. Access levels and grades must comply with access levels and grade required by Council under the *Roads Act* 1993.

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

Standard Condition: C45 (Autotext: CC45)

C.51 Stormwater Management Plan (site greater than 500m²)

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

- General design in accordance with Stormwater Management Plan, referenced 191165, Rev 5, prepared by Greenview Consulting, dated 01/05/2020, other than amended by this and other conditions;
- The discharge of stormwater, by direct connection, to back of kerb on Wentworth Road;
 - a. The Drainage conduits discharging to Council's kerb and gutter shall not traverse the proposed vehicular crossing;
 - b. The permissible site discharge to Council's kerb and gutter shall be limited to 20 l/s and the additional site storage required volume must be determined by using a computer modelling such as DRAINS. The electronic copy together with a hard copy of the Drains model shall be submitted. Note: all details and levels in the model shall be consistent with that depicted on the latest Stormwater Management Plan. The model shall include the entire site area as 'post catchment' together with tank levels and level of the final point of discharge.
 - Subsoil shall not drain to Councils kerb and gutter. All belowground structures to be tanked.
- Any rainwater tank (see Note below) required by BASIX commitments including their overflow connection to the Stormwater Drainage System,
- d) General compliance with Woollahra DCP 2015 Chapter E2 Stormwater and Flood Risk Management, and
- e) Provision of a Rainwater tank having a volume minimum 50m3 and calculated to the top of water level only.
 Only roof water shall drain to the rainwater tank. All surface areas and trafficable areas shall bypass the tank.

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

Layout Plan

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

It must include:

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- a) All pipe layouts, dimensions, grades, lengths and material specification,
- b) Location of all stormwater retention systems,
- c) All invert levels reduced to Australian Height Datum (AHD),
- d) Location and dimensions of all drainage pits,
- e) Point and method of connection to Council's drainage infrastructure, and
- f) Overland flow paths over impervious areas.

Retention System Details;

- a) Any potential conflict between existing and proposed trees and vegetation,
- b) Internal dimensions and volume of the proposed retention storage,
- c) Diameter of the outlet to the proposed retention storage basin,
- Plans, elevations and sections showing the retention storage basin invert level, centre-line level of outlet, top water level, finished surface level and adjacent structures,
- e) Details of access and maintenance facilities,
- f) Construction and structural details of all tanks and pits and/or manufacturer's specifications for proprietary products and,
- g) Details of the emergency overland flow-path (to an approved Council drainage point) in the event of a blockage to the retention systems.

Subsoil drainage

The subsoil drainage is to address:

- a) subsoil drainage details,
- b) clean out points, and
- c) discharge point.

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

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

Standard Condition: C.51 (Autotext CC51)

D. Conditions which must be satisfied \underline{PRIOR} TO THE $\underline{COMMENCEMENT\ OF\ ANY}$ DEVELOPMENT WORK

D.4 Dilapidation Reports for existing buildings

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

Referral Response - Technical Services - DA2019 520 1 - 57 Wentworth Road VAUCLUSE

These properties must include (but is not limited to)

- · No. 55 Wentworth Road
- No. 59 Wentworth Road

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

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

Note: The reasons for this condition are:

- To provide a record of the condition of buildings prior to development being carried out
- To encourage developers and its contractors to use construction techniques that will
 minimise the risk of damage to buildings on neighbouring land

Also refer to the Dilapidation Report Advising for more information regarding this condition Standard Condition: D4

- D.6 Adjoining buildings founded on loose foundation materials
- D.10 Works (Construction) Zone Approval & Implementation
- D.14 Erosion & Sediment Control Installation

E. Conditions which must be SATISFIED DURING ANY DEVELOPMENT WORK

- E.7 Public Footpaths safety, access and maintenance
- **E.11** Maintenance of Environmental Controls
- E.12 Compliance with Geotechnical / Hydrogeological Monitoring Program
- E.13 Support of adjoining land and buildings
- E.14 Vibration Monitoring
- E.15 Erosion & Sediment Controls Maintenance
- E.17 Disposal of Site water during construction
- E.19 Site Cranes
- E.24 Compliance with Council's Specification for Roadworks, Drainage and Miscellaneous Works Road works and work within the Road and Footway

- F. Conditions which must be satisfied <u>PRIOR TO ANY OCCUPATION</u> or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)
 - F.7 Commissioning & Certification of Systems & Works
- G. Conditions which must be satisfied PRIOR TO THE ISSUE OF ANY SUBDIVISION CERTIFICATE

Nil

- H. Conditions which must be satisfied prior to the issue of a <u>FINAL OCCUPATION</u> <u>CERTIFICATE</u> (s109C(1)(c))
 - H.13 Road Works (including footpaths)
 - H.20 Positive Covenant and Works-As-Executed Certification of Stormwater Systems

On completion of construction work, stormwater drainage works are to be certified by a professional engineer with works-as-executed drawings supplied to the Principal Certifier detailing:

- a) Compliance with conditions of development consent relating to stormwater,
- b) The structural adequacy of the Rainwater Tank,
- c) That the works have been constructed in accordance with the approved design and will provide the retention storage volume and attenuation in accordance with the submitted calculations,
- d) Pipe invert levels and surface levels to Australian Height Datum, and
- e) Contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

A positive covenant pursuant to section 88E of the *Conveyancing Act 1919* must be created on the title of the subject property, providing for the indemnification of Council from any claims or actions and for the on-going maintenance of the Rainwater Tank incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered with the NSW Land Registry Services.

Note: The required wording of the Instrument can be downloaded from Council's website www.woollahra.nsw.gov.au. The PC must supply a copy of the WAE plans to Council together with the Final Occupation Certificate.

Note: The Final Occupation Certificate must not be issued until this condition has been satisfied.

Standard Condition: H20 (Autotext HH20)

I. Conditions which must be satisfied during the $\underline{ONGOING}$ \underline{USE} \underline{OF} \underline{THE} $\underline{DEVELOPMENT}$

Referral Response - Technical Services - DA2019 520 1 - 57 Wentworth Road VAUCLUSE

I.29 Ongoing Maintenance of the Rainwater Tank

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

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

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

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

Standard Condition: 129

K. Advisings

- K.23 Dilapidation Report Condition
- K.24 Roads Act Application



19 February 2020

REFERRAL RESPONSE - HERITAGE

FILE NO: Development Applications/ 520/2019/1

ADDRESS: 57 Wentworth Road VAUCLUSE 2030

PROPOSAL: Demolition of existing dwelling and construction of replacement

dwelling, with associated landscaping and site works

FROM: Charlotte Simons - Heritage Officer

TO: Ms T Ward

DOCUMENTATION

The following documentation provided by the applicant has been examined for this referral response:

- Drawing set by Innovate Architects, dated December 2019 (Rev B)
- Demolition Report by GBA Heritage, dated February 2020
- Statement of Environmental Effects by Tony Moody Planning & Development
- Survey plan by Eric Scerri & Associates Pty Ltd, ref 2623/15, dated 29 January 2015.

SITE INSPECTION / RESEARCH

Review of the following documents and photographic evidence:

- Council's property system, to establish dates of earlier building and development applications for the subject and surrounding properties
- Council's photography files relevant to the immediate area
- Council's heritage inventory sheets
- Council's aerial photography and mapping database
- Google Maps street view.

STATUTORY AND POLICY DOCUMENTS

The following statutory and policy documents are relevant to the application:

- National Parks & Wildlife Act 1974
- Woollahra LEP 2014
- Woollahra DCP 2015.

ASSESSMENT OF HERITAGE IMPACT

Compliance with the relevant legislative framework and planning controls

SIGNIFICANCE OF SUBJECT PROPERTY/TO THE CONSERVATION AREA

The development site comprises one allotment (Lot 1, DP32444) that was part of the 12th subdivision of the Vaucluse estate, originally granted to William Charles Wentworth.

The extant building is a largely modified Federation era bungalow that was constructed in 1916. The house was designed/built by local architect Mr John Albert Milford as a single storey bungalow of

Referral Response - Heritage - DA 2019 520 1 - 57 Wentworth Road VAUCLUSE



face brick construction with hipped tiled roof and roughcast rendered elements including several tall chimneys.

The house was subject to major modifications in the 1943, 1944, 1955, 1979, 1980 and 1994, which have largely altered the house and resulted in the loss of almost all original fabric including the front façade. Remnant original fabric is limited to plaster ceilings in the entry vestibule, hallway, living room and formal dining room. An historic sandstone retaining wall is located along the front boundary of the site, which would be retained in the proposal. A later addition garage is located beneath the patio to the front of the house.

The heritage assessment within the Demolition Report prepared by GBA Heritage provides an assessment of significance for 57 Wentworth Road, Vaucluse. Based on its heavily modified form and absence of any association with a notable architect or social significance, the report concludes that the building does not meet any of the Heritage Division criteria for identification as a place of local significance and that the house is a poor example of its type.

National Parks and Wildlife Act 1974

A basic search conducted on AHIMS (Aboriginal Heritage Information Management System) on DATE from the Office of Environment & Heritage NSW (OEH) website has revealed that there are 0 recorded Aboriginal sites recorded within a 200m buffer in or near the above location.

The site does not contain landscape features that indicate the likely existence of Aboriginal objects as defined in Section 2, Step 2 p.12 of the Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW ('Due Diligence Code') published by the Department of Environment, Climate Change and Water and dated 13 September 2010.

The subject site is considered to be on 'disturbed land' as per the definition outlined in the Due Diligence Code, p. 18.

Woollahra LEP 2014 Part 5.10 Heritage Conservation

The subject site is not a heritage item in Woollahra Local Environment Plan 2014 'the LEP' and is not within a heritage conservation area.

Significance of items in the vicinity

There are no listed heritage items in close proximity that would be adversely affected by the proposal.

Woollahra DCP 2015

The subject property is located on land that was part of the 12th subdivision of the Vaucluse estate, originally granted to William Charles Wentworth. The extant building was constructed in 1916, and has been subject to major modifications that have resulted in the loss of most original fabric and have obscured the original design and character of the Federation era bungalow, including the loss of the original front façade. Remnant original fabric is limited to plaster ceilings in the entry vestibule, hallway, living room and formal dining room. An historic sandstone retaining wall (which has been subject to several modifications over time) is located

Referral Response - Heritage - DA 2019 520 1 - 57 Wentworth Road VAUCLUSE



along the front boundary of the site and would be retained in the proposal.

The heritage assessment within the Demolition Report prepared by GBA Heritage provides an assessment of significance for 57 Wentworth Road, Vaucluse. Based on its heavily modified form and absence of any association with a notable architect or social significance, the report concludes that the building does not meet any of the Heritage Division criteria for identification as a place of local significance and that the house is a poor example of its type. The findings of the report are considered to be accurate. Accordingly, the property is not considered a potential heritage item and therefore no objection is raised to the proposed demolition of the existing building.

As the property is not listed as a heritage item and is not located within a heritage conservation area, the design of the proposed new development will not result in any adverse impacts on heritage items/areas of value. There are no heritage items located within the vicinity of the site that will be adversely impacted and the proposal will not affect any significant views. As such, there are no concerns raised on heritage grounds regarding the design of the proposed new development.

Given that the building that is proposed to be demolished is an insignificant item, it is considered that the photographic record included in the Demolition Report by GBA Heritage of the property would satisfy the standard condition for recording insignificant items.

The AHIMS basic search did not reveal any recorded Aboriginal sites within 200m of the subject site. As the site has been previously disturbed when the existing structures and landscaping were constructed, it is unlikely that any archaeological evidence will remain, therefore no further actions under the Due Diligence Code of Practice are required.

CONCLUSION

National Parks & Wildlife Service Act, 1979

Appropriate conditions of consent to manage Aboriginal heritage will be provided below.

Woollahra LEP, 2014 Part 5.10 Clauses 1(a), 4

- Clause 1(a) The development does conserve the heritage of Woollahra
- Clause 4 This referral constitutes an assessment under this clause.

RECOMMENDATION

The proposal is generally acceptable, subject to conditions, as it complies with the relevant statutory and policy documents and would have a satisfactory impact.

Consent, subject to conditions.

1. Aboriginal Objects - Unexpected Findings

If unexpected Aboriginal objects are found during the works covered by this approval, all work must cease immediately in the affected area(s) and the Department of Premier and Cabinet,

Referral Response - Heritage - DA 2019 520 1 - 57 Wentworth Road VAUCLUSE



Community Engagement, Heritage must be notified. Additional assessment and approval pursuant to the National Parks and Wildlife Act 1974 may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

Note: The Definition of Aboriginal object as per the Woollahra Local Environmental Plan 2014: any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains. Standard Condition: B10

Charlotte Simons - Heritage Officer

Referral Response – Heritage – DA 2019 520 1 – 57 Wentworth Road VAUCLUSE

5 May 2020

REFERRAL RESPONSE – TREES & LANDSCAPING

FILE NO: DA 520/2019/1

ADDRESS: 57 Wentworth Road VAUCLUSE 2030

PROPOSAL: Demolition of existing dwelling and construction of replacement

dwelling, with associated landscaping and site works

FROM: Simone Woodman - Tree Management Officer

TO: Ms T Ward

I refer to the following documents received for this report:

- Survey Plan No. 2623/15 Sheet 1&2, drafted by Eric Scerri & Associates Pty Ltd, dated 29/01/2015
- Architectural Drawing No.s 2600 Sheet 01/A Sheet 07/A, drawn by Innovate, dated December 2019
- Stormwater Drainage Plan No.s 191165 C01/5 C03/5, drawn by Greenview Consulting, dated 01/05/2020
- Arboricultural Impact Assessment Report, Ref AIA-20-410, written by Matthew Reed, dated 29/01/2020
- Landscape Plan No. s 7009 L-01D L-04D, designed by Site Design + Studios, dated 18/12/2019
- HPE Record No. 20/79485 Email correspondence titled Clarification Required -DA520/2019/1 - 57 Wentworth Road VAUCLUSE from Anders Idestrom – Innovate Architects, dated 12/05/2020

A site inspection was carried out on 29 April 2020.

Relevant Control:

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

SUMMARY

- Impacts to existing trees on neighbouring properties. Amendments to the submitted landscaping plan and stormwater management have been recommended to mitigate impacts.
- Additional replacement tree planting recommended to compensate for the loss of existing tree canopy coverage.

COMMENTS

Located within the subject property are a number of trees proposed for removal. The submitted Arboricultural Impact Assessment Report assesses most of the trees within the property as low to medium retention value. Located within the front yard of the subject property however are three Italian Cypress that are visually prominent to the streetscape. The Italian Cypress are proposed for removal. Council's recommendation to include the demolition of the front sandstone retaining wall also makes retention of these trees not possible. Replacement tree planting could compensate for the loss of soft landscaping amenity provided by these trees.

Clarification was sought on the location of a Port Jackson Fig growing adjacent the eastern side boundary of the subject property. Email correspondence from Ander Idestrom from Innovate Architects dated 12/05/2020 has confirmed the location of the Port Jackson fig is within the neighbouring property of 59 Wentworth Road Vaucluse. Accordingly no consent for the removal of the Port Jackson fig has been obtained and successful retention of the fig should be considered. The submitted landscape plans show a proposed masonry fence/retaining wall within the Tree Protection Zone of the fig. This would have negative impacts to the fig. To achieve successful retention of the Port Jackson fig the submitted landscape plan could be amended to include the deletion of proposed fence/retaining walls within the Tree Protection Zone of the fig.

The submitted landscape plan shows proposed masonry fencing and retaining walls along the western side boundary of the subject property. The proposed fencing and walls encroache into the Structural Root Zones of existing trees located within the neighbouring property of 55 Wentworth Road Vaucluse. To avoid negative impacts to Tree No.s 12, 15, 16 and 17 the existing fencing and retaining wall configuration should remain in situ. I have included Condition C.3 to address this issue through the deletion of proposed masonry fencing/walls within a specified distance of Tree No.s 12, 15, 16 and 17.

Located at the front of the subject property is a young Jacaranda tree on the Council verge. The submitted landscape plan does not show the retention of the Jacaranda. In accordance with Council's Street Tree Master Plan 2014 the preferred tree species for Wentworth Road Vaucluse are *Syzygium paniculatum*, *Eucalyptus tereticornis* and *Angophora costata*. Accordingly a replacement tree to be planted on the Council verge at the front of the subject property should be included in an amended landscape plan.

The submitted Stormwater Management plan shows proposed pipes and pits within the Structural Root Zone and Tree Protection Zones of Trees 12, 15, 16 and 17 located in the rear yard eastern side boundary of 55 Wentworth Road Vaucluse. To minimise impacts to the existing trees all proposed pipes and pits should be located at a further distance from the existing trees. Condition E.5 has been included to address this issue.

RECOMMENDATIONS

Referral Response - Landscaping - DA2019 520 1 - 57 Wentworth Road VAUCLUSE

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

CONDITIONS OF CONSENT

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

A. General Conditions

A.1 Tree Preservation & Approved Landscaping Works

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

a) The following trees shall be retained

· Trees on Private Land

Council Ref No.	Species	Location	Dimension (metres)
8	Archontophoenix alexandrae (Alexander palm)	Rear yard eastern side	8 x 3
9	Archontophoenix alexandrae (Alexander palm)	Rear yard eastern side	8 x 3

· Trees on Council Land

Council Ref No.	Species	Location	Dimension (metres)	Tree Value
1	Lagerstroemia indica (Crepe Myrtle)	Council verge	5 x 4	

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

b) The following trees may be removed:

Council Ref No.	Species	Location	Dimension (metres)
1a	Jacaranda mimosifolia (Jacaranda)	Council verge	3.5 x 1.5
2	Pyrus calleryana (Callery Pear)	Front yard	6 x 8
3	Cupressus sempervirens (Italian Cypress)	Front yard	8 x 4
4	Cupressus sempervirens (Italian Cypress)	Front yard	8 x 4
5	Cupressus sempervirens (Italian Cypress)	Front yard	8 x 2
6	Olea europea var. europea (European Olive)	Front yard driveway	5 x 3
7	Ulmus parvifolia (Chinese Weeping Elm)	Front yard	5 x 6
7a	Syagrus romanzoffianum (Cocos palm)*	Front yard eastern side	5 x 3
a	X Cupressocyparis leylandii (Leyland Cypress)*	Eastern side boundary	5 x 2
b	Strelitzia nicolai (Giant Bird of Paradise)*	Eastern side boundary	5 x 3
С	Syagrus romanzoffianum	Eastern side boundary	5 x 3

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(Cocos palm)*	

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

c) Should the following tree require pruning to provide clearance for the proposed development a detailed pruning specification shall be prepared and submitted to Council for assessment and approval. The pruning specification shall be in accordance with Australian Standard Pruning of Amenity Trees (AS 4373) and Workcover NSW Code of Practice Amenity Tree Industry. Any pruning shall be to the minimum extent necessary to provide clearance to the new development:

Council Ref No.	Species	Location
17	Eucalyptus haemastoma (Scribbly Gum)	Rear yard of 55 Wentworth Road Vaucluse - eastern side

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

A.2 Approved Plans and supporting documents

Reference	Description	Author/Drawn	Date(s)
Plan No. s 7009 L-01D – L-04D	Landscape Plan	Site Design + Studios	18/12/2019
Ref AIA-20- 410	Arboricultural Impact Assessment Report	Matthew Reed	29/01/2020

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

Nil

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

B.1 Establishment of Tree Protection Zone (TPZ) Fence

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	Tree Location	Fence Radius from Centre of Trunk (Metres)
1	Lagerstroemia indica (Crepe Myrtle)	Council verge	2
5a	Ficus rubiginosa (Port Jackson Fig)	Front yard, western side boundary of 59 Wentworth Road Vaucluse	2.8
8	Archontophoenix alexandrae (Alexander palm)	Rear yard eastern side	2.4

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^{*}This species is exempt from the WMC DCP Chapter E.3 - Tree Management and can be removed without consent.

9	Archontophoenix alexandrae (Alexander palm)	Rear yard eastern side	2.4
10	Schefflera arboricola	Rear yard of 55	2.4
12	(Hawaiian Elf Schefflera)	Wentworth Road	2.4
		Vaucluse - eastern side	
	Cedrus atlantica (Atlantic	Rear yard of 55	
15	Cedar)	Wentworth Road	3.6
		Vaucluse - eastern side	
	Cravillas robusts (Siller Oals)	Rear yard of 55	
16	Grevillea robusta (Silky Oak)	Wentworth Road	6
		Vaucluse - eastern side	
	Eucalyptus haemastoma	Rear yard of 55	
17	(Scribbly Gum)	Wentworth Road	7
		Vaucluse - eastern side	

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 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) 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 this consent.
- f) The site foreman must be made aware of all tree protection requirements associated with these conditions of consent by the project arborist. Any subsequent site personnel and contractors to the site must be made aware of all tree protection requirements by the site foreman.
- The project arborist shall provide written certification of compliance with the above condition.

B.2 Permissible work within Tree Protection Zones

The following works are permissible within the Tree Protection Zone:

Council Ref No.	Species	Radius from Trunk (metres)	Approved works
5a	Ficus rubiginosa (Port Jackson	2.8	Proposed soft landscaping.

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	Fig)		
8	Archontophoenix alexandrae (Alexander palm)	2.4	Proposed soft landscaping.
9	Archontophoenix alexandrae (Alexander palm)	2.4	Proposed soft landscaping.
12	Schefflera arboricola (Hawaiian Elf Schefflera)	2.4	Proposed soft landscaping.
15	Cedrus atlantica (Atlantic Cedar)	3.6	Proposed soft landscaping.
16	Grevillea robusta (Silky Oak)	6	Proposed soft landscaping.
17	Eucalyptus haemastoma (Scribbly Gum)	7	Proposed soft landscaping. Proposed dwelling.

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

B.3 Demolition and Construction Management Plan

Nil

B.4 Arborists Documentation and Compliance Checklist

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

- A record of the condition of trees to be retained prior to and throughout development;
- Recommended actions to improve site conditions and rectification of noncompliance; and
- Recommendations for future works which may impact the trees

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

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

Stage of arboricultural inspection and supervision	Compliance documentation and photos shall be included
Prior to the demolition of any building or construction and prior to the commencement of any development work	The project arborist shall install or supervise the installation of tree protection fencing.
	The project arborist shall supervise all demolition and excavation works within the Tree Protection Zones of nominated trees listed in this consent.
During any development work	The project arborist shall supervise excavation for retaining walls and stormwater pipes and pits within the Tree Protection Zones of nominated trees listed in this consent, ensuring no roots greater than 50mm diameter are damaged or severed.
	The project arborist shall ensure pier holes within the Tree Protection Zones or

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	specified distances of nominated trees listed in this consent are positioned to avoid the severance of and damage to roots greater than 50mm diameter.
Prior to any occupation or use of the building	Ensure all trees conditioned to be planted as part of this consent have been planted in accordance with the details prescribed in this consent.
Prior to the issue of a Final Occupation	The project arborist shall supervise the
Certificate	dismantling of tree protection measures

Stage of arboricultural inspection Compliance documentation photos shall be included		
Installation of tree protection fencing	Compliance with tree protection measures	
Demolition of xxx	Condition of exposed roots	
Inspection of pier holes Piers positioned to avoid the severance of a damage to roots greater than 50mms		
Installation of	Condition of roots and soil	
Inspection of irrigation set out	Appropriate distribution of irrigation water	
Prior to pouring of slab Condition of roots and soil		
Prior to the issue of a Final Occupation	Supervise the dismantling of tree protection	
Certificate measures		

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

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

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

C.1 Tree Management Plan

The Construction Certificate plans and specifications shall show the following information:

- a) Trees to be numbered in accordance with these conditions:
 - shaded green where required to be retained and protected
 - shaded red where authorised to be removed
 - shaded yellow where required to be transplanted
 - shaded blue where required to be pruned
- References to applicable tree management plan, arborists report or transplant method statement.

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

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

Referral Response - Landscaping - DA2019 520 1 - 57 Wentworth Road VAUCLUSE

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY	,		
under Building and Construction Industry L	ong Service Payments Ac	t 1986	
Tree Damage Security Deposit -			
Making good any damage caused to any	\$3000.00	No	T114
public tree as a consequence of the doing		NO	1114
of anything to which the consent relates.			
INSPECTION FEES			
under section 608 of the Local Government Act 1993			
Tree Inspection Fee	\$200.00	No	T95

C.3 Modification of details of the development (section 4.17 (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) Amended landscape plan. The proposed landscape plan must be amended to delete any proposed masonry retaining walls or masonry fencing within the distances of the following trees:

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
12	Schefflera arboricola (Hawaiian Elf Schefflera)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	2.4
15	Cedrus atlantica (Atlantic Cedar)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	3.6
16	Grevillea robusta (Silky Oak)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	2.6
17	Eucalyptus haemastoma (Scribbly Gum)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	3.7

The landscape plan shall show existing retaining walls to remain in situ within the distances of the following trees. The proposed soft landscaping within these distances shall be modified to adapt to the retention of existing retaining walls:

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
12	Schefflera arboricola (Hawaiian Elf Schefflera)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	2.4
15	Cedrus atlantica (Atlantic Cedar)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	3.6
16	Grevillea robusta (Silky Oak)	Rear yard of 55 Wentworth Road	2.6

Referral Response - Landscaping - DA2019 520 1 - 57 Wentworth Road VAUCLUSE

		Vaucluse - eastern	
		side	
17	Eucalyptus haemastoma (Scribbly Gum)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	3.7

Additionally to compensate for the loss of existing canopy cover to the subject property and to replace the proposed removal of a Jacaranda on the Council verge the following additional replacement trees shall be included:

Species/Type	Planting/Location	Container Size/Size of Tree (at planting)	Minimum Dimensions at Maturity (metres)
1 x Angophora costata (Sydney Pink Gum), Eucalyptus tereticornis (Forest Red Gum) OR Syzygium paniculatum (Brush Cherry)	Council verge	100 litre	10 x 8
1 x Brachychiton populneus x acerifolius 'Bella Donna', Callistemon citrinus x viminalis 'Harkness' OR Corymbia ficifolia cv.	Front yard lawn area	100 litre	6 x 4

b) Amended Stormwater Management plan. The proposed Stormwater Management plan shall be amended to delete the installation of stormwater pipes and pits within the distances of the following trees:

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
12	Schefflera arboricola (Hawaiian Elf Schefflera)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	2.4
15	Cedrus atlantica (Atlantic Cedar)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	3.6
16	Grevillea robusta (Silky Oak)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	2.6
17	Eucalyptus haemastoma (Scribbly Gum)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	3.7

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 4.15 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.

Referral Response - Landscaping - DA2019 520 1 - 57 Wentworth Road VAUCLUSE

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

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

Nil

E. Conditions which must be satisfied during any development work

E.1 Tree Preservation

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

General Protection Requirements

- 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 50mm are exposed. The *principal contractor* must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- c) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

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

E.2 Replacement/Supplementary trees which must be planted

Any replacement or supplementary tree shall be grown in accordance with Tree stock for landscape use (AS 2303:2018). The replacement tree shall be planted in a *deep soil landscaped area* and maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council's Tree Preservation Order, it must be replaced with another of the same species which complies with the criteria outlined below.

Species/Type	Planting/Location	Container Size/Size of Tree (at planting)	Minimum Dimensions at Maturity (metres)
2 x Dracaena draco (Dragon's Blood Tree)	Front yard	100 litre each	4 x 5 each
1 x Tristaniopsis laurina (Water gum)	Front yard	100 litre	8 x 5
1 x Brachychiton populneus x acerifolius 'Bella Donna',	Front yard lawn area	100 litre	6 x 4

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Callistemon citrinus x viminalis 'Harkness' OR Corymbia ficifolia cv.			
1 x Angophora costata (Sydney Pink Gum), Eucalyptus tereticornis (Forest Red Gum) OR Syzygium paniculatum (Brush Cherry)	Council verge	100 litre	10 x 8

The project arborist shall document compliance with the above condition.

E.3 Paving in the vicinity of trees

Nil

E.4 Level changes in the vicinity of trees

No level changes shall occur within the specified radius from the trunks of the following trees.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
5a	Ficus rubiginosa (Port Jackson Fig)	Front yard, western side boundary of 59 Wentworth Road Vaucluse	2.8
8	Archontophoenix alexandrae (Alexander palm)	Rear yard eastern side	2.4
9	Archontophoenix alexandrae (Alexander palm)	Rear yard eastern side	2.4
12	Schefflera arboricola (Hawaiian Elf Schefflera)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	2.4
15	Cedrus atlantica (Atlantic Cedar)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	3.6
16	Grevillea robusta (Silky Oak)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	6
17	Eucalyptus haemastoma (Scribbly Gum)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	7

The project arborist shall document compliance with the above condition.

E.5 Stormwater pipes and pits within tree root zones

No stormwater pipes or pits shall be installed within the specified radius from the trunks of the following trees:

Council	Species	Location	Radius
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Referral Response - Landscaping - DA2019 520 1 - 57 Wentworth Road VAUCLUSE

Ref No.			from centre of trunk (metres)
12	Schefflera arboricola (Hawaiian Elf Schefflera)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	2.4
15	Cedrus atlantica (Atlantic Cedar)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	3.6
16	Grevillea robusta (Silky Oak)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	2.6
17	Eucalyptus haemastoma (Scribbly Gum)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	3.7

Excavation for the installation of stormwater pipes and pits within the specified radius from the trunks of the following trees shall be excavated manually:

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
12	Schefflera arboricola (Hawaiian Elf Schefflera)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	2.4
15	Cedrus atlantica (Atlantic Cedar)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	3.6
16	Grevillea robusta (Silky Oak)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	6
17	Eucalyptus haemastoma (Scribbly Gum)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	14

Small hand tools such as mattocks or using compressed air or water jetting only shall be used. Roots with a diameter equal to or in excess of 50mm shall not be severed or damaged unless approved in writing by the project arborist. Any pipes shall be inserted under the roots left intact. Any pits shall be located to avoid the severing of roots equal to or in excess of 50mm diameter.

Mechanical excavation is permitted beyond this radius when root pruning by hand along the perimeter line is completed. Exposed roots to be retained shall be covered with mulch or a geotextile fabric and kept in a moist condition and prevented from drying out.

All root pruning must be undertaken in accordance with the Australian Standard 4373 "Pruning of Amenity Trees" and carried out by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent).

Referral Response - Landscaping - DA2019 520 1 - 57 Wentworth Road VAUCLUSE

The project arborist shall document compliance with the above condition.

E.6 Footings in the vicinity of trees

Footings for any structure (excluding the proposed dwelling) within the specified radius from the trunks of the following trees shall be supported using an isolated pier and beam system.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
12	Schefflera arboricola (Hawaiian Elf Schefflera)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	2.4
15	Cedrus atlantica (Atlantic Cedar)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	3.6
16	Grevillea robusta (Silky Oak)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	6
17	Eucalyptus haemastoma (Scribbly Gum)	Rear yard of 55 Wentworth Road Vaucluse - eastern side	14

Excavations for installation of piers shall be located so that no tree root with a diameter equal to or in excess of 50mm is severed or damaged. The smallest possible area shall be excavated which allows construction of the pier. The beam is to be placed a minimum of 100mm above ground level and is to be designed to bridge all tree roots with a diameter equal to or in excess of 50mm.

The project arborist shall document compliance with the above condition.

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

F.1 Amenity Landscaping

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

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

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

Nil

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

Referral Response - Landscaping - DA2019 520 1 - 57 Wentworth Road VAUCLUSE

H.1 Landscaping

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

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

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

Nil

J. Miscellaneous Conditions

Nil

K. Advisings

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

In accordance with Woollahra Municipal Council Development Control Plan (DCP) 2015, Chapter E.3 Tree Management an application to prune existing trees located on neighbouring properties must 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. The application shall include a detailed pruning specification.

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



Simone Woodman

Tree Management Officer

DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No. D2

FILE No. DA375/2020/1

ADDRESS 11-13 Wentworth Road VAUCLUSE

COUNCIL WARD Vaucluse **SITE AREA** 1202.5m²

ZONING R2 Low Density Residential

PROPOSAL Alterations & additions to existing dwelling

TYPE OF CONSENT Local development

COST OF WORKS \$694,258.00

DATE LODGED 30/09/2020 (original proposal)

12/10/2020 (Amended proposal)

26/11/2020 (Amended proposal)

APPLICANT Ms L Goddard

OWNER D A Steingold

AUTHOR Mrs L Holbert

TEAM LEADER Mr T Wong

SUBMISSIONS 0

RECOMMENDATION Conditional Approval

1. REASON FOR REPORT TO LOCAL PLANNING PANEL (LPP)

The application is to be determined by the Woollahra Local Planning Panel as it falls under the category of:

- Departure from development standards
 - (a) Development that contravenes a development standard imposed by an environmental planning instrument by more than 10%

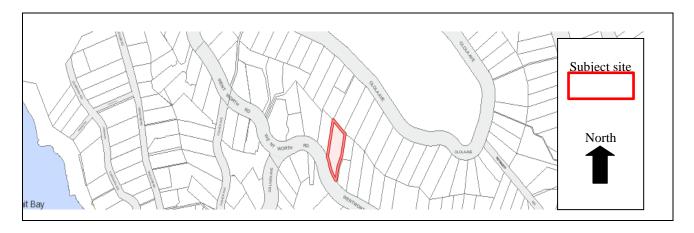
2. REASONS FOR RECOMMENDATION

The application has been assessed within the framework of the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is recommended for approval because:

- It is considered to be satisfactory with all relevant planning policies including the objectives of WLEP 2014 and WDCP 2015
- It will not have adverse effects on the local built and natural environment nor any adverse social and economic impacts in the locality

- All likely impacts to adjoining properties including any submissions made have been addressed in the report, or are considered to be satisfactory.
- The site is suitable for the proposed development
- The proposal is in the public interest

3. LOCALITY PLAN



4. PROPOSAL

The proposed development is for alterations and additions to the existing dwelling. The proposal involves the following works:

External Street front:

- Replacement of the vehicular entry gate fronting Wentworth Road;
- New vergola structure above the pedestrian pathway from the garage to the dwelling;
- Re-painting of the shingles to the front elevation;
- New shutters to the front elevation windows.

Lower Ground Floor:

- New recessed seating area to the northern end of the site;
- New spa to the north of the existing swimming pool;
- New repositioned glass pool fence/gate and new paving to the north and east of the existing swimming pool;
- Alterations to the pool plant enclosure;
- New pergola structure to the south of the existing pool;
- Removal of the existing doors and windows to the rear elevation and the enlargement of the existing opening to accommodate new bi-fold doors and windows.

Ground floor:

- Demolition of the existing glazed doors and bay window to the rear elevation to provide new enlarged sliding glazed doors;
- Part demolition of the internal walls to allow for changes to the internal layout;
- New laundry window to the front elevation;
- Extension of the existing rear balcony by 1m and new glass balustrade;
- New wall to the western side of the rear balcony with gas fire place in-front;

First floor:

- Part demolition of the internal walls, joinery and bathroom to allow for a reconfiguration of the internal layout including a new master-suite;
- Demolition of the existing doors to the rear elevation and enlargement of the existing opening with new sliding glazed doors;
- Demolition of the pitched roof form to the rear and construction of a flat roof form;
- New louvered windows above the new glazed doors;
- Reduction to the size of the sitting area window to the western elevation;
- Reduction to the size of the bedroom window opening (W4) to the front elevation.
- Demolition of the existing balustrade to allow for a new glazed balustrade and wider trafficable area;
- New window to the ensuite to the eastern elevation;
- Existing window to the eastern elevation to be blocked up;
- New pergola to the rear balcony.

Second floor:

- Existing storage room to be converted into a sauna room.

Amended Plans were received on the 12/10/2020. The following change was proposed:

- The existing Palm trees adjacent to the existing swimming pool were shown on the plans to be removed.

Amended Plans were received on the 26/11/2020. The following changes have been proposed:

- Additional trees and shrubs to be removed adjacent to the existing swimming pool were shown on the plans;
- Details of the proposed pergola structure and vehicular gate were provided;
- Minor changes to the ensuite layout (first floor);
- Deletion of the proposed spa;
- Removal of 7 Cypress Pines trees located along the eastern boundary.

5. ISSUES

5.1. Exceptions to Development Standards in Woollahra Local Environmental Plan 2014

Clause	Development Standard	Departure from Control	Conclusion
Part 4.3	Height of Buildings	2.1m or 22% departure from the 9.5m control	Satisfactory

5.2. Primary Issues

- Visual Privacy [Condition C.1(a) and (b) have been recommended]
- Trees [Condition C.1(d) has been recommended]

PROPERTY DETAILS AND REFERRALS

6. SITE AND LOCALITY

Physical features

The subject site is located on the eastern side of Wentworth Ave, Vaucluse. The subject site has an irregular shape and is 1208m² in size.

Topography

The subject site slopes from the street toward the rear of the site.

Existing buildings and structures

The subject site is occupied by a three storey rendered masonry dwelling house with pitched (tiled) roof. A detached garage is located at the frontage and an inground swimming pool is located on the north-eastern side of the site.

Surrounding Environment

The surrounding locality is characterised by dwellings houses of a variety of styles and sizes.



7. RELEVANT PROPERTY HISTORY

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	irrei	nt.	use

Residential

Relevant Application History

 $DA568/2015\text{-alterations} \ and \ additions \ including \ the \ amalgamation \ of \ two \ decks \ into \ one \ larger \ deck \ on \ the \ first-Approved -15/01/2015.$

Relevant Compliance History

N/A

Pre-DA

N/A

Requests for Additional Information and Replacement Applications

- Additional information relating to the removal of the existing trees surrounding the pool was requested on 07/10/2020 and provided on 12/10/2020.
- A Cl.4.6 Variation for the height non-compliance was requested on 17/11/2020 and received on 26/11/2020;
- A site plan showing the deep soil landscaping was requested on 17/11/2020 and received on 26/11/2020;
- Details of the pergola structure and vehicular gate was requested on 17/11/2020 and received on 26/11/2020.

Land and Environment Court Appeal(s)

N/A

8. REFERRALS

Referral	Summary of Referral Response	Annexure
Trees and Landscaping	Satisfactory, subject to Conditions A.6, B.2, B.3, C.1(d), C.2, E.6, E.7,	3
	H.2, K.12.	

ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 include the following:

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

9. ADVERTISING AND NOTIFICATION

9.1. Submissions

The application was advertised and notified from 14/10/2020 to 28/10/2020 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. No Submissions were received.

The amended plans received on 12/10/2020 and 26/11/2020 were placed onto Council's website. They were not renotified to surrounding residents because it was considered that these changes would have no greater environmental or amenity impact, subject to **Condition A.5.**

9.2. Statutory Declaration

The applicant has completed the statutory declaration dated 30/10/2020 declaring that the site notice for DA375/2020/1 was erected and maintained during the notification period in accordance with Chapter A2.3.5 of the Woollahra DCP 2015.

10. STATE ENVIRONMENTAL PLANNING POLICY 55: REMEDIATION OF LAND

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

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

Under Clause 7(1)(a) of SEPP 55 – Remediation of Land, consideration has been given as to whether the subject site on which the development is occurring is contaminated. As the site has a long history of residential use, it is considered that the land does not require further consideration under Clause 7 (1) (b) and (c) of SEPP 55. The proposal is therefore acceptable with regard to SEPP 55: Remediation of Land.

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

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

The development application was accompanied by BASIX Certificate A389659 demonstrating compliance with the SEPP. These requirements are imposed in **Conditions C.3, H.1** and **I.1.**

12. SEPP (COASTAL MANAGEMENT) 2018

The provisions of this planning instrument that are relevant to the subject application involve managing development in the coastal zone and protecting the environmental assets of the coast.

It is considered that the proposal, as conditioned, will not have any significant adverse environmental impact upon the harbour coastal locality and therefore satisfactory with regard to the relevant provisions of the planning instrument.

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

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

14. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

14.1. Part 1.2: Aims of Plan

The proposal is consistent with the aims in Part 1.2(2) of the Woollahra LEP 2014.

14.2. Land Use Table

The proposal is defined as alterations and additions is permitted and is consistent with the objectives of the R2 Residential zone.

14.3. Part 4.3: Height of Buildings

Part 4.3 limits development to a maximum height of 9.5m.

	Existing	Proposed	Control	Complies
Maximum Building Height	11.8m	11.6m	9.5m	NO

^{*} Cl.46 Variation has been submitted

The proposal does not comply with Part 4.3 of Woollahra LEP 2014 as detailed and assessed in Section 7.4.

14.4. Part 4.6: Exceptions to Development Standards

Departure

The proposed new alterations and additions will result in a breach of 2.1m or 22% from the 9.5m maximum height of buildings development standard prescribed by Part 4.3 of the WLEP 2014.

It should be noted that the existing building's ridge already exceeds the 9.5m height limit, the majority of the proposed works would comply with the development standard.

The non-compliant height is depicted in the drawing below (shown in red dotted shade):



Purpose

Part 4.6 allows a contravention of a development standard with the objectives being to allow an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Written Request

Clause 4.6(3) requires the consent authority to consider the applicant's written request that seeks to justify the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify the contravention.

The applicant has provided a Clause 4.6 written request in relation to the departure from the maximum height of buildings (in **Annexure 2**).

Assessment

Clause 4.6(4)(a)(i) - Assessment

Clause 4.6(4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be addressed by Cl 4.6(3). There are two separate matters for consideration contained within Cl 4.6(3) and these are addressed as follows:

a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

<u>Comment:</u> The applicant's written request has demonstrated that the objectives of the *Height of Buildings* development standards is achieved, notwithstanding the non-compliances.

In doing so, the applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a). The objectives of the development standard are discussed further in the assessment of Clause 4.6(4)(a)(ii).

b) That there are sufficient environmental planning grounds to justify contravening the development standard.

Comment: In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be 'environmental planning grounds' by their nature: See Four2Five Pty Ltd. v Ashfield Council. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act including the objects in s1.3 of the EPA Act. '

S1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5) The objects of this Act are as follows:

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicant's written request, which supports the proposed non-compliance with the height of building development standard, has adequately demonstrated that the proposed development promotes the orderly and economic use and development of the land; and that the proposal promotes good design and local amenity, in accordance with the objects 1.3(c) and (g) of the EPA Act.

The applicant's written request has therefore demonstrated sufficient environmental planning grounds to justify the contravention of the development standard as required by Clause 4.6(3)(b) and the consent authority can be satisfied that the applicant's written requests have adequately addressed the matters required to be demonstrated by Clause 4.6(3).

Clause 4.6(4)(a)(ii) - Assessment

Clause 4.6(a)(a)(ii) requires the consent authority to be satisfied that:

ii) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the *Height of Buildings* development standard, and the zone objectives of the R2 Low Density Residential Zone. An assessment against these objectives is provided below.

Clause 4.3 – Height of Buildings

The proposal is consistent with the objectives applying to Part 4.3 (Height of Buildings) as follows:

(a) To establish building heights that are consistent with the desired future character of the neighbourhood

<u>Assessment:</u> The proposed building height is consistent with the desired future character of the neighbourhood as there is no changes to the existing building height. The proposal therefore achieves consistency with objective (a).

(b) To establish a transition in scale between zones to protect local amenity

<u>Assessment:</u> The subject site is within the R2 Low Density Residential zone and does not adjoin any other zone. There is no impact in terms of transition in scale between zones.

(c) To minimise the loss of solar access to existing buildings and open space

<u>Assessment:</u> The non-compliant building height will not result in unacceptable loss of solar access to existing buildings and open spaces and will achieve consistency with objective (c).

(d) To minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion

<u>Assessment:</u> The non-compliant building height will not result in any adverse amenity impacts to adjoining or nearby properties in terms of views, loss of privacy, overshadowing or visual intrusion and will achieve consistency with objective (d).

(e) To protect the amenity of the public domain by providing public views of the harbour and surrounding areas

<u>Assessment:</u> The non-compliant building height will not result in any adverse amenity impacts to the public domain or views from public areas and will achieve consistency with objective (e).

Objectives of the R2 Zone

The development is also consistent with the objectives applying to the R2 zone as follows:

• To provide for the housing needs of the community within a low density residential environment.

<u>Assessment:</u> The proposed building height has no impact to the housing need and achieves consistency with this objective.

• To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Assessment: This objective is not relevant.

• To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.

<u>Assessment:</u> The proposed development does not result in any increase to the overall height of the existing building and will be compatible with the character and amenity of the surrounding neighbourhood.

• To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood

<u>Assessment:</u> The proposal will be of a height and scale that achieves the desired future character of the neighbourhood as there is no proposed change to the existing building height. The non-

compliant height will not change the overall height of the existing building and will also achieves the desired future character of the neighbourhood, therefore achieving consistency with this objective.

The Clause 4.6 variation request is considered to be well founded as the proposal demonstrates the following:

- Compliance with the building height development standard would be unreasonable and unnecessary in this circumstance as the non-compliant building height is a result of the existing building height;
- There are sufficient environmental planning grounds to justify the contravention as outlined in the assessment above;
- The development meets the objectives of the development standard and the objectives of the R2 Low Density Residential zone, notwithstanding the variation;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard in this instance;
- The proposed variation will not hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and
- The contravention does not raise any matter of State or Regional Significance.

Clause 4.6(4)(a)(b) - Assessment

The Department issued Planning Circular No.PS18-003 (dated 21st February 2018) which notified Councils of arrangements "...where the Director General's concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6 ...of the Standard Instrument..." Clause 64 of the EPA Regulations provides that Council may assume the Director-General's [Secretary's] concurrence for exception to development standard, thus satisfying the terms of this clause.

Conclusion

The written submission from the applicant has adequately demonstrated that the variation of the development standard prescribed by *Clause 4.3* is justified pursuant to the relevant matters for consideration prescribed by Clause 4.6.

The consent authority is satisfied that the applicant's written request has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances in this case, and that sufficient environmental planning grounds have been demonstrated to justify the contravention of the development standard.

The consent authority is also satisfied that the proposal is in the public interest as it is consistent with the objectives of the development standard and those applicable to development within the zone.

Accordingly, the departure from the development standard is justified in this instance.

14.5. Part 6.1: Acid Sulfate Soils

Part 6.1 requires Council to consider any potential acid sulfate soil affectation so that it does not disturb, expose or drain acid sulfate soils and cause environmental damage.

The subject site is within a Class 5 area as specified in the Acid Sulfate Soils Map. However, the subject works are not likely to lower the water table below 1.0m AHD on any land within 500m of a Class 1, 2 and 3 land classifications. Accordingly, preliminary assessment is not required and there is unlikely to be any acid sulfate affectation. It is therefore acceptable with regard to Part 6.1.

15. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

15.1. Chapter B1: Vaucluse West Residential Precinct

The proposal satisfies the precinct objectives outlined in Part B1.1.3 of the Woollahra DCP 2015.

The proposal meets the streetscape character and key elements of the precinct and desired future character objectives of the Vaucluse West precinct, as noted in Part B1.10.2 of the Woollahra DCP 2015.

15.2. Chapter B3: General Development Controls

Part B3.2: Building Envelope

Part 3.2.2: Front Setback

C1 states that the front setback is the average of the three most typical setbacks of the four closest residential properties.

No change.

Part 3.2.3: Side Setbacks

No changes to the existing side setbacks have been proposed.

Part 3.2.4: Rear Setback

The proposed development does not involve any changes to the existing rear setback with the exception of a 1m extension to the rear balcony (ground floor level). This balcony addition will result in a further non-compliance with the minimum requirements (14.11m-20.24m). This non-compliance is considered acceptable for the following reasons:

- The non-compliance is a result of the irregular nature of the rear boundary;
- The non-compliance does not result in the loss of any deep soil landscaping/trees at the site;
- The proposed non-compliance does not compromise the private open space available at the site:
- The proposed non-compliance does not result in any adverse amenity impacts on surrounding properties, subject to **Condition C.1(a)**.

Conclusion

The proposal is acceptable with regard to the building envelope controls in Part B3.2 of the Woollahra DCP 2015.

Part B3.3: Floorplates

Site Area: 1208m ²	Existing	Proposed	Control	Complies
Maximum Elaan Plata	157%	162%	165%	VEC
Maximum Floor Plate	$733m^{2}$	$755m^{2}$	$768m^{2}$	YES

C1 limits the floorplate, being the measurable floor area as a proportion of the buildable area, is limited to 165%. In this instance, this equates to $465m^2$. As per C5, it does not include $40m^2$ of car parking.

The proposed floorplate complies.

Conclusion

The proposal is therefore acceptable with regard to the floorplate controls in Part B3.3 of the Woollahra DCP 2015.

Part B3.5: Built Form and Context

Site Area: 1208m ²	Existing	Proposed	Control	Complies
Significant Trees	-	Retained	Retained	YES
Casual Surveillance –	>1	>1	One	YES
Windows Facing Street/Public Area	/1	/1	One	ILS

Part B3.5.1: Streetscape and Local Character

The proposed development is not visible from the Wentworth Ave, with the exception of a new vehicular gate located at the front of the site. This gate is discussed below.

Part B3.5.2: Overshadowing

The proposed works are not considered to adversely affect the solar access of surrounding private open space or habitable room windows, as the works are mostly confined within the existing building envelope and or sufficiently separated from surrounding private open space and habitable room windows. The proposal is considered be acceptable in this regard.

Part B3.5.3: Public and Private Views

The proposed development will not obstruct any significant views from the public or private domain.

Part B3.5.4: Acoustic and Visual Privacy

The proposed development is considered acceptable in terms of visual and acoustic privacy in the following manner:

- The proposed first floor window to the eastern elevation is a highlight window to a bathroom containing obscure glazing. The only other change to the fenestration on this elevation is the blocking up of an existing window opening at first floor level;
- The only change to the fenestration to the western elevation is the deletion of part of the sitting room window at first floor level;
- The remaining changes to the fenestration face the front or rear of the site, and are acceptable in this regard;

- The proposed extension of the rear ground floor balcony is considered acceptable, subject to a privacy screen being erected on the eastern side of this balcony, refer to **Condition C.1(a)**. The privacy of No.15 Wentworth Road will not be affected as the balcony only overlooks a highlight windows and blank wall, refer to Photo 1;
- The proposed increased trafficable area to the rear first floor balcony will increase overlooking to the balcony at No.11A Wentworth Road and the habitable room windows at No.15 Wentworth, refer to Photos 3 and 4. A condition of consent of consent has therefore been recommended that requires privacy screens to both side of this extended balcony to be provided, refer to **Condition C.1(b).**



Photo 1: Existing ground floor balcony looking toward No.15 Wentworth Road



Photo 2: Existing ground floor balcony looking toward No.11A Wentworth Ave



Photo 3: Existing first floor balcoy looking toward No.15 Wentworth Ave

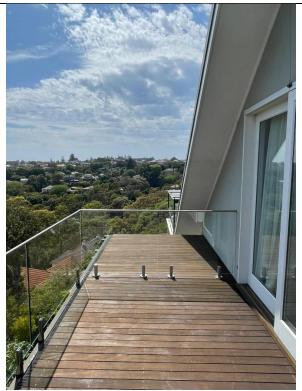


Photo 4: Existing first floor balcony looking toward No.11A Wentworth Ave

Part B3.5.5: Internal Amenity

The proposed changes to the internal layout will result in good internal amenity and are considered acceptable in this regard.

Part B3.7: External Areas

Site Area: 1208m ²	Existing	Proposed	Control	Complies
Deep Soil Landscaping –	>50%	63% (468m²)	50% of Buildable Area (372.28m²)	YES
Deep Soil Landscaping – Rear Setback	>50%	50% (180.6m²)	50% or Rear Setback (360m²)	YES
Minimum Area of Private Open Space at Ground Level	>35m²	>35m²	35m²	YES
Private Open Space at Ground Level – Maximum Gradient	<1:10	<1:10	1:10	YES
Fire Places	-	Gas	Non Solid Fuel Burning Only	YES

Part 3.7.1: Landscaped Areas and Private Open Space

C1 requires that 50% of the site area outside of the buildable area is to comprise deep soil landscaping.

Complies.

C2 requires that 40% of the front setback area is to comprise deep soil landscaping.

Complies. No change to the deep soil landscaping within the front setback has been proposed.

C4 requires that 50% of the rear setback area comprises deep soil landscaping.

Complies.

C6-C8 requires that each dwelling must have private open space with a minimum area of $35m^2$ with a maximum gradient of 1:10.

Complies.

C16 Existing trees and vegetation of landscape value are incorporated into the landscape area and treatment.

The proposed development involves the removal of 4 Cocos palms and 3 Strelitzia's located adjacent to the swimming pool. Council's Landscape Officer has not raised any objection to the removal of this planting, subject to replacement trees being provided in this area of the site, refer to **Condition C.1(d)** and **E.7.** This is because these trees are not covered by Council's TPO.

The amended plans have shown the removal of 7 Cypress Pine trees located on the eastern boundary of the site. However, the applicant has not provided sufficient information for Council's Tree Officer to assess these works. Therefore a condition of consent has been recommended that requires these tree works to be deleted from the proposal, refer to **Condition A.5**. A separate TPO application or S.4.55 could be submitted if the applicant still wanted to proceed with these works.

Part 3.7.2: Fences

C2 requires delineation of the public, common and private spaces and C3 requires fences to define the front entrance.

Complies.

C4 limits fencing to 1.2m, or 1.5m if 50% transparent or open. On the high side of the street, C6 allows fences to a height of 1.2m above the high side.

The proposed vehicular gate to the front boundary is up to 1.8m height and is mostly solid in construction. This gate is considered acceptable for the following reasons:

- A condition of consent has been recommended that requires this new gate to be at least 50% transparent or open to be more in-keeping with the general pattern of development in the area and Control C4, refer to **Condition C.1(c)**;
- The proposed height of the gate matches the height of existing gate and the existing front fence.

C7 requires gates to open inwards.

The proposed new vehicular gate to the front boundary is a sliding gate.

Part 3.7.3: Site Facilities

C3 and C4 require at least one clothes drying facility that is secure, has access to sunlight and away from public view.

Complies.

C10 allows non-solid fuel burning fire places only.

The proposed new gas fire place to the ground floor rear balcony is gas and is acceptable in this regard.

Part 3.7.4: Ancillary Development – Swimming Pools, Tennis Courts and Outbuildings

The proposed spa pool has been deleted by the amended proposal.

Conclusion

The proposal is acceptable with regard to the external controls in Part B3.7 of the Woollahra DCP 2015.

15.3. Chapter E5: Waste Management

Chapter E5 is applicable to all development and seeks to establish waste minimisation and sustainable waste management during demolition and construction phases and throughout the ongoing use of the building.

The SWMMP addresses volume and type of waste and recyclables to be generated, storage and treatment of waste and recyclables on site, disposal of residual waste and recyclables and operational procedures for ongoing waste management once the development is complete.

The applicant provided a SWMMP with the development application and it was found to be satisfactory.

Part E5.2: Demolition and Construction Phase

C2 and C3 promote reuse of salvaged and excess construction materials. C4 promotes prefabricated or recycled materials where possible. C5 seeks to minimise site excavation and disturbance.

The proposal is acceptable with regard to Part E5.2 of the Woollahra DCP 2015.

Part E5.3: On-Site Waste and Recycling Controls for all Development

	Existing	Proposed	Control	Complies
Garbage and Recycling Areas	Separated	Separated	Separated	YES
Location of Garbage and	Behind Building Line or Non-Habitable	Behind Building Line or Non-	Behind Building Line or Non-	YES
Recycling Areas	Areas	Habitable Areas	Habitable Areas	125

C2 requires waste storage areas to facilitate the separation of garbage and recycling.

Complies.

C3 and C4 require waste storage areas to be behind the building line or in non-habitable spaces and integrated within the building design.

Complies.

Conclusion

The proposal is acceptable with regard to Part E5 of the Woollahra DCP 2015.

16. SECTION 94 CONTRIBUTION PLANS

16.1. Section 94A Contributions Plan 2011

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

Cost of Works	Rate	Contribution Payable
\$694 258	1%	\$694 258

16.2. Application of Contributions

Section 3.5 of the Section 94A Contributions Plan 2005 states:

'A condition under section 94 of the Act may be imposed on a development consent as an alternative to imposing a condition authorised by this Plan, depending on the nature of the development and the demand for public facilities.'

In this instance, given the increase in the density of the site, Section 94A contributions have been applied. Accordingly, Section 94 contributions are not applicable.

17. APPLICABLE ACTS/REGULATIONS

17.1. Environmental Planning and Assessment Regulation 2000

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

Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires Council to consider Australian Standard AS 2601-2004: The demolition of structures. The proposal is considered to be acceptable, subject to **Condition E.1**.

18. THE LIKELY IMPACTS OF THE PROPOSAL

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

19. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development for the following.

20. THE PUBLIC INTEREST

The proposal is considered to be in the public interest.

21. CONCLUSION

The proposal is acceptable against the relevant considerations under Section 4.15.

22. DISCLOSURE STATEMENTS

There have been no disclosure statements regarding political donations or gifts made to any Councillor or to any council employee associated with this development application by the applicant or any person who made a submission.

23. RECOMMENDATION: PURSUANT TO SECTION 4.16 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, is of the opinion that the written request from the applicant under Part 4.6 of the Woollahra Local Environmental Plan 2014 to the height development standard under Clause 4.6 of Woollahra LEP 2014 has adequately addressed the relevant matters and the proposed development will be in the public interest because it is consistent with the relevant objectives of the particular standard and the zone. The Panel assumes the concurrence of the Secretary, Department of Planning, Industry and Environment.

AND

THAT Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, grant development consent to Development Application No. 375/2020/1 for alterations and additions to existing dwelling on land at 11-13 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 4.16 of the *Environmental Planning and 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 4.15 of the *Act*

Standard Condition: A1 (Autotext AA1)

A.2 Definitions

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

Applicant means the applicant for this consent.

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

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

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

Council means Woollahra Municipal Council

Court means the Land and Environment Court

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

Stormwater drainage system means all works, facilities and documentation relating to:

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

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

Owner-builder has the same meaning as in the *Home Building Act 1989*. *PC* means the Principal Certifier under the *Act*.

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

Professional engineer has the same meaning as in the BCA.

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

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

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

Site means the land being developed subject to this consent.

Woollahra LEP means Woollahra Local Environmental Plan 2014

Woollahra DCP means Woollahra Development Control Plan 2015

Work for the purposes of this consent means:

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

- the delivery to or removal from the *site* of any machine, article, material, or thing, or
- the occupation of the *site* by any person unless authorised by an occupation certificate.

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

Standard Condition: A2 (Autotext AA2)

A.3 Approved Plans and Supporting Documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with both the architectural plans to which is affixed a Council stamp "Approved" and supporting documents listed below as submitted by the Applicant unless modified by any following condition.

Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
A.1-100, AD2-101, A.6- 105, A.8-107, A.20-206, A.21-207 (all Rev 2)	Architectural Plans	All by LG Design Studio Pty Ltd	All dated 24/11/2020
AD.3-102 Rev 1 AD.4- 103, AD.5-104, A.7-106, A.9-108, AD14- 200, AD.15-201, AD.16- 202, A.18-204, A.19-205 (all Rev 1)	Architectural Plans	All by LG Design Studio Pty Ltd	All dated 28/09/2020
A389659	BASIX Certificate	NSW Department of Planning, Industry and Environment	29/09/2020

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 4.17(1)(g) of the *Act* modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)

Standard Condition: A5 (Autotext AA5)

A.4 Ancillary Aspects of Development (section 4.17(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* (2012) unless expressly provided otherwise by these conditions at the Owner's expense.

Note: This condition does not affect the Principal Contractor's or any sub-contractors obligations to protect and preserve public infrastructure from damage or affect their liability for any damage that occurs. Standard Condition: A8 (Autotext AA8)

A.5 Development Consent is Not Granted in Relation to these Matters

This approval does not give consent to the removal of the 7 Cypress Pine trees located on the eastern boundary of the site.

Standard Condition: A9 (Autotext AA9)

A.6 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)	Tree Value
1	Ficus microcarpa var. 'Hillii'	Council verge	10 x 12	\$3000.00
	(Hills Weeping Fig)			
8	Callitris Spp	Eastern boundary	8m	Nil
	(Cypress Pine)	(front)		

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

b) The following trees may be removed:

Council Ref No.	Species	Location	Dimension (metres)
1, 2, 3, 4	Syagrus romanzoffianum (Cocos palm)*	Eastern side boundary	~8 metres height
5, 6, 7	Strelitzia nicolai (Giant Bird of Paradise)*	Eastern side boundary	~8 metres height

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

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

B.1 Construction Certificate Required Prior to Any Demolition

Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is "commencement of erection of building" pursuant to section 6.6 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 Principal Certifier, and Notice of Commencement under the *Act*.

Note: See Over our Dead Body Society Inc v Byron Bay Community Association Inc [2001] NSWLEC 125. Standard Condition: B1 (Autotext BB1)

^{*}This species is exempt from the WMC DCP Chapter E.3 - Tree Management and can be removed without consent from Council.

B.2 Establishment of Tree Protection Zone (TPZ) Fence

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	Tree Location	Fence Radius from Centre of Trunk (Metres)
1	Ficus microcarpa var. 'Hillii' (Hills Weeping Fig)	Council verge	3

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 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 this consent.
- e) The site foreman must be made aware of all tree protection requirements associated with these conditions of consent by the project arborist. Any subsequent site personnel and contractors to the site must be made aware of all tree protection requirements by the site foreman.
- f) The project arborist shall provide written certification of compliance with the above condition.

B.3 Arborists Documentation and Compliance Checklist

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

• A record of the condition of trees to be retained prior to and throughout development;

- Recommended actions to improve site conditions and rectification of non-compliance;
 and
- Recommendations for future works which may impact the trees

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

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

Stage of arboricultural inspection	Compliance documentation and photos shall be included		
Installation of tree protection fencing	Compliance with tree protection measures		
Prior to the issue of a Final Occupation Certificate	Supervise the dismantling of tree protection measures		

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

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

B.4 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.5 Archaeological Features – Unexpected Findings

If unexpected archaeological features are discovered during the works covered by this approval, work must cease immediately in the affected area(s) and the Department of Premier and Cabinet, Community Engagement, Heritage must be notified. Additional assessment and approval pursuant to the Heritage Act 1977 may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

Note: Definition of archaeological feature as per the NSW Heritage Manual: Any physical evidence of past human activity. Archaeological features include buildings, works, relics, structures, foundations, deposits, cultural landscapes and shipwrecks. During an archaeological excavation the term 'feature' may be used in a specific sense to refer to any item that is not a structure, a layer or an artefact (for example, a post hole).

Standard Condition: B8

C. Conditions which must be satisfied prior to the issue of any Construction Certificate

C.1 Modification of Details of the Development (section 4.17(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) Ground floor balcony

To protect the visual privacy of surrounding properties and to comply with Control C7 in Part B3.5.4 of the WDCP, 2015, the full length of the eastern edge of the rear ground floor balcony shall incorporate a privacy screen to a minimum height of 1.5m measured from the finished floor level of this balcony.

b) First floor balcony

To protect the visual privacy of surrounding properties and to comply with Control C10 of B3.5.4 of the WDCP, 2015 the full length of both the eastern and western edges of the rear first floor balcony shall incorporate a privacy screen to a minimum height of 1.5m measured from the finished floor level of this balcony.

c) Vehicular gate

To protect the character and appearance of the streetscape, the proposed materials/construction of the front vehicular gate shall be at least 50% transparent or have an open form.

d) Replacement Tree

The architectural plan shall be amended to include a garden bed which is to be located on the eastern side boundary adjacent the south east of the proposed new pergola structure (which is adjacent to the existing swimming pool). The garden bed shall be a minimum of 1.3 metres deep (inside wall measurement) and a minimum of 2.9 metres length along the eastern side boundary. A suitable screening palm such as *Dypsis lutescens* (Golden Cane palm) shall be planted in this garden bed to compensate for the loss of canopy cover currently provided by the existing Cocos palms and Giant Bird of Paradise.

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 4.15 of the *Act*.

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

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

Standard Condition: C4 (Autotext CC4)

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

The Certifying Authority must not issue any certificates under section 6.4 of the *Act* 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 www.longservice.nsw.gov.au/bci/levy/other- information/levy-calculator	Contact LSL Corporation or use online calculator	No		
SECURITY under section 4.17(6) of the Environmental Planning and Assessment Act 1979				
Property Damage Security Deposit -making good any damage caused to any property of the Council	\$21,048	No	T115	
Tree Damage Security Deposit – Making good any damage caused to any public tree as a consequence of the doing of anything to which the consent relates.	\$3,000	No	T114	
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 7.12)	\$6 942.58 + Index Amount	Yes, quarterly	Т96	
INSPECTION FEES under section 608 of the Local Government Act 1993				
Security Administration Fee	\$194	No	T16	
Tree Inspection Fee	\$200	No	T95	
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$31 384.58 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 Service Corporation or to Council. Further information can be obtained from the Long Service Corporation website www.longservice.nsw.gov.au or the Long Service Corporation on 131 441.

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 7.12 levy (formerly known as 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 levy.

Do you need HELP indexing the levy?

Please contact Council's Customer Service Team on ph 9391 7000. Failure to correctly calculate the adjusted development levy will delay the issue of any certificate issued under section 6.4 of the *Act* and could void any such certificate (eg Construction Certificate, Subdivision Certificate, or Occupation Certificate).

Deferred or periodic payment of section 7.12 levy (formerly known as 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 7.12 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 7.12 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.A389659 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 4.55 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 and 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 Soil and Water Management Plan – Submission and 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" 2004 published by the NSW Government (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 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" publication can be downloaded from www.woollahra.nsw.gov.au, and The Blue Book is available at www.environment.nsw.gov.au/stormwater/publications.htm.

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 Plan

The Construction Certificate plans and specifications shall show the following information:

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

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

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 (Autotext CC35)

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, hydrogeological, 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 Woollahra DCP 2015 Chapter E2 Stormwater and Flood Risk Management.

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

All Stormwater Drainage System work within any road or public place must comply with Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (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. For more information go to the Sydney Water website www.sydneywater.com.au/SW/plumbing-building-developing/index.htm or call 1300 082 746.

Note: Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* dated January 2003 and the Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management 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 4.17(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 <u>Home Building Act 1989</u> 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, or
- b) to the erection of a temporary building.

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

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

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

D.2 Adjoining Buildings Founded on Loose Foundation Materials

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

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

Standard Condition: D6 (Autotext DD6)

D.3 Works (Construction) Zone – Approval and Implementation

A Works Zone may be required for this development. The Principal Contractor or Owner can apply for a works zone. If the works zone is approved the Principal Contractor or Owner must pay all fees for this Works Zone before it can be installed.

The Principal Contractor must pay all fees associated with the application and occupation and use of the road as a Works Zone. All Works Zone signs must have been erected by Council to permit enforcement of the Works Zone by Council's Rangers and NSW Police before commencement of any work. Signs are not erected until full payment of works zone fees.

Note: The Principal Contractor or Owner must allow not less than four to six weeks (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under the clause 22 of the *Transport Administration (General) Regulation 2000* to exercise those functions delegated by the Roads and Maritime Services under section 50 of the *Transport Administration Act 1988*.

Note: The enforcement of the works zone is at the discretion of Council's Rangers and the NSW Police Service. The Principal Contractor must report any breach of the works zone to either Council or the NSW Police Service.

Standard Condition: D10 (Autotext DD10)

D.4 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 4.17(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 Certifier 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 6.28 of the *Act*, to comply with the Building Code of Australia.

Clause 227A of the *Regulation* provides:

Signs on development sites

If there is a person who is the Principal Certifier 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 Principal Certifier it will provide the sign to the Principal Contractor or Owner-builder who must ensure that the sign is erected and maintained as required by clause 98A and clause 227A of the *Regulation*. Standard Condition: D12 (Autotext DD12)

D.5 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 SafeWork NSW requirements.

Standard Condition: D13 (Autotext DD13)

D.6 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" 2004 published by the NSW Government (The Blue Book).

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

Note: The International Erosion Control Association – Australasia (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" publication can be downloaded from www.woollahra.nsw.gov.au and *The Blue Book* is available at www.woollahra.nsw.gov.au and *The Blue Book* is available at www.environment.nsw.gov.au/stormwater/publications.htm

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 (Autotext DD14)

D.7 Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 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 Certifier for the building work, and
 - notified the Principal Certifier that the person will carry out the building work as an Owner-builder, if that is the case, and
- c) The Principal Certifier 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 Certifier 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 1.4 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 6.1 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 6.6(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, PC 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 6.6(2) of the *Act*.

Standard Condition: D15 (Autotext DD15)

D.8 Notification of *Home Building Act 1989* requirements

- a) For the purposes of section 4.17(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 <u>Home Building Act 1989</u> must not be carried out unless the Principal Certifier 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 Certifier 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 6.28 of the *Act*, to comply with the Building Code of Australia. Standard Condition: D17 (Autotext DD17)

E. Conditions which must be satisfied during any development work

E.1 Compliance with Australian Standard for Demolition

Demolition of buildings and structures must comply with Australian Standard AS 2601—2001: *The Demolition of Structures*.

Standard Condition: E2 (Autotext EE2)

E.2 Requirement to Notify about New Evidence

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

Standard Condition: E4 (Autotext EE4)

E.3 Critical Stage Inspections

Critical stage inspections must be called for by the Principal Contractor or Owner-builder as required by the Principal Certifier, any PC service agreement, the *Act* and the *Regulation*.

Work must not proceed beyond each critical stage until the Principal Certifier 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 6.5 of the Act or as required by the Principal Certifier and any PC Service Agreement.

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

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

Standard Condition: E5 (Autotext EE5)

E.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 <u>any equipment</u> 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 a separate penalty infringement notice or prosecution.

Note: The delivery and removal of plant, equipment and machinery associated with wide loads subject to RMS and NSW 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 2017*.

Note: NSW EPA Noise Guide is available at www.epa.nsw.gov.au/noise/nglg.htm Standard Condition: E6 (Autotext EE6)

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 heritage listed 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 148B of the *Road Transport Act 2013*, section 138 of the *Roads Act 1993* or section 68 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.

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

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.

 Standard Condition: E7 (Autotext EE7)

E.6 Tree Preservation

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

General Protection Requirements

- a) 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 50mm are exposed. The *principal contractor* must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- c) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

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

E.7 Replacement/Supplementary trees which must be planted

Any replacement or supplementary tree shall be grown in accordance with Tree stock for landscape use (AS 2303:2018). The replacement tree shall be planted in a *deep soil landscaped area* and maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council's Tree Preservation Order, it must be replaced with another of the same species which complies with the criteria outlined below.

Species/Type	Planting/Location	Container Size/Size of Tree (at planting)	Minimum Dimensions at Maturity (metres)
2 x Dypsis lutescens (Golden Cane palm)	Eastern side boundary in garden bed adjacent south eastern corner of existing swimming pool	45 litre each	6 metres height

The project arborist shall document compliance with the above condition.

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.
 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 and 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 Regulation 2008* 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 (Autotext EE13)

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" 2004 published by the NSW Government (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 (Autotext EE15)

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 (Autotext EE17)

E.12 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 registered surveyor 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 Principal Certifier'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 (Autotext EE20)

E.13 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 68 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.

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

Standard Condition: E21 (Autotext EE21)

E.14 Prohibition of Burning

There must be no burning of any waste or other materials. The burning of copper chrome arsenate (CCA) or pentachlorophenol (PCP) 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 (Clean Air) Regulation 2010* all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.

Standard Condition: E22 (Autotext EE22)

E.15 Dust Mitigation

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

This generally requires:

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

Note: "Dust Control - Do it right on site" can be downloaded from Council's website 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.safework.nsw.gov.au and www.epa.nsw.gov.au. Other specific conditions and advice may apply.

Note: Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution. Standard Condition: E23 (Autotext EE23)

E.16 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, and
- 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 NSW Environment Protection Authority, and relevant occupational health and safety legislation administered by SafeWork NSW, and
- e) evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained.

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

Standard Condition: E31 (Autotext EE31)

E.17 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 and 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, and
- k) retain all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as Council, the NSW EPA or SafeWork NSW.

Standard Condition: E32 (Autotext EE32)

E.18 Asbestos Removal

All asbestos removal work must be carried out safely according to NSW work health and safety legislation.

Where hazardous material, including bonded or friable asbestos has been identified in accordance with condition B.4 above, and such material must be demolished, disturbed and subsequently removed, all such works must comply with the following criteria:

- a) Be undertaken by contractors who hold a current SafeWork NSW "demolition licence" and a current SafeWork NSW "Class A licence" for friable asbestos removal.
- b) Be carried out in accordance with the relevant SafeWork NSW codes of practice.
- c) No asbestos products may be reused on the site.
- d) No asbestos laden skip or bins shall be left in any public place.

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

E.19 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 EPA *Waste Classification Guidelines, Part1: Classifying Waste, 2014.*

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.20 Disposal of Asbestos and Hazardous Waste

Asbestos and hazardous waste, once classified in accordance with condition E.19 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 NSW EPA requirements. Standard Condition: E41

E.21 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.22 Notification of Asbestos Removal

In addition to the requirements for licensed asbestos removalists to give written notice to SafeWork NSW 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 6 of the Act and Part 8 Division 3 of the Regulation)

F.1 Occupation Certificate (section 6.9 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 6.10 of the *Act*) unless an Occupation Certificate has been issued in relation to the building or part.

Note: New building includes an altered portion of, or an extension to, an existing building. Standard Condition: F1 (Autotext FF1)

F.2 Commissioning and Certification of Systems and Works

The Principal Contractor or Owner-builder must submit to the satisfaction of the Principal Certifier 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 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 Certifier 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 PC 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 PC must submit to Council, with any Occupation Certificate, copies of WAE plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA upon which the PC has relied in issuing any Occupation Certificate.

Standard Condition: F7 (Autotext FF7)

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

No relevant conditions.

H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (section 6.4 (c))

H.1 Fulfillment of BASIX Commitments – clause 154B of the Regulation

All BASIX commitments must be effected in accordance with the BASIX Certificate No. A389659.

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

Standard Condition: H7 (Autotext HH7)

H.2 Removal of Ancillary Works and Structures

The Principal Contractor or Owner must remove from the land and any adjoining public place:

- a) the site sign,
- b) ablutions,
- c) hoarding,
- d) scaffolding, and
- e) waste materials, matter, article or thing.

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

Standard Condition: H12 (Autotext HH12)

H.3 Landscaping

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

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

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. A389659.

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: 124

J. Miscellaneous Conditions

No relevant conditions.

K. Advisings

K.1 Criminal Offences – Breach of Development Consent and Environmental Laws

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

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

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

Warnings as to potential maximum penalties

Maximum penalties under NSW environmental laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

Warning as to enforcement and legal costs

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

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

Note: The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of *the Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. Standard Advising: K1 (Autotext KK1)

K.2 Dial Before You Dig



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

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

Standard Advising: K2 (Autotext KK2)

K.3 Builder's Licences and Owner-builders Permits

Section 6.6(2)(d) 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.

The Owner(s) must appoint the Principal Certifier. The Principal Certifier must check that the required insurances are 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.

Note: For more information go to the NSW Fair Trading website www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating
Standard Condition: K5 (Autotext KK5)

K.4 Building Standards - Guide to Standards and Tolerances

The Principal Certifier does not undertake detailed quality control inspections and the role of the Principal Certifier 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 "NSW Guide to Standards and Tolerances 2017" 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 Principal Certifier does not undertake this role.

Council, as the Principal Certifier or otherwise, does not adjudicate building contract disputes between the Principal Contractor, contractors and the Owner.

Note: For more information on the NSW Guide to Standards and Tolerances go to the NSW Fair Trading website www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/after-you-build-or-renovate/guide-to-standards-and-tolerances or call 133 220. Standard Condition: K6 (Autotext KK6)

K.5 SafeWork NSW Requirements

The Work Health and Safety Act 2011 and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

Note: For more information go to the SafeWork NSW website www.safework.nsw.gov.au or call 131 050.

Standard Condition: K7 (Autotext KK7)

K.6 Asbestos Removal, Repair or Disturbance

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

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

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

- a) Work Health and Safety Act 2011,
- b) Work Health and Safety Regulation 2017,
- c) SafeWork NSW "Code of Practice: How to Safely Remove Asbestos" (2016), and
- d) SafeWork NSW "Code of Practice: How to Manage and Control Asbestos in the Workplace" (2016).

Note: For more information go to the SafeWork NSW website on asbestos www.safework.nsw.gov.au/health-and-safety/safety-topics-a-z/asbestos, and www.safework.nsw.gov.au/law-and-policy/legislation-and-codes/codes-of-practice or call 131 050.

Standard Advising: K8 (Autotext KK8)

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

Standard Advising: K9 (Autotext KK9)

K.8 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Larissa Holbert, Assessment Officer, on (02) 9391 7118.

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

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

Standard Condition: K14 (Autotext KK14)

K.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 4.17 of the *Act*.

The securities will not be released until a Final Occupation Certificate has been 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 Refund of Security Bond Application form can be downloaded from

<u>www.woollahra.nsw.gov.au</u> Standard Condition: K15 (Autotext KK15)

K.10 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 (Autotext KK17)

K.11 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 NSW Fair Trading.

Note: For more information go to the NSW Fair Trading website www.fairtrading.nsw.gov.au or call 133 220.

Standard Condition: K18 (Autotext KK18)

K.12 Pruning or Removing a Tree Growing on Private Property

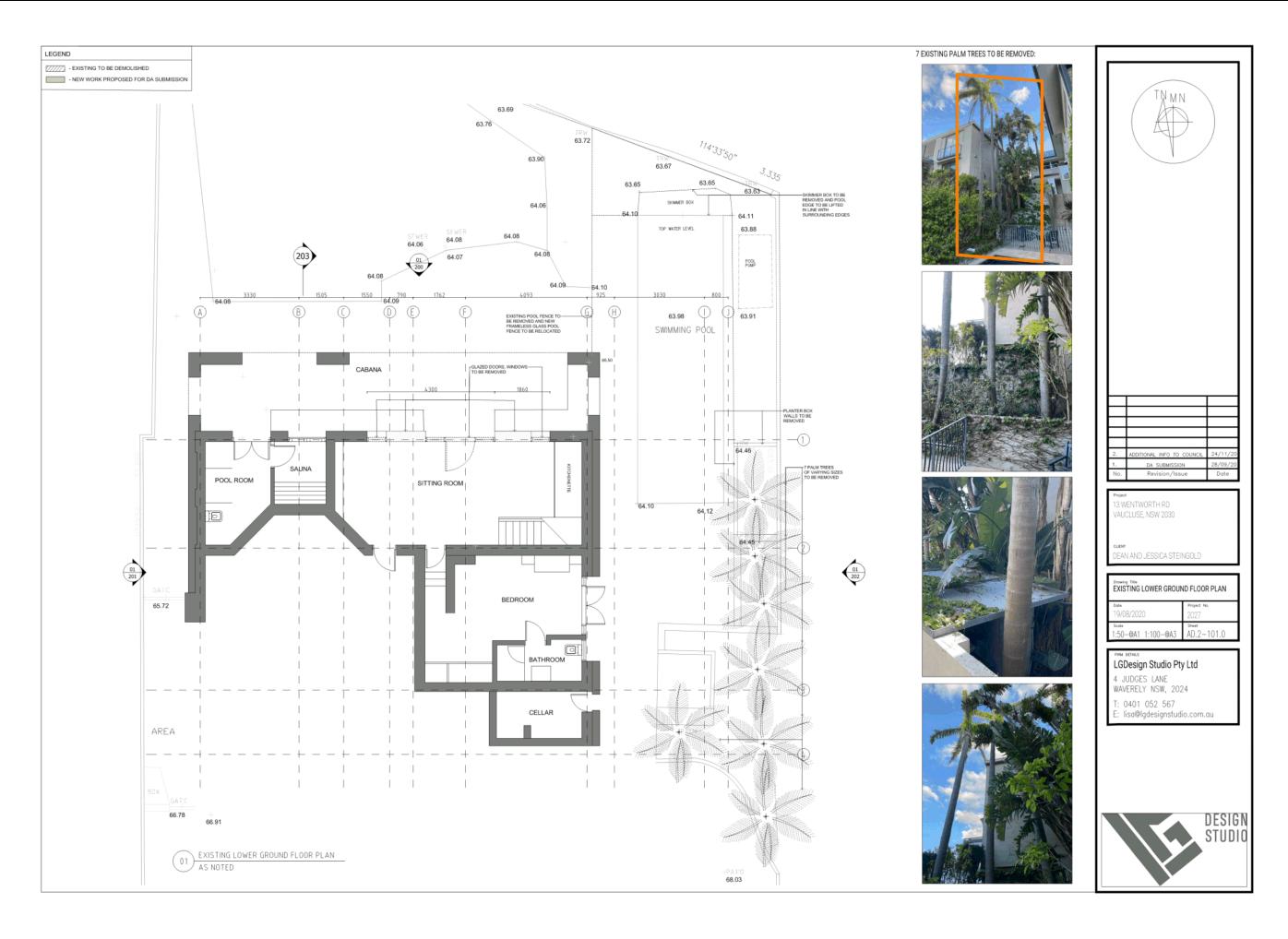
Woollahra Municipal Development Control Plan (DCP) 2015, Chapter E.3 Tree Management may require that an application be made to Council prior to pruning or removing any tree. The aim is to secure the amenity of trees and preserve the existing landscape within our urban environment.

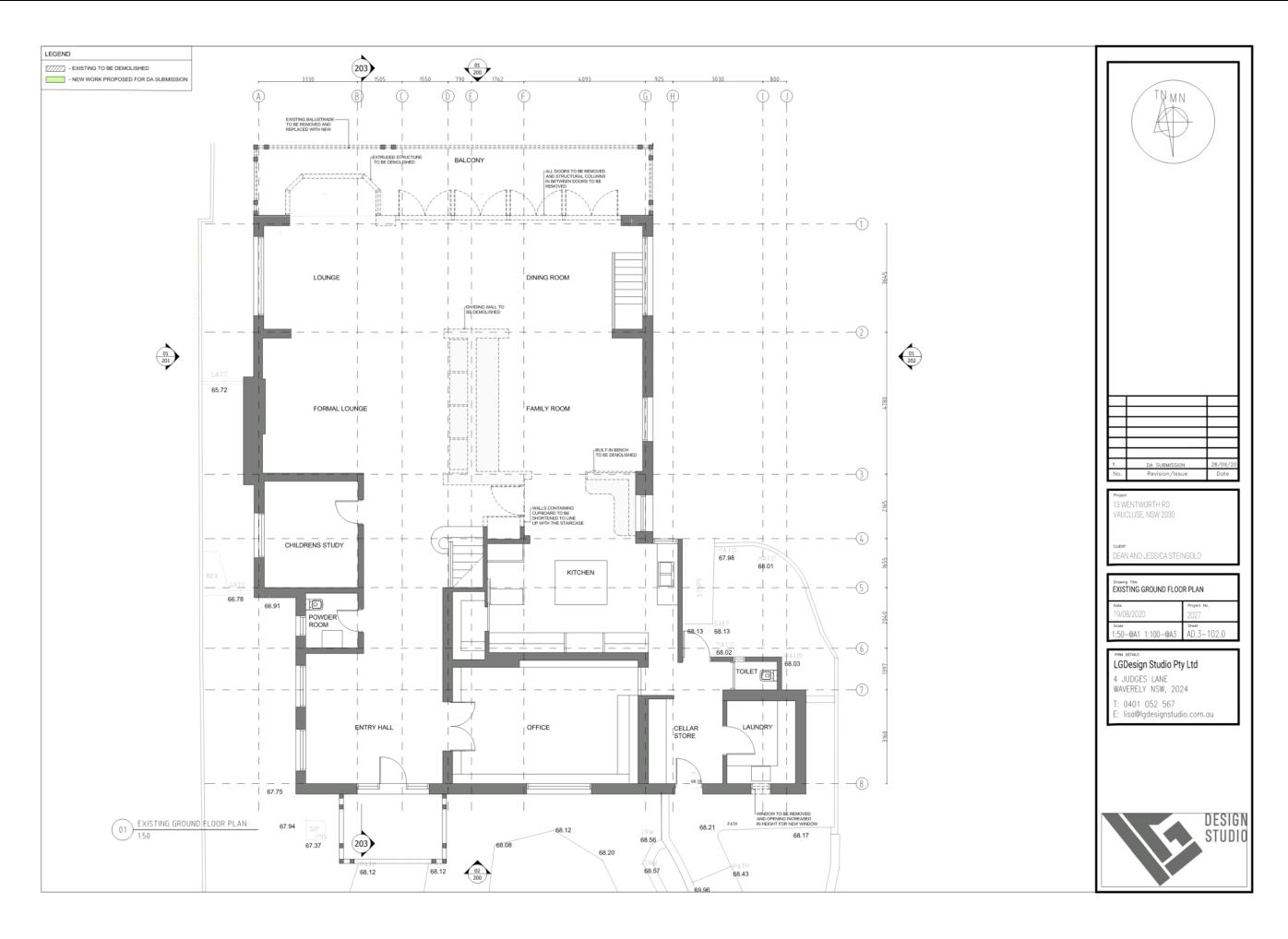
Before you prune or remove a tree, make sure you read all relevant conditions. You can obtain a copy of the DCP from Council's website www.woollahra.nsw.gov.au or you may contact Council on 9391-7000 for further advice.

Annexures

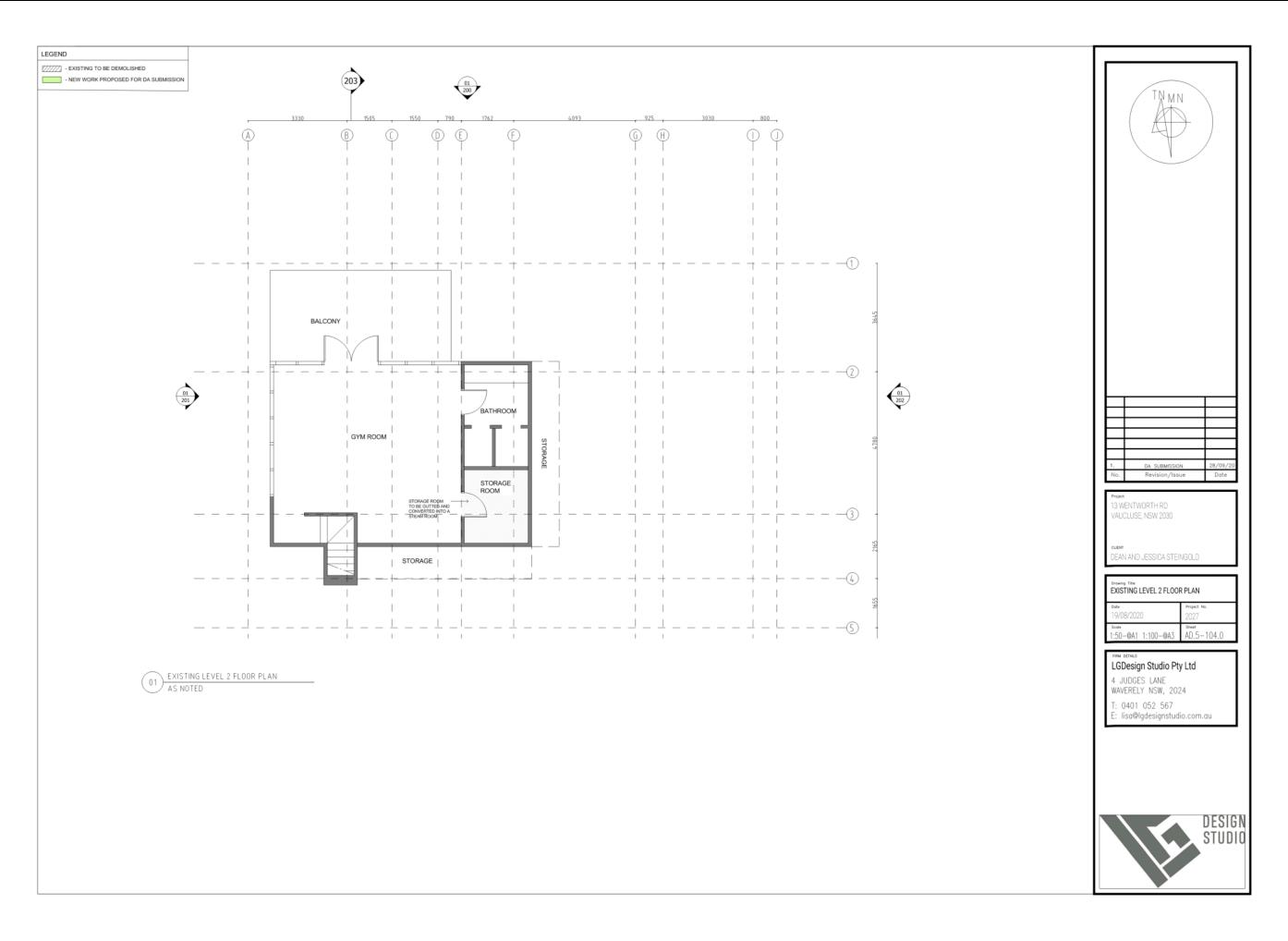
- 1. Plans, Sections and Elevations 🖟 🖫
- 2. Clause 4.6 Written Request Height J.
- 3. Referral Response Trees & Landscaping 🗓 🖺
- 4. Site Survey 🗓 🖫

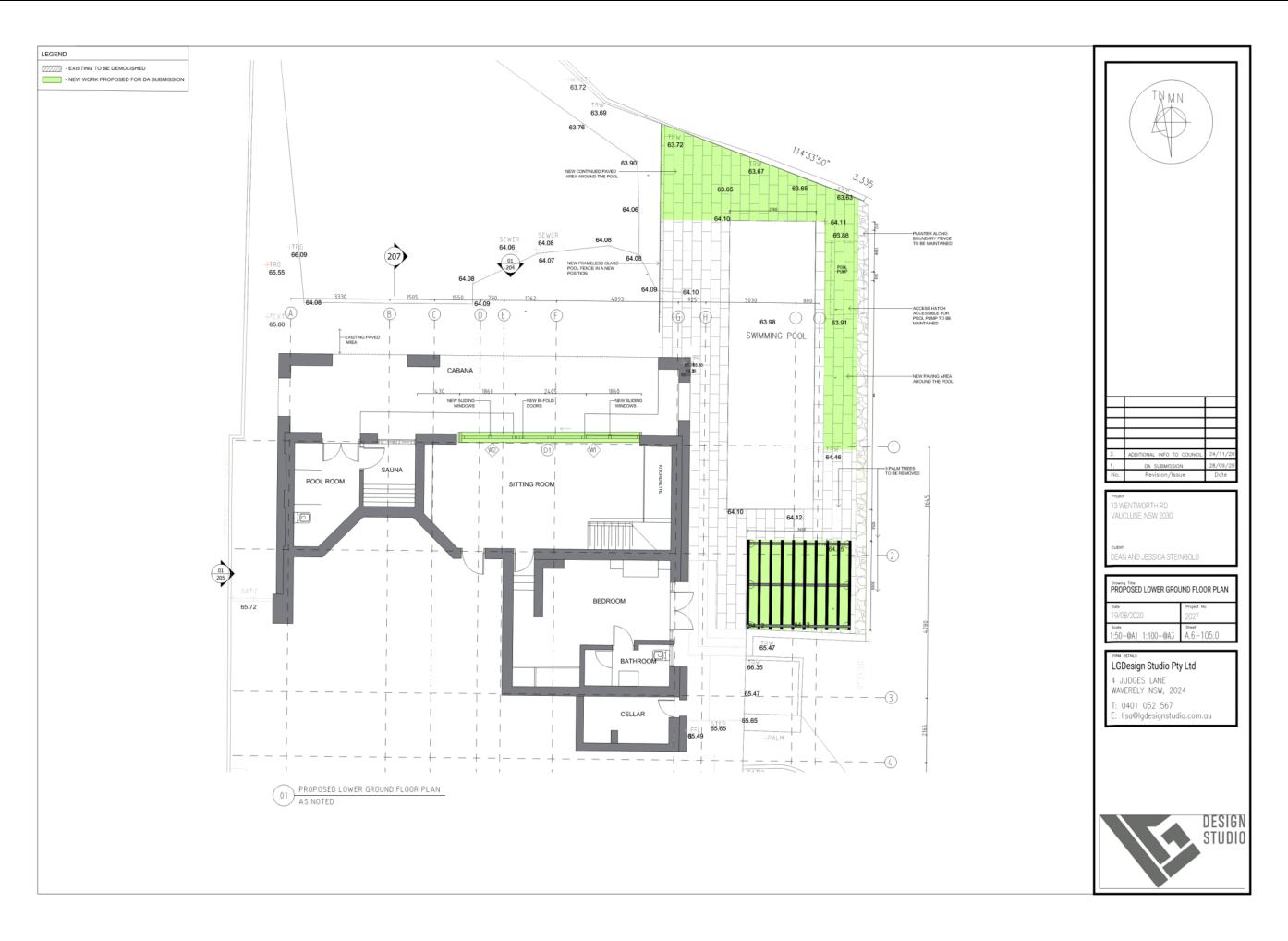








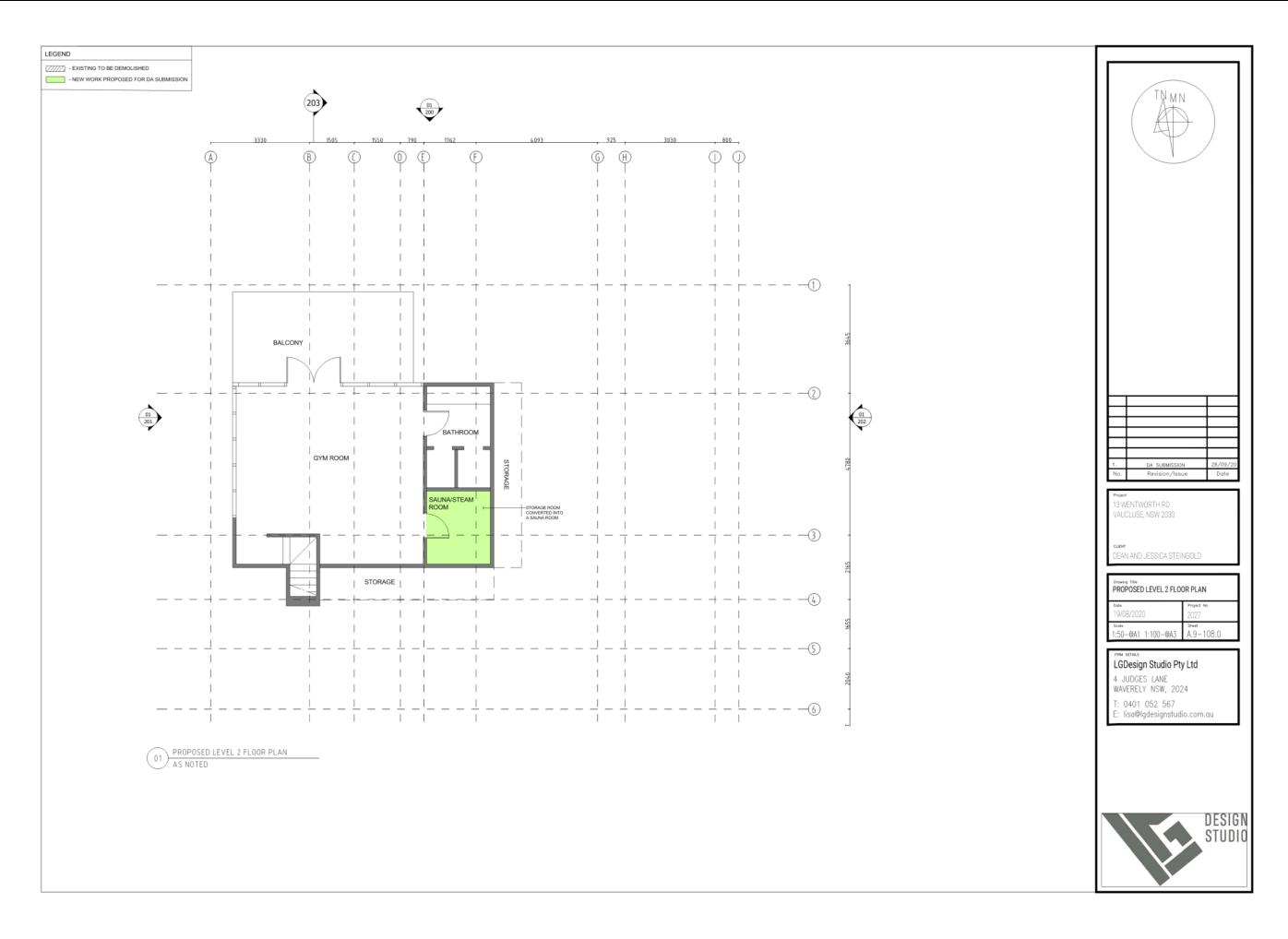








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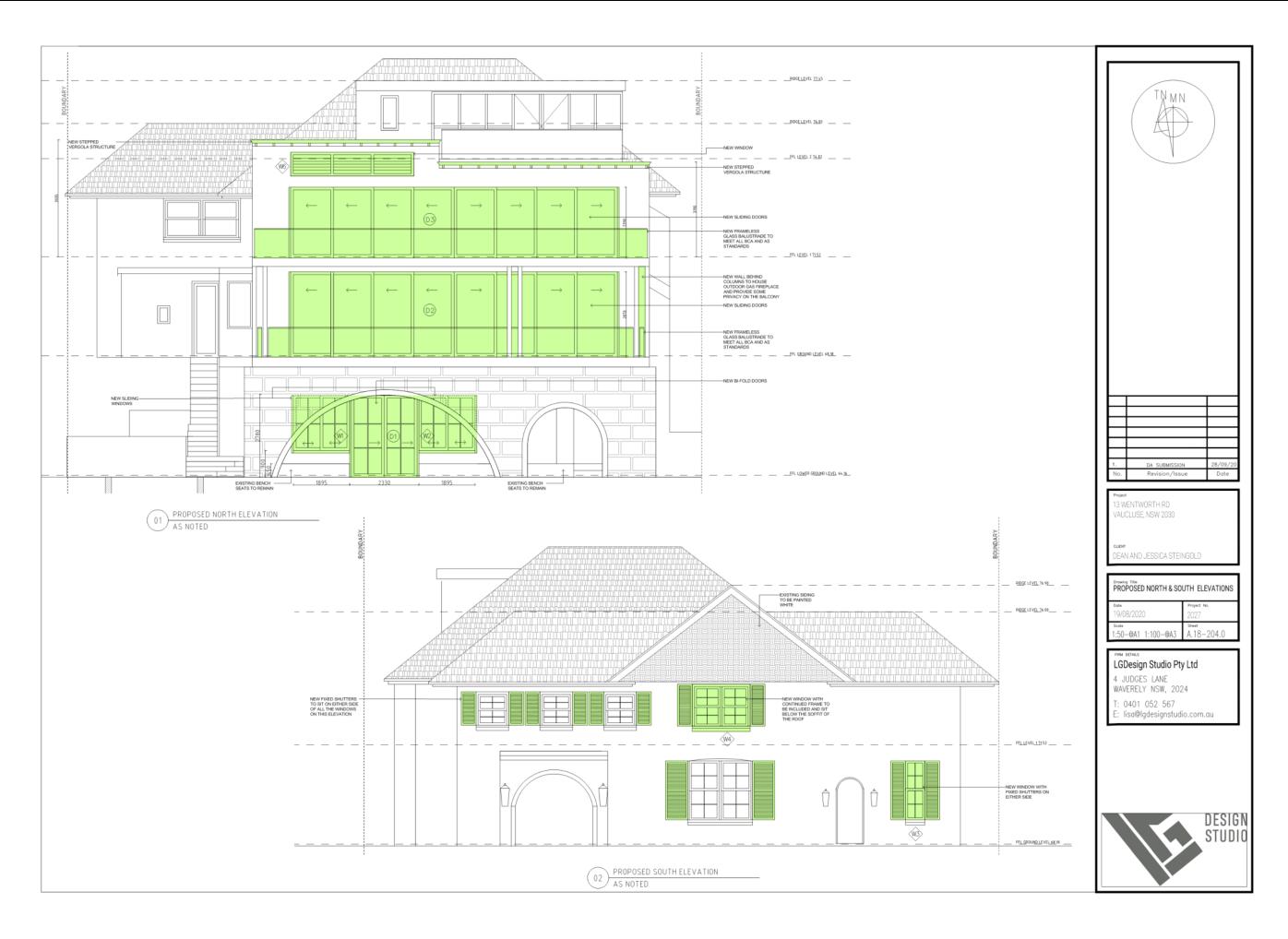
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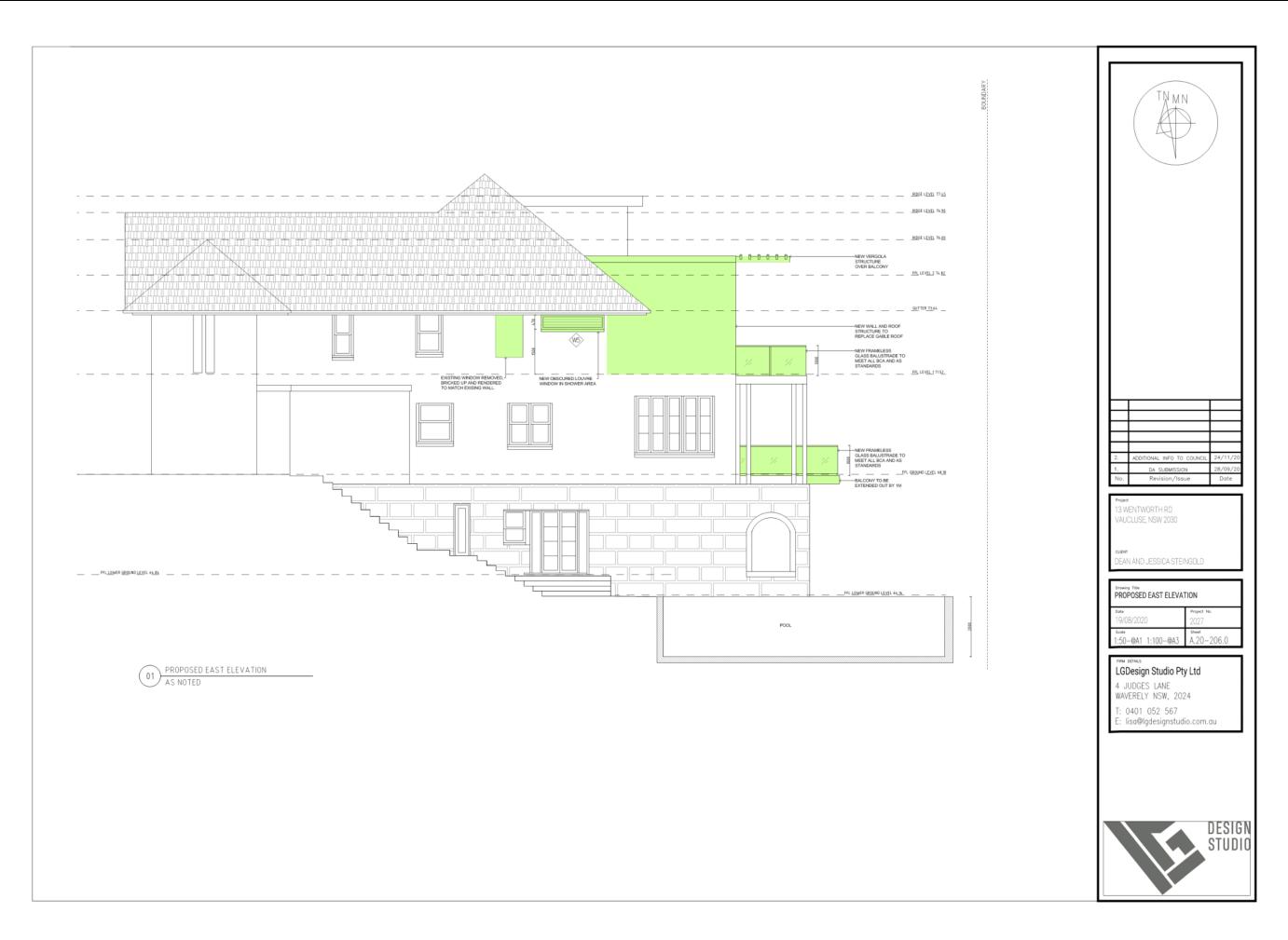
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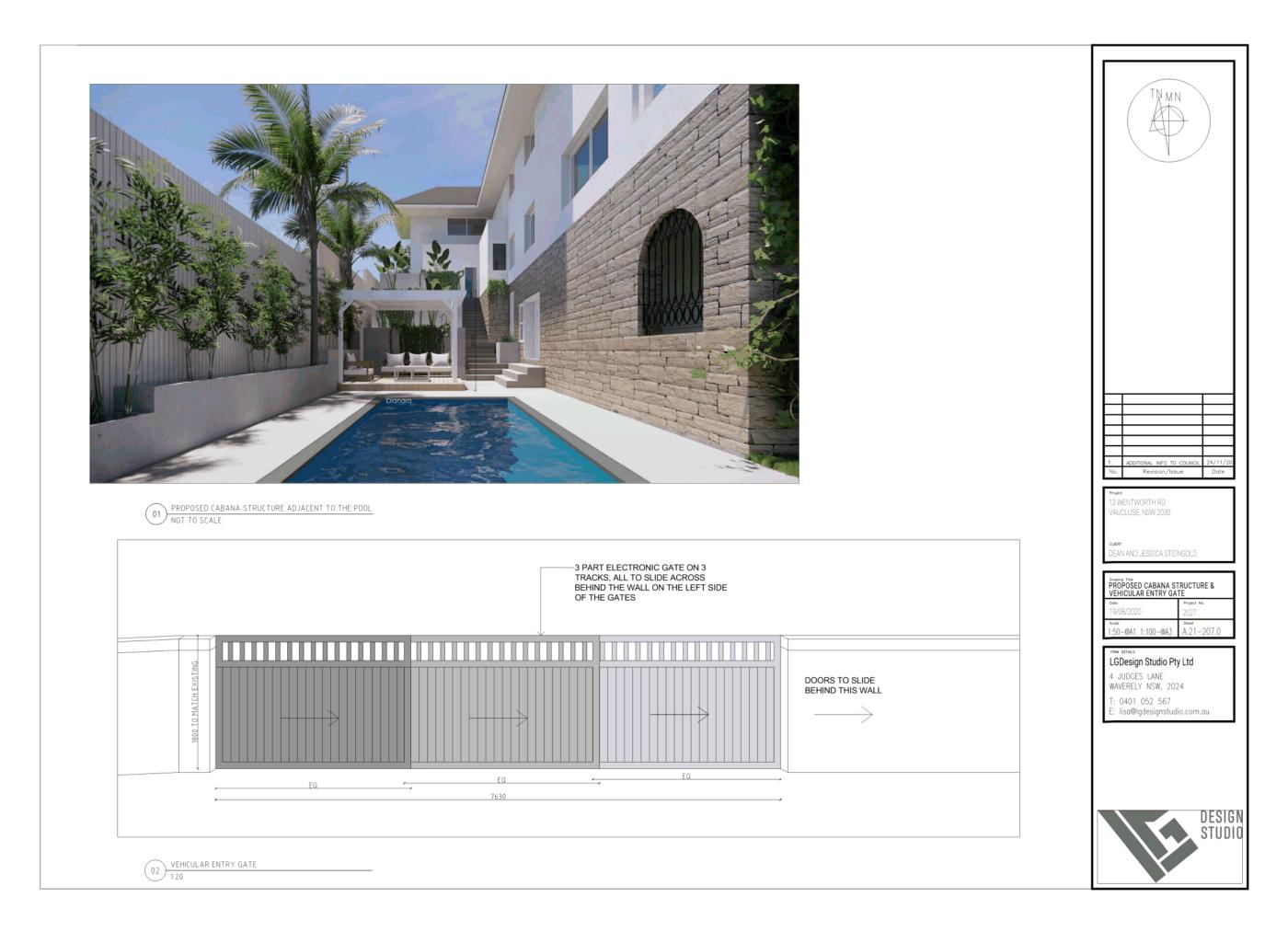
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11-13 Wentworth St Vaucluse 2030

To be submitted to Woollahra Municipal Council November 2020

On behalf of Mr Dean and Mrs Jessica Steingold **By LGDesign Studio**

This clause 4.6 variation should be read in conjunction with: Architectural plans and elevations prepared by LGDesign Studio

11-13 Wentworth Rd Vaucluse

CLAUSE 4.6 VARIATION

1. Name of the environmental planning instrument that applies to the land

Woollahra Municipal Council Local Environmental Plan 2014 (2015 EPI 20) is the environmental planning instrument relevant to 11-13 Wentworth Rd Vaucluse.

2. The zoning of the land and the objectives of the zone

The site at 11-13 Wentworth Rd Vaucluse is zoned R2- Low Density Residential.

Objectives of zone:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.

3. The Development Standard to which this Clause 4.6 Variation applies

4.3 Height of buildings

4. The objectives of the development standard

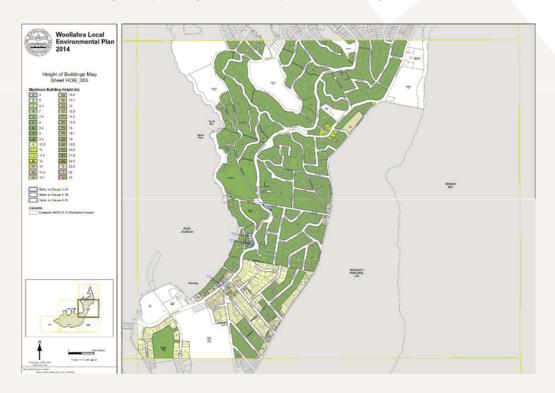
- (1) The objectives of this clause are as follows-
 - (a) to establish building heights that are consistent with the desired future character of the neighbourhood,
 - (b) to establish a transition in scale between zones to protect local amenity,
 - (c) to minimise the loss of solar access to existing buildings and open space,
 - (d) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,
 - (e) to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.
- (2A) Despite subclause (2) and clause 4.3A, the maximum height of a dwelling house, dual occupancy, or semi-detached dwelling on land in Zone R3 Medium Density Residential is 9.5 metres.
- (2B) Despite subclause (2) and clause 4.3A, the maximum height of a building on a battleaxe lot on land in Zone R3 Medium Density Residential is 9.5 metres.

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Director (B. Architecture)

11-13 Wentworth Rd Vaucluse

5. The numeric value of the development standard in the environmental planning instrument

The standard proposed to be varied is the maximum height restrictions. The maximum height allowed at 11-13 Wentworth Rd Vaucluse is 9.5m, however the existing structure/ the existing envelope already exceeds this required maximum height.



6. The existing height of the structure in relation to the development standard

Height of Building			
Current Height of Building	Maximum Height of Building under WMC LEP2014	Proposed Height of Building (m)	Percentage Variation
Current maximum height from the top of the roof to the ground directly below is 12.4m	9.5m	The maximum height of building is NOT proposed to be changed and will remain in its maximum area of 12.4m	0%

LGDESIGN STUDIO Director (B. Architecture)

11-13 Wentworth Rd Vaucluse

7. The compliance with the development standard

The compliance with the maximum height restrictions in this DA proposal to council is unnecessary in the circumstances of this particular case as the existing building already exceeds the building maximum height in its current and approved format previously by Woollahra Municipal Council.

The alterations that have been proposed in the area above the 9.5m building height include:

- · The new attic sauna
- And the vergola structure on the 1st floor balcony.

8. Sufficient environmental planning grounds to justify contravening the development standard

As noted above (in No.7) the alterations that have been proposed in this DA to the area that sits above the 9.5m building height include

Firstly with regards to the proposed sauna sits on the attic level that is above the maximum 9.5m height restriction, however this attic level was approved by council and the sauna itself will have no impact on the envelope of the structure at all. Therefore compliance with the standard in this instance is unnecessary and unreasonable to have to comply with.

The other item above the maximum building height that needs to be addressed is the vergola structure on the 1st floor balcony. This structure has been proposed to provide shade to a incredibly large glazed elevation of sliding doors. Without this vergola structure the proposed as well as the existing glazed elevation do not meet the BASIX requirements, meaning the heat load into the house will continue to be unacceptable. In order to place a DA, the proposal needs to pass BASIX and this fairly discreet vergola structure that blends into the aesthetics of the house will ensure that the house can pass BASIX. In this instance again it is unnecessary and unreasonable to have to comply with the maximum building height given that the approved structure as it exists is already noncompliant.

9. Is the proposed development in the public interest despite the contravention to the development standard?

It is my understanding that the proposed development will be in the public interest as long as it is consistent with the objectives for development within the zone and the objectives of the standard in which the development is proposed to be carried out.

In response to this criteria and in review of the objectives of the R2 zoning in the Woollahra council, I will note that the contravention to the development standard continues to maintain to "provide for development that is compatible with the character

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11-13 Wentworth Rd Vaucluse

and amenity of the surrounding neighbourhood," and continues to "ensure that development is of a height and scale that achieves the desired future character of the neighbourhood." IN addition to this I can also confirm that the objectives for the maximum building height continue to be adhered to as the envelope of the house maintains a building height that is consistent with the desired future character of the neighbourhood, continues to establish a transition in scale between zones to protect local amenity, nor does it alter the loss of solar access to existing buildings and open space, the proposal will not impact adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion and will continue to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.

10. Conclusion

In conclusion the assessment demonstrates continued compliance with the aims and objectives of the relevant provisions and despite the contravention to the development standard and confirms that the DA proposal for 11-13 Wentworth Rd Vaucluse will have no impact on the neighbouring properties or the public domain and therefore the infringement to the development standard for maximum building height should be overlooked and should be considered suitable for approval.

If you require any additional information, please contact me on 0401 052 567 or email at lisa@lgdesignstudio.com.au

Document done by:

Lisa Goddard

Director, LGDesign StudioBachelor of Architecture, UNSW

LGDESIGN STUDIO
Director (B. Architecture)

25 November 2020

REFERRAL RESPONSE – TREES & LANDSCAPING

FILE NO: DA 375/2020/1

ADDRESS: 11-13 Wentworth Road VAUCLUSE 2030

PROPOSAL: Alterations & additions to existing dwelling

FROM: Simone Woodman - Tree Management Officer

TO: Mrs L Holbert

I refer to the following documents received for this report:

- Survey Plan No. 2818 DETAIL/0, drafted by Jonathan C Keen & CO Pty Ltd, dated 12/08/2020
- Architectural Drawing No.s AD.2-101.0/1, A.6-105.0/1, drawn by LG Design Studio Pty Ltd, dated 28/08/2020

A site inspection was carried out on 19 November 2020.

Relevant Control:

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

COMMENTS

The submitted architectural plans show the proposed removal of three *Syagrus romanzoffianum* (Cocos palm) located in the rear yard eastern side boundary of the subject property. Chapter E.3 – Tree Management of Council's Development Control Plan (DCP) lists Cocos palm as an exempt species meaning consent from Council is not required to prune or remove the palms. Additionally in the area identified on the submitted architectural plans for a proposed pergola there are a number of *Strelitzia nicolai* (Giant Bird of Paradise). Giant Bird of Paradise are also a species listed as exempt from Council's DCP.

To compensate for the loss of canopy cover in the area where the Cocos palms and Giant Bird of Paradise are currently located, part of the existing garden bed along the eastern side boundary adjacent the south eastern corner of the existing swimming pool could be retained with appropriate replacement planting.

Located on the Council verge at the front of the subject property is a Hills Weeping Fig. Although the fig would not be impacted upon directly a nominal Tree Damage Security Deposit amount is recommended for the duration of the proposed development should it be approved.

RECOMMENDATIONS

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

CONDITIONS OF CONSENT

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

A. General Conditions

A.1 Tree Preservation & Approved Landscaping Works

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

a) The following trees shall be retained

· Trees on Council Land

Council Ref No.	Species	Location	Dimension (metres)	Tree Value
1	Ficus microcarpa var. 'Hillii' (Hills Weeping Fig)	Council verge	10 x 12	\$3000.00
8	Callitris Spp (Cypress Pine)	Eastern boundary (front)	8m	Nil

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

b) The following trees may be removed:

Council Ref No.	Species	Location	Dimension (metres)
1, 2, 3, 4	Syagrus romanzoffianum (Cocos palm)*	Eastern side boundary	~8 metres height
5, 6, 7	Strelitzia nicolai (Giant Bird of Paradise)*	Eastern side boundary	~8 metres height

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

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

B.1 Establishment of Tree Protection Zone (TPZ) Fence

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	Tree Location	Fence Radius from Centre of Trunk (Metres)
1	Ficus microcarpa var. 'Hillii' (Hills Weeping Fig)	Council verge	3

Attachment to report 20229539 (Title Referral Response - Trees & Landscaping)

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^{*}This species is exempt from the WMC DCP Chapter E.3 - Tree Management and can be removed without consent from Council.

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 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 this consent.
- e) The site foreman must be made aware of all tree protection requirements associated with these conditions of consent by the project arborist. Any subsequent site personnel and contractors to the site must be made aware of all tree protection requirements by the site foreman.
- The project arborist shall provide written certification of compliance with the above condition.

B.2 Permissible work within Tree Protection Zones

Nil

B.3 Demolition and Construction Management Plan

Nil

B.4 Arborists Documentation and Compliance Checklist

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

- A record of the condition of trees to be retained prior to and throughout development;
- Recommended actions to improve site conditions and rectification of noncompliance; and
- Recommendations for future works which may impact the trees

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

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

Attachment to report 20229539 (Title Referral Response - Trees & Landscaping)

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Stage of arboricultural inspection	Compliance documentation and photos shall be included
Installation of tree protection fencing	Compliance with tree protection measures
Prior to the issue of a Final Occupation	Supervise the dismantling of tree protection
Certificate	measures

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

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

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

C.1 Tree Management Plan

The Construction Certificate plans and specifications shall show the following information:

- a) Trees to be numbered in accordance with these conditions:
 - shaded green where required to be retained and protected
 - shaded red where authorised to be removed
 - shaded yellow where required to be transplanted
 - shaded blue where required to be pruned
- References to applicable tree management plan, arborists report or transplant method statement.

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

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

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY			
under Building and Construction Industry I	ong Service Payments Ac	t 1986	
Tree Damage Security Deposit – Making good any damage caused to any public tree as a consequence of the doing of anything to which the consent relates.	\$3000.00	No	T114
INSPECTION FEES under section 608 of the Local Government Act 1993			
Tree Inspection Fee	\$200.00	No	T95

C.3 Modification of details of the development (section 4.17 (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) Amended architectural plan. The submitted architectural plan shall be amended to include a garden bed to be located on the eastern side boundary adjacent the south eastern corner of the existing swimming pool. The garden bed shall be a minimum

Attachment to report 20229539 (Title Referral Response - Trees & Landscaping)

of 1.3 metres deep (inside wall measurement) from the side boundary and a minimum of 2.9 metres length along the eastern side boundary. A suitable screening palm such as *Dypsis lutescens* (Golden Cane palm) shall be planted in tis garden to compensate for the loss of canopy cover currently provided by the existing Cocos palms and Giant Bird of Paradise.

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 4.15 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.

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

Nil

E. Conditions which must be satisfied during any development work

E.1 Tree Preservation

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

General Protection Requirements

- a) 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 50mm are exposed. The *principal contractor* must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- c) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

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

E.2 Replacement/Supplementary trees which must be planted

Any replacement or supplementary tree shall be grown in accordance with Tree stock for landscape use (AS 2303:2018). The replacement tree shall be planted in a *deep soil landscaped area* and maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it is

Attachment to report 20229539 (Title Referral Response - Trees & Landscaping)

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protected by Council's Tree Preservation Order, it must be replaced with another of the same species which complies with the criteria outlined below.

Species/Type	Planting/Location	Container Size/Size of Tree (at planting)	Minimum Dimensions at Maturity (metres)
2 x <i>Dypsis lutescens</i> (Golden Cane palm)	Eastern side boundary in garden bed adjacent south eastern corner of existing swimming pool	45 litre each	6 metres height

The project arborist shall document compliance with the above condition.

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

F.1 Amenity Landscaping

Nil

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

Nil

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

H.1 Landscaping

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

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

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

Nil

J. Miscellaneous Conditions

Nil

K. Advisings

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

Woollahra Municipal Development Control Plan (DCP) 2015, Chapter E.3 Tree Management 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.

Attachment to report 20229539 (Title Referral Response - Trees & Landscaping)

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You can obtain a copy of the DCP from Council's website www.woollahra.nsw.gov.au or you may contact Council on 9391-7000 for further advice.



Simone Woodman
Tree Management Officer



Annexure 4 Site Survey

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DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No. D3

FILE No. DA 242/2020/1

ADDRESS 245 Underwood Street PADDINGTON

COUNCIL WARD Paddington
SITE AREA 423m²

ZONING R2 Low Density Residential

PROPOSAL Alterations & additions to the existing dwelling, first & second floor

additions, new swimming pool & workshop

TYPE OF CONSENT Local Development

COST OF WORKS \$649,237.00 **DATE LODGED** 14/07/2020

4/08/2020 – Amended Plans (Revision A)

10/09/2020 – Amended Plans (Revision B)

APPLICANT L M Elhage
OWNER L M Elhage
AUTHOR George Lloyd
TEAM LEADER Thomass Wong

SUBMISSIONS 2

RECOMMENDATION Conditional Approval

1. REASON FOR REPORT TO LOCAL PLANNING PANEL (LPP)

The application is to be determined by the Woollahra Local Planning Panel as it falls under the category of:

- Departure from development standards
 - (a) Development that contravenes a development standard imposed by an environmental planning instrument by more than 10%

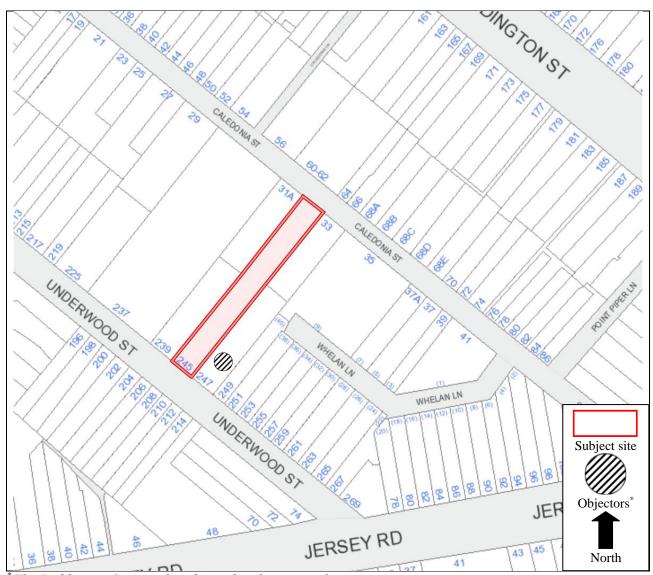
2. REASONS FOR RECOMMENDATION

The application has been assessed within the framework of the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979, and is recommended for approval because:

- The proposal is considered to be satisfactory with all relevant planning policies including the objectives of WLEP 2014 and WDCP 2015;
- The proposal satisfies section 4.15 of the Environmental Planning and Assessment Act 1979;
- The proposal is considered to be satisfactory with all relevant planning policies including the objectives of WLEP 2014 and WDCP 2015;
- The proposal will not have adverse effects on the local built and natural environment nor any adverse social and economic impacts in the locality;

- All likely impacts to adjoining properties including any submissions made have been addressed in the report, or are considered to be satisfactory;
- The site is suitable for the proposed development; and
- The proposal is deemed not to be contrary to the public interest.

3. LOCALITY PLAN



The Paddington Society also objected to the proposal

4. PROPOSAL

The proposal involves, as amended below, alterations and additions to the existing three-storey terrace dwelling and construction of a new swimming pool and comprises the following works:

External works

- New workshop attached to rear of existing double garage (within rear yard);
- New swimming pool in rear yard;
- New rear covered terrace adjoining kitchen; and
- New planter box facing street at ground floor.

Ground Floor

• Extension of kitchen/dining area by approx. 1m and construction of an adjoining terrace (described above).

First Floor

- Alteration of Bedroom 1 to allow for additional floor area through removal of existing terrace; and
- New walk in robe and ensuite for Bedroom 1.

Second Floor

- New study to rear
- New walk in robe to existing Bedroom 4; and
- New window to western elevation

4.1 Amended Plans

Following receipt of the first referral response from Council's Heritage Officer on 22 July 2020, the recommended heritage conditions of consent were forwarded to the applicant with a request to amend their originally submitted architectural plans.

On 4 August 2020, amended plans (Issue 'A') were received which incorporated the recommended variations/ conditions of Council's Heritage Officer.

On 5 August 2020, a re-referral response was received from Council's Heritage Officer to the Issue 'A' plans in which no objections (or conditions) were recommended.

On 10 September 2020, following receipt of the updated arborists report, the applicant also submitted amended landscape plans which were re-referred to Council's Tree and Landscape Officer. The amended landscape plan was accompanied with updated architectural plans (Issue B) which incorporated the retention of certain trees on site and made no other architectural variations to the finished built form of the development works from Issue 'A' (or from the originally submitted plans).

5. ISSUES

5.1 Exceptions to Development Standards in Woollahra Local Environmental Plan 2014

Clause	Development Standard	Departure from Control	Conclusion
Part 4.3	Height of Buildings	10.8m	Satisfactory* – Refer
	9.5m	(1.3m or 13.6% departure from the 9.5m control).	to Section 13.3

This is a pre-existing non-compliance. The extent of the non-compliant height relates to the existing roof which is to be replaced with new roofing material. The overall maximum height of the existing dwelling including the rood form and roof ridge will not be altered.

5.2 Primary Issues and Summary of Submissions

Issue	Conclusion	Section
Inconsistent with	The proposal has been thoroughly assessed and is considered to be consistent with	13.2,
the Zone	the objectives of the R2 zone and compatible with the character of the surrounding	14
Objectives (R2)	area.	

Issue	Conclusion	Section
Out of scale to	The subject site has a secondary frontage to Caledonia Street and is approximately	14.1.6
existing house at	40% larger in its overall site dimensions (esp. length) than the immediately adjoining	
No. 247	properties (239 and 247 Underwood Street and 31A and 33 Caledonia Street). The	
	overall height, bulk and scale are considered to be compatible with the adjoining	
	properties.	
Impact to view	There will be no significant view loss impacts	14.1.9
corridor		
Overlooking	The proposal will not result in unacceptable overlooking or privacy impacts	14.1.10
Lack of details of	Sufficient details have been provided for Council assessment of the DA.	N/A
the eastern façade		
Overshadowing	The proposal will be compliant with regard to the solar access requirements outlined	14.1.6
	in WDCP 2015	
Multiple non-	A detailed assessment of the proposal in accordance with the relevant requirements	14
compliances with	of the Woollahra DCP 2015 has been provided below and found to be satisfactory	
DCP controls		

6. SITE AND LOCALITY

Physical features

The subject site is located on the north-eastern side of Underwood Street. It is generally a rectangular block of land with dual frontages onto Underwood Street (front, 7.08m) and Caledonia Street (rear, 7.315m). With an average site length of approximately 58.2m, it has a site area of 423m².

Topography

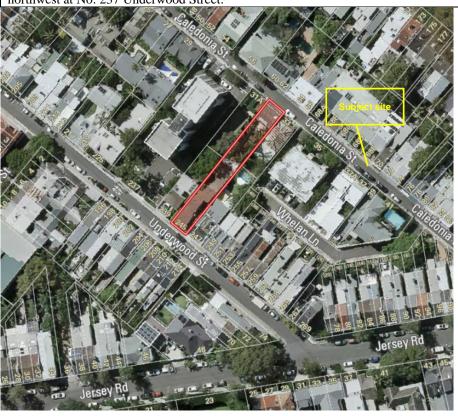
The site has a slight fall from the front (SW, RL69.91) toward the rear (NE, RL66.71).

Existing buildings and structures

Existing on the site is a 3-storey house (presented as two storeys upon Underwood Street) built in 1980s. A detached garage is located to the rear with vehicular access to Caledonia Street

Surrounding Environment

The site is located in the Paddington Heritage Conservation Area. Surrounding developments are predominantly Victorian and Federation period dwellings. A multi-storey residential flat building is located two lots to the northwest at No. 237 Underwood Street.



7. RELEVANT PROPERTY HISTORY

	Current	t use
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Residential dwelling

Relevant Application History

14/07/20: DA lodged with Council.

Relevant Compliance History

None

Pre-DA

None

Requests for Additional Information

21/07/20: Stop-The-Clock letter issued requesting: details of construction methodology; cl.4.6 (height non-compliance).

22/07/20: Council's Heritage Officer recommended specific design variations pertaining to: the front 1st floor balcony; the colour of the roof to be varied; deletion of rear 1st floor planter box on studio façade; and requested for window WS03 to be vertically proportioned.

4/08/20: Additional information received incl. revised plans as requested by Council's Heritage Officer.

5/08/20: Heritage Officer raises no objection to proposal (no heritage conditions imposed).

12-13/08/20: Referral response from Council's Tree Officer requested updated arboricultural impact assessment and revised landscape plan.

10/09/20: Updated arborists report and landscape plan submitted to Council and Re-referral sent to Council's Trees and Landscape Officer.

10/11/20: Tree and landscaping comments with relevant conditions of consent received.

17/11/20: Site inspection of subject site to ensure that amenity of adjoining properties was being suitably maintained.

Land and Environment Court Appeal(s)

Nil

8. REFERRALS

Referral	Summary of Referral Response	Annexure
Heritage	The proposal is satisfactory, subject to conditions	3
Technical Services	The proposal is satisfactory, subject to conditions	4
Trees and Landscaping	The proposal is satisfactory, subject to conditions	5

ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 are assessed under the following headings:

9. ADVERTISING AND NOTIFICATION

9.1 Notification Period

The application was advertised and notified from 29/07/2020 to 12/08/2020 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019.

One submission was received from:

1. Mecone P/L – on behalf of the owner/s of No. 247 Underwood Street, Paddington.

The submission raised the following issues:

• Non-compliant with the R2 zone objectives.

<u>Response</u>: A detailed assessment of the proposal has been undertaken in accordance with aims, objectives and controls of the Woollahra LEP 2014 and DCP 2015 (see section 9 and 10 of this report below). The proposal has been determined deemed to be consistent with the objectives of the R2 zone and has been determined to be compatible with the character of the surrounding area.

• Scale of development larger than adjoining development (at No.247).

<u>Response</u>: The subject site enjoys a secondary frontage to Caledonia Street and is approximately 40% larger in its overall site dimensions (esp. length) than the immediately adjoining properties (239 and 247 Underwood Street and 31A and 33 Caledonia Street).

The overall bulk and scale of the proposal is considered to be commensurate with the area of the site and bulk of the existing residence and the existing garage and studio facing Caledonia Street.

• Adverse impact upon view corridor.

<u>Response</u>: The extent of view loss objected to by the complainant occurs when looking towards the north-west corner from within the adjoining site and at an oblique angle towards the sky and surrounding canopy trees. Perpendicular views (ie. 180 degree views from side boundary to side boundary) and views beyond to the south-west remain intact.

For the reasons described above, a detailed view loss assessment was not deemed to be necessary in this case, especially as no significant views from the neighbouring sites are to be affected.

- Visual impacts
- Overlooking into neighbouring yard from proposed upper floor bedrooms

<u>Response</u>: A detailed site inspection of the subject site took place on 17/11/2020 at which time a number of key photographs were taken from elevated positions to determine especially the extent of impact upon the amenity and privacy of the adjoining property owner/s.

A number of those images are provided below with a description of form where they were taken. In summary, the alterations and additions to the principal dwelling house will not lead to any additional adverse amenity or privacy impacts. The same can be said for the proposed additions to the existing studio facing Caledonia Street and the elevated swimming pool.



View from rear facing 1st floor bedroom



Northern edge of rear facing 1st floor bedroom at a 90° (oblique angle) south-eastwards
Note: balconies of No.35 Caledonia Street opposite objector's pool



View from 1st floor studio at level of proposed terrace



Approximate location of swimming pool

• Lack of detail of the eastern façade

Elevational details provided in the architectural plans are considered to be suitable for the assessment of the completed eastern side façade. The proposed upper floor bedrooms are considered to be suitably designed and are consistent with similar additions to traditional terraces throughout Paddington and will not result in an undesirable amenity impact upon neighbouring properties from an amenity view point that would justify refusal of the application.

• Overshadowing and solar access.

<u>Response</u>: The extent of additional overshadowing and accessibility to solar access has been determined to be compliant with the requirements of Council's DCP (see section 14.1.6 below for details).

• Multiple non-compliances with the Woollahra DCP 2015.

<u>Response</u>: A detailed assessment of the proposal in accordance with the relevant requirements of the Woollahra DCP 2015 has been provided below and found to be satisfactory (**section 14**).

2. The Paddington Society

Multiple non-compliances with the WDCP 2015.

<u>Response</u>: The extent of the proposals compliance with the Woollahra DCP 2015 has been addressed comprehensively in section 10 of this report.

9.2 Updated (amended) Plans

The updated (amended) plans noted in Section 4 were not renotified to surrounding residents because it was considered to have no greater environmental or amenity impact. They were however placed onto Council's website and made public.

9.3 Statutory Declaration

The applicant completed the statutory declaration dated 13/08/2020 declaring that the site notice was erected and maintained during the notification period.

10. STATE ENVIRONMENTAL PLANNING POLICY 55: REMEDIATION OF LAND

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

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

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

As the site has a long history of residential use, it is considered that the land does not require further consideration under Clause 7 (1) (b) and (c) of SEPP 55. The proposal is therefore acceptable with regard to SEPP 55 – Remediation of Land.

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

The development application was accompanied by BASIX Certificate A380031, dated 25 June 2020, demonstrating compliance with the SEPP. These requirements are imposed in **Conditions C4, H1 and I1**.

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

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

13. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

13.1 Part 1.2: Aims of Plan

The proposal, subject to conditions, is consistent with the aims in Part 1.2(2) of the Woollahra LEP 2014.

13.2 Land Use Table

The proposal is defined as alterations and additions to an existing "attached [terrace] dwelling" which is permissible and consistent with the objectives of the R2 Low Density Residential zone.

13.3 Part 4.3: Height of Buildings

Part 4.3 limits development to a maximum height of 9.5m.

	Existing	Proposed	Control	Complies
Maximum Building Height	10.8m	10.8m (14.4% variation)	9.5m	No

The height of the existing terrace exceeds the statutory control of 9.5. The replacement of the existing roof material results in a technical breach in Council's maximum height control, which, from the public domain, will not appear any higher than the existing residence.

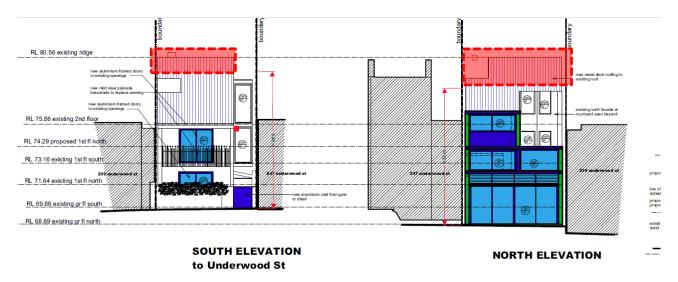
The proposed alteration and additions will not increase the overall height of the existing building (at RL80.56) as viewed from the public domain. As such, the proposal to replace the roofing material is deemed to be acceptable even though it exceeds the height of buildings control and is also deemed to suitably satisfy the objectives of Part 4.3 of the Woollahra LEP 2014.

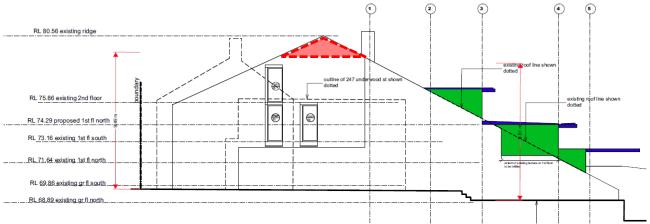
Part 4.6: Exceptions to Development Standards

Departure

The proposal involves a non-compliance with the Height of Buildings development standard.

While the existing building's ridge exceeds the 9.5m height limit, the majority of the proposed works would comply with the development standard. However, the proposed works related to the new roofing material, which is measured up to 10.8m from the existing ground level, will exceed the height limit by up to 1.3m (or 14.4%) as depicted in the drawing below (shown as shade in red dotted line):





Extract of elevations showing the non-compliant building height. (Source: Sofair Design)

13.3.2 Purpose

Part 4.6 allows a contravention of a development standard with the objectives being to allow an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

13.3.3 Written Request

Clause 4.6(3) requires the consent authority to consider the applicant's written request that seeks to justify the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify the contravention.

The applicant has provided a Clause 4.6 written request in relation to the departure from the maximum height of buildings (in **Annexure 2**).

13.3.4 Clause **4.6(4)** Assessment

Clause 4.6 (4) Consent must not be granted for development that contravenes a development standard unless:

- *a)* The consent authority is satisfied that:
 - i. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - ii. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- b) The concurrence of the Secretary has been obtained.

Clause 4.6(4)(a)(i) - Assessment

Clause 4.6(4) requires the consent authority to be satisfied that the applicant's written request seek to justify the contravention of the development standard, has adequately addressed the matters required to be addressed by C1 4.6(3). There are two separate matters for consideration contained within C1 4.6(3) and these are addressed as follows:

a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

<u>Assessment</u>: The applicant's written request has demonstrated that the objectives of the height of buildings development standard are achieved, notwithstanding the non-compliance.

In doing so, the applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a). The objectives of the development standard is discussed further in the assessment of Clause 4.6(4)(a)(ii).

b) That there are sufficient environmental planning grounds to justify contravening the development standard.

Assessment: In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be 'environmental planning grounds' by their nature: See Four2Five Pty Ltd. v Ashfield Council. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act including the objects in s1.3 of the EPA Act.

S1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicant's written request, which supports the proposed non-compliance with the height of building development standard, has adequately demonstrated that the proposed development promotes the orderly and economic use and development of the land; and that the proposal promotes good design and local amenity, in accordance with the objects 1.3(c) and (g) of the EPA Act.

The applicant's written request has therefore demonstrated sufficient environmental planning grounds to justify the contravention of the development standard as required by Clause 4.6(3)(b) and the consent authority can be satisfied that the applicant's written requests have adequately addressed the matters required to be demonstrated by Clause 4.6(3).

Clause 4.6 (a) (ii) – Assessment

Clause 4.6 (4)(a)(ii) requires the consent authority to be satisfies that:

ii) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the height of building development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below:

Clause 4.3 – Height of Buildings

The proposal is assessed against the *Objective of the Development Standard* prescribed by *Clause 4.3* which states:

(a) To establish building heights that are consistent with the desired future character of the neighbourhood,

<u>Comment</u>: The proposed development does not exceed the overall height of the existing building. The non-compliant height only relates to the proposed new roofing materials whereas the roof form and the overall height of the building will remain unchanged. The proposal will generally maintain the visual qualities of the original house and its grounds when viewed from the surroundings.

(b) To establish a transition in scale between zones to protect local amenity,

<u>Comment</u>: The subject site is within the R2 Low Density Residential zone and does not adjoin any other zone. There is no impact in terms of transition in scale between zones.

(c) To minimise the loss of solar access to existing buildings and open space,

<u>Comment</u>: Acceptable – The proposed development is satisfactory with regards to the minimum solar access requirements to adjoining private open space and habitable room windows, assessed under *Part C1.4.5*: *Building Height, Bulk, Form and Scale* of the Woollahra DCP 2015

(d) To minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,

<u>Comment:</u> Acceptable – The non-compliant height will not result in any unacceptable impact on adjoining or nearby properties in terms of disruption of views, loss of privacy, overshadowing or visual intrusion. Each of these elements are discussed in detail under the relevant heads of consideration of this report.

(e) To protect the amenity of the public domain by providing public views of the harbour and surrounding areas.

<u>Comment</u>: Acceptable – The non-compliant height will not result in any loss of publicly available views of the harbour and of surrounding areas.

Objectives of the R2 Zone

• To provide for the housing needs of the community within a low density residential environment

<u>Comment</u>: The non-compliant height only relates to the proposed new roofing materials whereas the roof form and the overall height of the building will remain unchanged. The alterations and additions to the existing building will not impact on the housing needs of the community in the R2 area.

• To enable other land uses that provide facilities or services to meet the day to day needs of residents.

<u>Comment</u>: This objective is irrelevant to the proposed scope of works.

• To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.

<u>Comment</u>: The overall height and bulk of the existing residence will remain compatible with the character of the Paddington HCA and will not adversely impact upon the amenity of surrounding properties.

• To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood

<u>Comment</u>: The non-compliant height will not change the overall height and scale of the existing building and will also achieves the desired future character of the neighbourhood.

The Clause 4.6 variation request is considered to be well founded as the proposal demonstrates the following:

- Compliance with the building height development standard would be unreasonable and unnecessary in this circumstance as the non-compliant building height is a result of the existing building height;
- There are sufficient environmental planning grounds to justify the contravention as outlined in the assessment above;
- The development meets the objectives of the development standard and the objectives of the R2 Low Density Residential zone, notwithstanding the variation;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard in this instance;
- The proposed variation will not hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and
- The contravention does not raise any matter of State or Regional Significance.

Clause 4.6(4)(a)(b) – Assessment

The Department issued Planning Circular No.PS18-003 (dated 21 February 2018) which notified Councils of arrangements "...where the Director General's concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6 ...of the Standard Instrument..." Clause 64 of the EPA Regulations provides that Council may assume the Director-General's [Secretary's] concurrence for exceptions to development standards, thus satisfying the terms of this clause.

In relation to this Part, Preston CJ in Initial Action Pty Ltd v Woollahra Municipal Council (2018) establishes *Planning Principles* which are summarised and assessed as follows:

- i. Does the applicant's written request demonstrate non-compliance with the development standard is unreasonable or unnecessary?
 - Yes.
- ii. Are there sufficient environmental planning grounds to justify contravening the development standard?
 - Yes The proposed development will allow improved residential amenity relative to the existing residential accommodation justifying the contravention of the development standard.
- iii. The public interest and whether the proposal is consistent with the objectives of the development standard.

For reasons outlined in the applicant's written request, the proposal is considered to be in the public interest and is consistent with the objectives of the development standard.

13.3.5 Conclusion

The written submission from the applicant has adequately demonstrated that the variation of the development standards prescribed by *Clauses 4.3* is justified pursuant to the relevant matters for consideration prescribed by Clause 4.6.

The consent authority is satisfied that the applicant's written request has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that sufficient environmental planning grounds have been demonstrated to justify the contravention of the standard.

The consent authority is also satisfied that the proposal is in the public interest as it is consistent with the objective of the development standards and those applicable to development within the zone.

Accordingly, departure from the development standard is justified in this case.

13.4 Part 5.10: Heritage Conservation

The subject site is located within the Paddington Heritage Conservation Area.

In correspondence dated 22 July 2020, Council's Heritage Officer advised that the proposal is satisfactory subject to specific design variations pertaining to: the front 1st floor balcony; the colour of the roof to be varied; deletion of rear 1st floor planter box on studio façade; and request for window WS03 to be vertically proportioned.

Those requested variations were forwarded to the applicant who provided revised/updated plans on 4 August 2020.

On 5 August 2020, Council's Heritage Officer provided additional comments in response to the updated plans and did not impose any [heritage related] conditions of consent.

The proposal is therefore considered to be acceptable with regard to the objectives in Parts 5.10 of the Woollahra LEP 2014.

13.5 Part 6.1: Acid Sulfate Soils

The subject site is within a Class 5 area as specified in the Acid Sulfate Soils Map. The subject works are not likely to lower the water table below 1.0m AHD on any land within 500m of a Class 1, 2 and 3 land classifications. Accordingly, a preliminary assessment is not required and there is unlikely to be any acid sulfate affectation.

The proposed development is acceptable with regard to Part 6.1 of the Woollahra LEP 2014.

13.6 Part 6.2: Earthworks

The proposal involves less than approximately 15m³ of excavations taking place for the construction of the swimming pool and extended (sunken) workshop adjacent to the existing garage.

As such, a geotechnical report (prepared by Geo-environmental) has been submitted with the application and which has identified the subsurface conditions and offered a methodology of excavation/s.

Council's Development Engineer has reviewed the above documents and in comments dated 24/09/2020, has found no objections to the proposed excavations on technical grounds and has recommended appropriate conditions of consent for the works to be able to take place.

The recommended conditions also include the requirement for dilapidation reports for adjoining residences to be prepared (**Condition D.2**).

Having regard to the above, the proposed development, as conditioned, is acceptable with regard to Part 6.2 of the Woollahra LEP 2014.

13.7 Part 6.3: Flood Planning

The site is not located within a flood planning area and is not below the flood planning level.

14. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

14.1 Chapter C1: Paddington Heritage Conservation Area

14.1.1 Section C1.2.4 Desired future character

In response to this part of the DCP, Council's Heritage Officer has made the following comments:

The proposal retains the existing contemporary infill development on the subject property, and the proposed alterations and additions would achieve a more cohesive relationship with the significant 19th century residential character and context of the Paddington HCA. The contemporary design of the proposal responds appropriately to the streetscape character of the surrounding historical context. The form, articulation, detailing, materials and finishes of the proposed alterations and additions offer a modern design approach that interprets traditional terrace typologies along Underwood Street and also Caledonia Street to the rear, whilst adding a respectful new contemporary layer of development. The proposal complies under this clause.

The proposal is consistent with Paddington's low scale high density development and the desired future character, retaining the unique significance of the area as a special residential precinct.

The proposal is considered to be consistent with the area's desired future character and acceptable with the relevant objectives of Part C1.2.4 of the DCP.

14.1.2 Section C1.2.5: Contemporary design in Paddington

The building on site has been reconstructed as a modern infill development (see image below).



In response to this part of the DCP, Council's Heritage Officer has made the following comments:

The proposal simplifies existing elevations of the infill development, and responds to and respects the context of the Paddington HCA. The proposed alterations and additions to the existing infill development would establish a more cohesive relationship between the new development and surrounding Paddington HCA. The form, articulation, detailing, materials and finishes of the proposed alterations and additions offer a modern design approach that takes ques from traditional terrace typologies along Underwood Street and also Caledonia Street to the rear, whilst adding a respectful new contemporary layer of development. The proposal complies under this clause.

The proposal is considered to be consistent with the desired future character statement/s in Part C1.2.5 of the DCP.

14.1.3 Section C1.3.12: Existing Contemporary Infill

In response to this part of the DCP, Council's Heritage Officer has made the following comments:

- The proposal is consistent with the character of the existing building including its massing and has been designed with regard to its context. The proposed alterations and additions are predominantly contained within the existing roof plane and side blade walls, which would maintain the existing bulk and massing of the contemporary infill development. This meets Objective O1 and complies with Control C2 and is supported.
- The removal of a portion of the existing transversal gable roof to the rear and proposed insertion of flat roof extensions and also a reverse skillion form at ground floor level would not be visible from the public domain and are not to a contributory item, and this is therefore supported in this instance.
- The proposed materials, comprising cement rendered external walls, steel profile metal roofing, simple contemporary metal balustrades and fine aluminium framing to windows and doors in neutral tones, offers a restrained palette of contemporary materials and finishes that are appropriate within the context of the Paddington HCA. The proposed materials and finishes meet Objective O1 and comply with Control C1, and are generally supported.

- Contemporary corrugated profile sheeting in appropriate colours is permissible for roofs for infill development. However it is noted the proposed 'Monument' colour is not traditional within the Paddington HCA. New metal roofing is to be light to mid grey in colour in order to comply.
- The proposal would refine and simplify the elevations of the existing infill development, while maintaining the existing setbacks and alignments on the site. The introduction of new lightweight metal balustrades to the front elevation of the existing house would remove intrusive elements including cement planter boxes and would offer a contemporary reinterpretation of the terrace typology. This is considered appropriate in the context of the surrounding streetscape, which comprises a combination of historic terrace housing and modern development, and is supported in this instance.
- The existing building on the site does not retain any notable architectural merit, therefore compliance under Objective O2 is not relevant. It is considered that the proposal would maintain the overall form and massing of the building, and would provide localised alterations that would enhance the contribution the existing building makes to the surrounding streetscape context of the Paddington HCA.
- While new windows to the rear (north) elevation of the dwelling at upper levels are not vertically proportioned, they would be located to the rear of the dwelling and would not be readily visible from the public domain, and are therefore supported in this instance.
- Window WS03 to the ensuite at second floor level (west elevation) is not vertically proportioned and would be visible from the public domain. WS03 is to be vertically proportioned or otherwise maintain existing compliant openings in this location in order to comply.
- The proposed modifications to the solid masonry front boundary wall would maintain an existing intrusive element in the Paddington HCA streetscape. The fence to the street front zone is to be a contemporary interpretation of traditional fence details and materials (i.e. matched to the details of the proposed steel balustrade to the first floor level balcony on the front façade) to comply.

Suggested modifications to the colour of the roof and to window WS03 have been made in originally updated plans dated 4/08/2020 and have been accepted as suitable by Council's Heritage Officer in updated comments dated 5/08/20.

In addition to the above, the proposal will also comply with objectives O1 and O2, and controls C1 and C2 in Part C1.3.12 of the DCP.

14.1.4 Section C1.4.3: Rear Elevations, Rear Additions, Significant Outbuildings and Yards

	Existing	Proposed	Control	Complies
C2 Height of an alteration and addition to the rear of a double storey or higher building	Below the gutter line of the main roof			Yes
C3 and C6 Rear setback	Does not extend beyond predominant rear setback	Retained existing rear setback	Not extend beyond the predominant rear building setbacks	Yes
C6 Original chimneys	Retain all original chimneys	Retain all original chimneys	Retain all original chimneys	Yes

The proposal will achieve objectives O1, O2, O3 and O4, and will comply with controls C1, C2, C3, C5, C6 and C10 of Part C1.4.3 of the DCP.

14.1.5 Section C1.4.4: Roofs and Roof Forms

	Existing	Proposed	Control	Complies
C3 Roofscape of the principal building form	N/A	To be retained in similar form to existing.	The roofscape of the principal building form is to be retained	Yes
C6 Traditional roof forms	N/A	New rear roof form diminishes in scale towards the rear of the building.	Roof forms are to be consistent with appropriate traditional roof forms, which reflect the diminishing scale of roofscapes towards the rear of buildings	Yes
C8 Materials of construction	N/A	Clad in materials that are appropriate to the architectural style of the building.	Appropriate materials are described in Section 1.5.8 Materials, finishes and details	Yes
C10 Transparent material to rear roof planes	<25%	No transparent roof materials.	Not more than 25% transparent material, including skylights and dormer windows	Yes

In response to this part of the DCP, Council's Heritage Officer has advised the following:

- The proposal is largely contained within the existing roof form, which comprises a large transversal gable roof. The removal of portions of this existing roof form to the rear and replacement with additions that provide a stepped form to the rear is appropriate to the context of the building, including flat roofs and a reverse skillion roof form at ground floor level. The proposed skillion roof form at ground floor level would not be visible from the public domain and is not to a contributory item. The proposed modifications to the existing roof form of the non-contributory item meet Objective O3 and are supported in this instance.
- The proposal involves removal of the intrusive concrete roof tiles and replacement with contemporary corrugated metal sheeting, which complies with Control C8 and is supported. It is noted however the proposed 'Monument' colour of new metal roofing is not traditional within the Paddington HCA and is not supported. New metal roofing within the Paddington HCA is to be light to mid grey in colour in order to comply.

Condition C.1(a) has been recommended with regard to the roofing material.

The proposal will achieve objective O3, and will comply with controls C6 and C8 of Part C1.4.4 of the DCP.

14.1.6 Section C1.4.5: Building Height, Bulk, Form and Scale

	Existing	Proposed	Control	Complies
C1 Height of existing buildings on street frontages	Nil	Not increased	Not increased	Yes
C3 The height, bulk, form and scale of infill and new development	Consistent with the predominant height, bulk, form and scale of adjoining buildings Consistent with the predominant height, bulk, form and scale of adjoining buildings Consistent with the predominant height, bulk, form and scale of adjoining buildings		Yes	
C4 Sunlight provided to the main ground level private open space of adjoining properties	>50% >2hrs	>50% >2hrs	Min 50% (or 35m²) for two hours between 9am and 3pm on 21 June	Yes Yes

In response to this part of the DCP, Council's Heritage Officer has advised the following:

• The proposed alterations and additions are predominantly contained within the existing built form of the house including the roof plane and side blade walls. As such, the proposal would maintain the existing bulk and massing of the contemporary infill development.

The proposal will achieve the relevant objectives O3 and O4, and as demonstrated above, is considered to be acceptable with the relevant controls of Part C1.4.5 of the DCP.

14.1.7 Section C1.4.6: Site Coverage, Setbacks and Levels

	Existing	Proposed	Control	Complies
C1 Proportion of building footprint	Consistency with similar properties	Consistent with similar properties.	Consistent with similar properties	Yes
C3 Siting and setbacks of all structures	No immediate pattern	No immediate pattern	immediate established	

The proposal will achieve objectives O2, O3 and O4, and as demonstrated above, is considered to be acceptable with the relevant controls of Part C1.4.6 of the DCP.

14.1.8 Section C1.4.8: Private Open Space, Swimming Pools, Lightwell Courtyards and Landscaping

Site Area: 423m ²	Proposed	Control	Complies
C4 Principal rear area of private open space on allotments greater than 180m^2 –			
Principal Area	76m²	$35m^2$	Yes
Minimum Deep Soil	64.65m ²	12% (50.76m ²)	Yes
Unbuilt Upon Area	$89.7m^2$	18% (76m²)	Yes
C13 Location of Swimming Pool	-	Rear	Yes
C15 Impact on adjoining dwellings		Not to impact upon amenity of neighbours	Yes
C16 Swimming Pool Setback from Significant Mature Trees	-	>3m	Yes
C17 Swimming Pool Height Above Ground Level	1.5m	Up to 300mm	No

Part of the proposal envisages constructing and above ground swimming pool with a coping height at 1.5m above ground level. This is due [in part] to the topography of the site as it falls from Underwood Street down to Caledonia Street.

Following a site inspection of the subject site, it is not envisaged that the location of the swimming pool or adjoining terrace from the upper floor rear studio will result in any adverse overlooking or cross viewing into neighbouring homes.

The siting and location of the proposed swimming pool will otherwise fulfil the objectives of this part of the DCP and is considered a suitable design alternative within a rear yard having regard to existing structures and the varying topography.

The proposal, as conditioned, is considered to be acceptable with the relevant objectives and controls of Part C1.4.8 of the DCP.

14.1.9 Section C1.4.9: Views

Having regard to the extent of the development, the extent of public or private views will not be prejudiced by the proposal.

The proposal, as conditioned, is considered to be acceptable with the relevant objectives and controls of Part C1.4.9 of the DCP.

14.1.10 Section C1.4.10: Acoustic and Visual Privacy

The proposal will achieve the relevant objectives O1 and O2, and will comply with controls C3 and C4.

Control C4 specifies that direct overlooking of the main living areas and private open space areas of adjoining and adjacent properties should be minimised by the sensitive location of windows, balconies, and screening devices.

The applicant has provided the following arguments in support of maintaining the privacy of neighbouring properties:

The proposed removal of the existing balcony at first floor level to allow for Bedroom 1 will improve the privacy of adjoining properties. Sightlines from the window to the rear will be inhibited by the roof below and full height side walls preventing existing overlooking into adjoining properties to the east and west.

The proposed terrace at the rear is to be located at above ground level for that portion of the site but will match ground level for the portion of the site adjoining the dwelling. This allows for a more usable rear garden by the occupants of the dwelling.

In terms of overlooking from the terrace, this will be prevented by the privacy screen to the western side, which is set back off the common boundary by the proposed from the garage, and with a privacy screen along the eastern boundary.

Having regard to the above, the proposal is considered to be acceptable in terms of maintaining the privacy and amenity of adjoining properties.

The proposal, as conditioned, is considered to be acceptable with the relevant objectives and controls of Part C1.4.10 of the DCP.

14.1.11 Section C1.5.3: Windows, Doors, Shutters and Security

In response to this part of the DCP, Council's Heritage Officer has advised the following:

- The proposal includes vertically proportioned windows and doors that are relatively consistent with traditional solid to void ratios. While new windows to the rear (north) elevation of the dwelling at upper levels are not vertically proportioned, they would be located to the rear of the dwelling and would not be readily visible from the public domain, and are therefore supported in this instance.
- Window WS03 to the ensuite at second floor level (west elevation) is not vertically proportioned and would be visible from the public domain. WS03 is to be vertically proportioned or otherwise maintain existing openings in this location in order to comply.

• The proposed aluminium framed doors and windows in neutral tones are appropriate to the existing contemporary style of the infill building and are therefore supported in this instance.

Having regard to the submission of amended plans which suitably address the vertical proportions of the relevant windows (incl.W03), the proposal, as amended, will achieve Objectives O2 and complies with Control C4 of Part C1.5.3 of the DCP.

14.1.12 Section C1.5.4: Verandahs and Balconies

The proposal involves the replacement of an intrusive concrete planter box with a metal balustrade to the front yerandah.

Council's Heritage Officer has advised that the replacement is supported.

The proposal will achieve Control C8 in this part of the DCP.

14.1.13 Section C1.5.6: On-site vehicle parking, garages, carports, driveway access and servicing facilities

The proposal involves minor works to the existing garage building involve modifications of its visual presentation, including a new garage door and new metal roofing.

There are no objections to the proposed new garage door and rear extension of the existing garage to form a workshop.

The proposal satisfies objectives O3 and O4 and Table 7 of Section C1.5.6 of the Woollahra DCP 2015.

14.1.14 Section C1.5.7: Lofts over garages and studios

The proposal maintains the existing loft/studio over the garage facing Caledonia Street.

Whilst the originally proposed planter box has now been removed in accordance with advice provided to the applicant.

The proposal satisfies objective O1 of Section C1.5.7 of the Woollahra DCP 2015.

14.1.15 Section C1.5.8: Materials, Finishes and Details

In response to this part of the DCP, Council's Heritage Officer has advised in the following terms:

- The proposed material palette, comprising fine aluminium windows and doors in neutral tones, steel profile metal roofing, cement rendered external walls and simple metal balustrades, provides a contemporary range of materials and finishes that are appropriate to the existing modern building and its context within the Paddington HCA. The proposed materials and finishes generally comply under this clause and are supported.
- Contemporary corrugated profile sheeting in appropriate colours is permissible for roofs for infill development as per Table 8. However it is noted the proposed 'Monument' colour is not traditional within the Paddington HCA. New metal roofing is to be light to mid grey in colour in order to comply.

The updated proposal, as conditioned, will achieve objective O2, and complies with controls C4, C5 and C6 and Table 8 in Part C1.5.8 of the DCP.

14.1.16 Section C1.5.9: Exterior Colours

The proposed external colours are appropriate to the terrace house and adjoining buildings and is supported.

The proposal will achieve the relevant objective O1 and complies with controls C1, C4, C5, C6 and C9 in Part C1.5.9 of the DCP.

14.1.17 Section C1.6.2: Views and Vistas

The proposal will not result in any adverse impacts upon existing views and vistas.

14.2 Chapter E5: Waste Management

The applicant has provided a SWMMP with the development application. In addition, suitable conditions of consent have been imposed (**Conditions E.20** and **E.21**).

14.2.1 Part E5.2: Demolition and Construction Phase

The proposal, as conditioned, is acceptable with regard to Part E5.2 of the Woollahra DCP 2015.

15. SECTION 7.12 CONTRIBUTION PLANS

15.1 Section 7.12 Contributions Plan 2011

In accordance with Schedule 1, a 1% levy applies with the monies being used for a variety of works as outlined in Schedule 2 of the Section 7.12 Contributions Plan 2011. Refer to **Condition C.2**.

Cost of Works	Rate	Contribution Payable
\$649,237	1%	\$6,492.37

16. APPLICABLE ACTS/REGULATIONS

16.1 Environmental Planning and Assessment Regulation 2000

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

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

17. THE LIKELY IMPACTS OF THE PROPOSAL

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

18. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

19. THE PUBLIC INTEREST

The proposal is considered to be in the public interest.

20. CONCLUSION

The proposal is acceptable against the relevant considerations under Section 4.15.

21. DISCLOSURE STATEMENTS

There have been no disclosure statements regarding political donations or gifts made to any Councillor or to any council employee associated with this development application by the applicant or any person who made a submission.

22. RECOMMENDATION: Pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, is of the opinion that the written request from the applicant under Part 4.6 of the Woollahra Local Environmental Plan 2014 to the Height of Buildings development standard under Clause 4.3 of Woollahra LEP 2014 has adequately addressed the relevant matters and the proposed development will be in the public interest because it is consistent with the relevant objectives of the particular standard and the zone. The Panel assumes the concurrence of the Secretary, Department of Planning, Industry and Environment.

AND

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, grant development consent to Development Application No. 242/2020/1 for alterations and additions to the existing dwelling, first and second floor additions, new swimming pool and workshop on land at 245 Underwood Street Paddington, subject to the following conditions:

A. General Conditions

A.1 Conditions

Consent is granted subject to the following conditions imposed pursuant to section 4.16 of the *Environmental Planning and 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 4.15 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.

PC means the Principal Certifier under the Act.

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

Professional engineer has the same meaning as in the BCA.

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

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

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

Site means the land being developed subject to this consent.

Woollahra LEP means Woollahra Local Environmental Plan 2014

Woollahra DCP means Woollahra Development Control Plan 2015

Work for the purposes of this consent means:

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

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

Standard Condition: A2

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 both the architectural plans to which is affixed a Council stamp "Approved" and supporting documents listed below as submitted by the Applicant unless modified by any following condition.

Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
DA01, Issue B	Plans – Roof/ Site Analysis	sofair design	Sep 2020
DA02, Issue B	Plans – Ground Floor + Garage	sofair design	Sep 2020
DA03, Issue B	Plans – 1 st Floor + 2 nd Floor	sofair design	Sep 2020
DA04, Issue B	Elevations – North, South + East	sofairdesign	Sep 2020
DA05, Issue B	Sections – A, B and C	sofair design	Sep 2020
DA06, Issue B	Calculations	sofair design	Sep 2020
A380031	BASXI Certificate	Department of Planning,	25/06/2020
		Industry and Environment	
G20050-PSD-	Geotechnical Report	Geo-Environmental	22/06/2020
R01F Rev 0	_	Engineering	
6286:RY:rp	Construction Methodology Report	James Taylor & Associates	04/08/2020
6286-S01-A	Excavation Plan & Sections	James Taylor & Associates	04/08/2020
2020-027	Stormwater Management Plans	Waterdesign Civil Engineers	03/07/2020
SW1-SW3			
200521	Landscape Plan	Geoscapes	09/09/2020
-	Arboricultural Impact Assessment	Lee Hancock Consulting	09/09/2020
	Report	Arborist	

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 4.17(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 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 Private Land

Council Ref No.	Species	Location	Dimension (metres)
1	Waterhousia floribunda (Weeping Lily Pilly)	Rear yard western boundary	7 x 4
2	Melaleuca quinquenervia (Broad Leaf Paperbark)	Rear yard western boundary	10 x 6
3	Livistona australis (Cabbage Tree Palm)	Rear yard western boundary	10 x 3
4	Howea forsteriana (Kentia Palm)	Rear yard western boundary	9 x 3
8	Archontophoenix cunninghamiana (Bangalow Palm)	Rear yard centre	8 x 3

b) The following trees may be removed:

Council Ref No.	Species	Location	Dimension (metres)
5, 6 & 7	*Syagrus romanzoffianum (Cocos Palm)	Rear yard eastern boundary	8 x 3

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

A.5 Ancillary Aspect of the Development (section 4.17(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.6 No Underpinning works (Special Condition)

This development consent does <u>NOT</u> give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties.

^{*}This species is exempt from the WMC DCP Chapter E.3 - Tree Management and can be removed without consent.

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 6.6 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 Principal Certifier, 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 Public Road Assets Prior to Any Work/Demolition

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

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

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

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

If the required report is not submitted then Council will assume there was no damage to any infrastructure in the immediate vicinity of the site prior to the commencement of any work under this consent.

Note: If the Applicant or Owner fails to submit the asset condition report required by this condition and damage is occasioned to public assets adjoining the site, Council will deduct from security any costs associated with remedying, repairing or replacing damaged public infrastructure. Nothing in this condition prevents Council making any claim against security held for this purpose Standard Condition: B7

B.4 Establishment of Tree Protection Zone (TPZ) Fence

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	Tree Location	Fence Radius from Centre of Trunk (Metres)
1	Waterhousia floribunda	Rear yard western	1
	(Weeping Lily Pilly)	boundary	
2	Melaleuca quinquenervia	Rear yard western	3
	(Broad Leaf Paperbark)	boundary	
3	Livistona australis	Rear yard western	1
	(Cabbage Tree Palm)	boundary	
4	Howea forsteriana	Rear yard western	1
	(Kentia Palm)	boundary	
8	Archontophoenix cunninghamiana	Rear yard centre	1
	(Bangalow Palm)		

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 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) Trunk protection shall be installed around the trunks of the following trees:

Council Ref No.	Species
1	We to the desired of the second of the secon
1	Waterhousia floribunda (Weeping Lily Pilly)
2	Melaleuca quinquenervia (Broad Leaf Paperbark)
3	Livistona australis (Cabbage Tree Palm)
4	Howea forsteriana (Kentia Palm)
8	Archontophoenix cunninghamiana (Bangalow Palm)

Trunk protection shall consist of a padding material such as hessian or thick carpet underlay wrapped around the trunk. Hardwood planks (50mm x100mm or similar) shall be placed over the padding and around the trunk of the tree at 150mm centres. The planks shall be secured with 8 gauge wire at 300mm spacing. Trunk protection shall extend a minimum height of 2 metres or to the maximum possible length permitted by the first branches.

- d) 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.
- e) 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.
- f) Establishment of Ground protection Ground protection shall be established within the specified radius from the trunks of the following trees.

Council Ref No.	Species	Tree Location	Radius from Centre of Trunk (Metres)
1	Waterhousia floribunda (Weeping Lily Pilly)	Rear yard western boundary	3
2	Melaleuca quinquenervia (Broad Leaf Paperbark)	Rear yard western boundary	10
3	Livistona australis (Cabbage Tree Palm)	Rear yard western boundary	2
4	Howea forsteriana (Kentia Palm)	Rear yard western boundary	2
8	Archontophoenix cunninghamiana (Bangalow Palm)	Rear yard centre	2

Ground protection shall consist of geotech fabric placed directly over the ground surface with 100mm mulch / aggregate / rumble boards strapped over mulch / steel plating over 10mm mulch layer / retention of existing surface.

- g) 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 this consent.
- h) The site foreman must be made aware of all tree protection requirements associated with these conditions of consent by the project arborist. Any subsequent site personnel and contractors to the site must be made aware of all tree protection requirements by the site foreman.

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

B.5 Permissible work within Tree Protection Zones

The following works are permissible within the Tree Protection Zone:

Council Ref No.	Species	Radius from Trunk	Approved works
		(metres)	
1	Waterhousia floribunda	3	Above ground installation of terrace pavement
	(Weeping Lily Pilly)		without excavation & installation of Vergola roof no
			closer than 0.5m from the trunk and major branches.
2	Melaleuca quinquenervia	8	Above ground installation of steps, terrace pavement
	(Broad Leaf Paperbark)		and garden edging without excavation & fill of
			maximum 150mm depth of topsoil.
			Excavation for pool footprint only and no deeper than
			0.45m below existing ground level.
			Excavation for rear workshop without over
			excavation towards the tree.
4	Howea forsteriana	2	Excavation 1m from base of tree using vertical
	(Kentia Palm)		excavation with no batter and no cutting of roots.
8	Archontophoenix	2	Above ground installation of terrace pavement
	cunninghamiana		without excavation.
	(Bangalow Palm)		

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

B.6 Demolition and Construction Management Plan

The Demolition and Construction Management Plan shall be reviewed and certified by the Project Arborist that appropriate tree protection measures have been accounted for. The Demolition and Construction Management Plan shall be prepared in accordance with all tree protection measures specified within this consent. Considerations by the Project Arborist shall include but not be limited to:

- a) Drawings and method statement showing details and the location of hoarding and scaffold and any pruning required to accommodate the hoarding and scaffolding;
- b) The movement and positioning of heavy machinery, lifting cranes, pier drilling gantry etc;
- Site construction access, temporary crossings and movement corridors on the site defined;
- d) Contractors car parking;
- e) Phasing of construction works;
- f) The space needed for all foundation excavations and construction works;
- g) All changes in ground level;
- h) Space for site sheds and other temporary structures such as toilets;
- i) Space for sorting and storing materials (short or long term), spoil and fuel and the mixing of cement and concrete; and
- j) The effects of slope on the movement of potentially harmful liquid spillages towards or into tree protection areas

B.7 Arborists Documentation and Compliance Checklist

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

- A record of the condition of trees to be retained prior to and throughout development;
- Recommended actions to improve site conditions and rectification of non-compliance;
 and
- Recommendations for future works which may impact the trees

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

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

Stage of arboricultural inspection	Compliance documentation and photos shall be included
Installation of tree protection fencing and	Compliance with tree protection measures
ground protection.	
Inspection of pier holes for all footings	Piers positioned to avoid the severance of and damage to roots
	greater than 50mms
Installation of vergola roof	Compliance with tree protection measures.
	Vergola roof is constructed no closer than 0.5m from the trunk and
	major branches of Tree 1.
Inspection of irrigation set out	Appropriate distribution of irrigation water
Prior to the issue of a Final Occupation	Supervise the dismantling of tree protection measures
Certificate	

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

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

C. Conditions which must be satisfied prior to the issue of any Construction Certificate

C.1 Modification of Details of the Development (section 4.17(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) Tree Preservation

(i) An amended Stormwater Drainage Plan shall be prepared in accordance with Council's DA Guide and submitted to Council's tree and landscape Officer for assessment. The amended plan must include the following:

Underground services shall not be positioned within the following radial distances:

Council Ref No.	Species	Tree Location	Radius from centre of trunk (metres)
1	Waterhousia floribunda (Weeping Lily Pilly)	Rear yard western boundary	3m
2	Melaleuca quinquenervia (Broad Leaf Paperbark)	Rear yard western boundary	5m
3	Livistona australis (Cabbage Tree Palm)	Rear yard western boundary	1m
4	Howea forsteriana (Kentia Palm)	Rear yard western boundary	1m

(ii) A minimum setback of 500 mm between the proposed vergola and the trunk and branches of Tree 1 must be provided.

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 4.15 of the *Act*.

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

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

Standard Condition: C4 (Autotext CC4)

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

The Certifying Authority must not issue any certificates under section 6.4 of the *Act* 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 www.longservice.nsw.gov.au/bci/levy/other- information/levy-calculator	Contact LSL Corporation or use online calculator	No			
SECURITY under section 4.17(6) of the Environmental Planning and Assessment Act 1979					
Property Damage Security Deposit -making good any damage caused to any property of the Council	\$19,994	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 7.12)	\$6,492.37 + Index Amount	Yes, quarterly	T96		
INSPECTION FEES under section 608 of the Local Government Act 1993					
Security Administration Fee	\$194	No	T16		
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$26,680.37 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 Service Corporation or to Council. Further information can be obtained from the Long Service Corporation website www.longservice.nsw.gov.au or the Long Service Corporation on 131 441.

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 7.12 levy (formerly known as 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 levy.

Do you need HELP indexing the levy?

Please contact Council's Customer Service Team on ph 9391 7000. Failure to correctly calculate the adjusted development levy will delay the issue of any certificate issued under section 6.4 of the *Act* and could void any such certificate (eg Construction Certificate, Subdivision Certificate, or Occupation Certificate).

Deferred or periodic payment of section 7.12 levy (formerly known as 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 7.12 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 7.12 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 Tree Management Plan

The Construction Certificate plans and specifications shall show the following information:

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

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

C.4 BASIX Commitments

The Applicant must submit to the Certifying Authority BASIX Certificate No.A380031, dated 25 June 2020, 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 4.55 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 and 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.5 Soil and Water Management Plan – Submission and 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" 2004 published by the NSW Government (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 <u>www.austieca.com.au</u> 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*" publication can be downloaded from www.woollahra.nsw.gov.au, and *The Blue Book* is available at www.environment.nsw.gov.au/stormwater/publications.htm.

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

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 (Autotext CC35)

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, hydrogeological, 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 Engineer Certification

This development consent does <u>NOT</u> give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties.

Any structural design is not to incorporate any underpinning works which encroaches outside the boundaries of the subject property. Engineer certification to this effect shall be submitted to the Certifying Authority prior to issue of any Construction Certificate.

C.9 Geotechnical and Hydrogeological Design, Certification and Monitoring

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

These details must be certified by the professional engineer to:

- a) Provide appropriate support and retention to ensure there will be no ground settlement or movement, during excavation or after construction, sufficient to cause an adverse impact on adjoining property or public infrastructure.
- b) Provide appropriate support and retention to ensure there will be no adverse impact on surrounding property or infrastructure as a result of changes in local hydrogeology (behaviour of groundwater).
- c) Provide tanking of all below ground structures to prevent the entry of all ground water, if deemed necessary by the geotechnical engineer upon detailed investigation, such that they are fully tanked and no on-going dewatering of the site is required. The investigation is to include a detailed inspection of the site during excavation and allowance for up to 1m of variation in ground water level are to be included in the investigation to allow for seasonal groundwater variation;
- d) Provide a Geotechnical and Hydrogeological Monitoring Program that:
 - will detect any settlement associated with temporary and permanent works and structures,
 - will detect deflection or movement of temporary and permanent retaining structures (foundation walls, shoring bracing or the like),
 - will detect vibration in accordance with AS 2187.2-1993 Appendix J including acceptable velocity of vibration (peak particle velocity),
 - will detect groundwater changes calibrated against natural groundwater variations,
 - details the location and type of monitoring systems to be utilised,
 - details the pre-set acceptable limits for peak particle velocity and ground water fluctuations,
 - details recommended hold points to allow for the inspection and certification of geotechnical and hydrogeological measures by the professional engineer, and
 - details a contingency plan.

Standard Condition: C40 (Autotext: CC40)

C.10 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 Woollahra DCP 2015 Chapter E2 Stormwater and Flood Risk Management.

For any works within the road reserve, 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* (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. For more information go to the Sydney Water website

www.sydneywater.com.au/SW/plumbing-building-developing/index.htm or call 1300 082
746.

Note: Woollahra Municipal Council's *Specification for Roadworks, Drainage and Miscellaneous Works* dated January 2003 and the Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management can be downloaded from Council's website www.woollahra.nsw.gov.au
Standard Condition: C49

C.11 Swimming and Spa Pools – Child Resistant Barriers

The Construction Certificate plans and specifications required by clause 139 of the *Regulation* must demonstrate compliance (by showing the proposed location of all child-resistant barriers and the resuscitation sign) with the provisions of the *Swimming Pools Act 1992* and the Building Code of Australia.

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

Note: A statement to the effect that isolation swimming pool fencing complying with AS1926 will be installed does not satisfy this condition. The location of the required barriers and the sign must be detailed upon the *Construction Certificate* plans.

Standard Condition: C55 (Autotext CC55)

C.12 Swimming and Spa Pools – Backwash

The Construction Certificate plans and specification required to be submitted pursuant to clause 139 of the *Regulation* must detail the connection of backwash to Sydney Waters sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

Note: The plans must show the location of Sydney Water's sewer, the yard gully or any new connection to the sewer system including a detailed cross section of the connection complying with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

Note: The discharge of backwash water to any stormwater system is water pollution and an offence under the *Protection of the Environment Operations Act 1997*. The connection of any backwash pipe to any stormwater system is an offence under the *Protection of the Environment Operations Act 1997*. Standard Condition: C56 (Autotext CC56)

C.13 Light and Ventilation

The Construction Certificate plans and specifications, required to be submitted to the Certifying Authority pursuant to clause 139 of the *Regulation*, must detail all a lighting, mechanical ventilation or air-conditioning systems complying with Part F.4 of the BCA or clause 3.8.4 and 3.8.5 of the BCA Housing Provisions, inclusive of <u>AS 1668.1</u>, <u>AS 1668.2</u> and <u>AS/NZS 3666.1</u>.

If an alternate solution is proposed then the Construction Certificate application must include a statement as to how the performance requirements of the BCA are to be complied with and support the performance based solution by expert *evidence of suitability*.

This condition does not set aside the mandatory requirements of the *Public Health (Microbial Control) Regulation 2000* in relation to *regulated systems*. This condition does not set aside the effect of the *Protection of the Environment Operations Act 1997* in relation to offensive noise or odour.

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

Standard Condition C59

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 4.17(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 <u>Home Building Act 1989</u> 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, or
- b) to the erection of a temporary building.

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

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

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

D.2 Dilapidation Reports for Existing Buildings

Dilapidation surveys and dilapidation reports shall be conducted and prepared by a *professional engineer* (structural) for all buildings and/or structures that are located within the likely "zone of influence" of any excavation, dewatering and/or construction induced vibration as determined applicable by the Structural Engineer.

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

- a) No. 31A & 33 Caledonia Street
- b) No. 239 & 247 Underwood Street

The dilapidation reports must be completed and submitted to the *Certifying Authority* for approval. An approved copy of the reports shall be submitted to Council with the *Notice of Commencement* prior to the commencement of any *development work*.

Where excavation of the site will extend below the level of any immediately adjoining building the *principal contractor* or *owner builder* must give the adjoining building owner(s) a copy of the dilapidation report for their building(s) and a copy of the *notice of commencement* required by Section 6.6(2) of the *Act* not less than two (2) days prior to the commencement of any work.

Note: The reasons for this condition are:

- To provide a record of the condition of buildings prior to development being carried out.
- To encourage developers and its contractors to use construction techniques that will minimise the risk of damage to buildings on neighbouring land.

Note: Also refer to the Dilapidation Report Advising for more information regarding this condition Standard Condition: D4

D.3 Adjoining Buildings Founded on Loose Foundation Materials

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

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

Standard Condition: D6

D.4 Works (Construction) Zone – Approval and Implementation

A Works Zone may be required for this development. The Principal Contractor or Owner can apply for a works zone. If the works zone is approved the Principal Contractor or Owner must pay all fees for this Works Zone before it can be installed.

The Principal Contractor must pay all fees associated with the application and occupation and use of the road as a Works Zone. All Works Zone signs must have been erected by Council to permit enforcement of the Works Zone by Council's Rangers and NSW Police before commencement of any work. Signs are not erected until full payment of works zone fees.

Note: The Principal Contractor or Owner must allow not less than four to six weeks (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under the clause 22 of the *Transport Administration (General) Regulation 2000* to exercise those functions delegated by the Roads and Maritime Services under section 50 of the *Transport Administration Act 1988*.

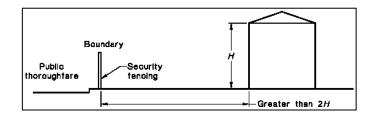
Note: The enforcement of the works zone is at the discretion of Council's Rangers and the NSW Police Service.

The Principal Contractor must report any breach of the works zone to either Council or the NSW Police Service.

Standard Condition: D10

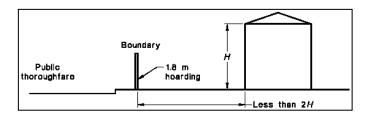
D.5 Security Fencing, Hoarding and Overhead Protection

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.



Type A Hoarding

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 1.8m adjacent to the thoroughfare.



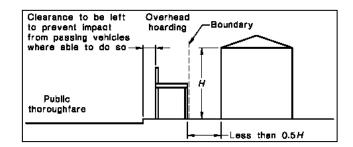
Type B Hoarding

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 4.0m; 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 2.1m,
- 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 0.5m 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 ensure that overhead protective structures are installed and maintained in accordance with the NSW "Code of Practice - Overhead Protective Structures 1995". This is code available at

www.safework.nsw.gov.au/__data/assets/pdf_file/0008/52883/Overhead-protective-structures-Code-of-practice.pdf

All Hoardings

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.

Hoardings on Public Land

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.

A creative hoarding (i.e. an approved artwork or historic image affixed to the hoarding) is required if the hoarding meets the criteria in Council's Creative Hoardings Policy (adopted March 2020). The cost of printing and affixing the creative hoarding is the responsibility of the Principal Contractor or Owner-builder. The Creative Hoardings Policy can be downloaded from Council's website www.woollahra.nsw.gov.au

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.

Note: Council seeks to increase public art in the public domain by requiring artwork or historic images on hoardings located on public land. Under the Creative Hoardings Policy an application for a hoarding proposed on public land will require an approved artwork or historic image affixed to the hoarding if the hoarding meets the criteria in section 3 of the Policy:

- A. Hoardings proposed on land zoned B2 Local Centre, or B4 Mixed Use, or SP2 Infrastructure under Woollahra Local Environmental Plan 2014 AND erected for 8 weeks or more OR
- B. Hoardings proposed on land located along a State classified road (regardless of the zone) AND erected for 8 weeks or more
- C. Hoardings proposed in any other location than that referred to in A. and B. above AND erected for 12 weeks or more, except where:
 - i. the capital investment value of the work to which the hoarding relates is less than 1 million OR
 - ii. the land is zoned R2 Low Density Residential OR
 - iii. the land is zoned R3 Medium Density Residential and the hoarding located in a lane or street that does not have through traffic (eg a cul-de-sac or no through road).

Artwork and historic images for the hoardings are assessed and approved in accordance with the Creative Hoardings Policy. Details of the artwork or images proposed to be affixed to the hoardings must be submitted with Council's form "Application for a permit to use a footpath for the erection of a hoarding/scaffolding".

The Creative Hoardings Policy can be downloaded from www.woollahra.nsw.gov.au or for more information contact Council's Cultural Development Team.

Standard Condition: D11 (Autotext DD11)

D.6 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 4.17(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 Certifier 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 6.28 of the *Act*, to comply with the Building Code of Australia.

Clause 227A of the Regulation provides:

Signs on development sites

If there is a person who is the Principal Certifier 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 Principal Certifier 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.7 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 SafeWork NSW requirements.

Standard Condition: D13

D.8 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" 2004 published by the NSW Government (The Blue Book).

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

Note: The International Erosion Control Association – Australasia (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" publication can be downloaded from www.woollahra.nsw.gov.au and *The Blue Book* is available at www.environment.nsw.gov.au/stormwater/publications.htm

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.9 Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 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 Certifier for the building work, and
 - notified the Principal Certifier that the person will carry out the building work as an Owner-builder, if that is the case, and
- c) The Principal Certifier 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 Certifier 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 1.4 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 6.1 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 6.6(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, PC 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 6.6(2) of the *Act*.

Standard Condition: D15

D.10 Notification of *Home Building Act 1989* requirements

- a) For the purposes of section 4.17(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 <u>Home Building Act 1989</u> must not be carried out unless the Principal Certifier 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 Certifier 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 6.28 of the *Act*, to comply with the Building Code of Australia. Standard Condition: D17

E. Conditions which must be satisfied during any development work

E.1 Compliance with BCA and Insurance Requirements under the *Home Building Act 1989*

For the purposes of section 4.17(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 (BCA),
- b) in the case of residential building work for which the <u>Home Building Act 1989</u> 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*.

Standard Condition: E2

E.3 Compliance with Construction Management Plan

All development activities and traffic movements must be carried out in accordance with the approved Construction Management Plan (CMP). All controls in the CMP must be maintained at all times. A copy of the CMP must be kept on-site at all times and made available to the Principal Certifier or Council on request.

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

Standard Condition: E3

E.4 Requirement to Notify about New Evidence

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

Standard Condition: E4

E.5 Critical Stage Inspections

Critical stage inspections must be called for by the Principal Contractor or Owner-builder as required by the Principal Certifier, any PC service agreement, the *Act* and the *Regulation*.

Work must not proceed beyond each critical stage until the Principal Certifier 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 6.5 of the *Act* or as required by the Principal Certifier and any PC Service Agreement.

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

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

Standard Condition: E5

E.6 Hours of Work - Amenity of the Neighbourhood

- a) No *work* must take place on any Sunday or public holiday.
- b) No *work* must take place before 7am or after 5pm any weekday.
- c) No *work* must take place before 7am or after 1pm any Saturday.
- 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 <u>any equipment</u> 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 a separate penalty infringement notice or prosecution.

Note: The delivery and removal of plant, equipment and machinery associated with wide loads subject to RMS and NSW 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 2017*.

Note: NSW EPA Noise Guide is available at www.epa.nsw.gov.au/noise/nglg.htm Standard Condition: E6

E.7 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 heritage listed 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 148B of the *Road Transport Act 2013*, section 138 of the *Roads Act 1993* or section 68 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.

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

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.

 Standard Condition: E7 (Autotext EE7)

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.

Standard Condition: E11

E.9 Compliance with Geotechnical / Hydrogeological Monitoring Program

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

The Principal Contractor and any sub-contractor must strictly follow the Geotechnical / Hydrogeological Monitoring Program for the development including, but not limited to:

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

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

Standard Condition: E12 (Autotext EE12)

E.10 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 and 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 Regulation 2008* 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 (Autotext EE13)

E.11 Vibration Monitoring

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

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

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

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

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

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

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

Note: professional engineer has the same mean as in clause A1.1 of the BCA.

Note: building has the same meaning as in section 1.4 of the Act i.e. "building includes part of a building and

any structure or part of a structure...."

Note: supported land has the same meaning as in the Conveyancing Act 1919. Standard Condition: E14 (Autotext EE14)

E.12 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" 2004 published by the NSW Government (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.13 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.14 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 registered surveyor 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 Principal Certifier'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.15 Placement and Use of Skip Bins

The Principal Contractor or Owner-builder must ensure that all waste storage containers, including but not limited to skip bins, must be stored within the site unless:

- a) Activity Approval has been issued by Council under section 68 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.

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.

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Standard Condition: E21

E.16 Prohibition of Burning

There must be no burning of any waste or other materials. The burning of copper chrome arsenate (CCA) or pentachlorophenol (PCP) 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 (Clean Air) Regulation 2010* 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.17 Dust Mitigation

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

This generally requires:

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

Note: "Dust Control - Do it right on site" can be downloaded from Council's website 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.safework.nsw.gov.au and www.epa.nsw.gov.au. Other specific conditions 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.18 Compliance with Council's Specification for Roadworks, Drainage and Miscellaneous Works, Road Works and, Work within the Road and Footway

All work carried out on assets which are under Council ownership or will revert to the ownership, care, control or management of Council in connection with the *development* to which this consent relates must comply with Council's *Specification for Roadworks*, *Drainage and Miscellaneous Works* (2012).

The Owner, Principal Contractor or Owner-builder must meet all costs associated with such works.

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

Note: A copy of Council's *Specification for Roadworks, Drainage and Miscellaneous Works* can be downloaded from Council's website www.woollahra.nsw.gov.au
Standard Condition: E24 (Autotext EE24)

E.19 Swimming and Spa Pools – Temporary Child Resistant Barriers and other Matters

Temporary child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and Building Code of Australia where any swimming pool or spa pool, as defined by the *Swimming Pools Act 1992*, contains more than 300mm in depth of water at any time.

Permanent child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and the Building Code of Australia as soon as practical.

Backwash and any temporary dewatering from any swimming pool or spa pool as defined by the *Swimming Pools Act 1992* must be discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

Note: This condition does not prevent Council from issuing an order pursuant to section 23 of the *Swimming Pool Act 1992* or taking such further action as necessary for a breach of this condition or the *Swimming Pools Act 1992*.

Standard Condition: E26

E.20 Existing Drainage Easement, Drainage Reserve or Stormwater Drainage System Benefiting Council

Council drainage easement(s) drainage reserve(s) or stormwater system passes through the site. No building or other structure must be placed over the drainage easement or stormwater system or within the zone of influence taken from the invert of any pipe.

The Principal Contractor or Owner-builder must locate all stormwater drainage systems without causing any damage to the public system and ensure its protection. The Owner, Principal Contractor or Owner-builder must not obstruct or otherwise remove, disconnect or render inoperable the stormwater drainage system.

Works such as fences must not obstruct the natural floodway or alter the natural floodway in such a way as to direct or concentrate stormwater on to neighbouring properties.

Where the relocation or reconstruction of Council's drainage system is approved then all work carried out on assets which are under Council ownership or will revert to the ownership, care, control or management of Council, in connection with the *development* to which this consent relates, must comply with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012).

The Owner, Principal Contractor or Owner-builder must meet all costs associated with such works.

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

Note: The *Local Government Act 1993* provides:

"59A Ownership of water supply, sewerage and stormwater drainage works

- a. Subject to this Division, a council is the owner of all works of water supply, sewerage and stormwater drainage installed in or on land by the council (whether or not the land is owned by the council).
- b. A council may operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that are necessary or appropriate to any of its works to ensure that, in the opinion of the council, the works are used in an efficient manner for the purposes for which the works were installed."

Standard Condition: E27

E.21 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, and
- 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 NSW Environment Protection Authority, and relevant occupational health and safety legislation administered by SafeWork NSW, and
- e) evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained.

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

Standard Condition: E31

E.22 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 and 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, and
- k) retain all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as Council, the NSW EPA or SafeWork NSW. Standard Condition: E32

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E.23 Asbestos Removal

All asbestos removal work must be carried out safely according to NSW work health and safety legislation.

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

- a) Be undertaken by contractors who hold a current SafeWork NSW "demolition licence" and a current SafeWork NSW "Class A licence" for friable asbestos removal.
- b) Be carried out in accordance with the relevant SafeWork NSW codes of practice.
- c) No asbestos products may be reused on the site.
- d) No asbestos laden skip or bins shall be left in any public place.

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

E.24 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 EPA *Waste Classification Guidelines, Part1: Classifying Waste, 2014.*

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.25 Disposal of Asbestos and Hazardous Waste

Asbestos and hazardous waste, once classified in accordance with condition E 24 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 NSW EPA requirements. Standard Condition: E41

E.26 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.27 Notification of Asbestos Removal

In addition to the requirements for licensed asbestos removalists to give written notice to SafeWork NSW all adjoining properties and those opposite the development site must be notified in writing of the dates and times when asbestos removal is to be conducted.

The notification is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone and facsimile numbers and email addresses.

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

Standard Condition: E43

E.28 Tree Preservation

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

General Protection Requirements

- a) 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 50mm are exposed. The *principal contractor* must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- c) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

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

E.29 Paving in the vicinity of trees

Paving works within the specified radius from the trunks of the following trees shall be constructed in such a way as to ensure that the existing moisture infiltration and gaseous exchange to the tree root system are maintained. When preparing an area for paving within the specified radius the soil surface shall not be skimmed. The new surface shall be established above the former ground level.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1	Waterhousia floribunda (Weeping Lily Pilly)	Rear yard western boundary	3
2	Melaleuca quinquenervia (Broad Leaf Paperbark)	Rear yard western boundary	10
3	Livistona australis (Cabbage Tree Palm)	Rear yard western boundary	2
4	Howea forsteriana (Kentia Palm)	Rear yard western boundary	2
8	Archontophoenix cunninghamiana (Bangalow Palm)	Rear yard centre	2

Paving works are to be designed in consultation with a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent) and are to utilise such measures as semiporous material.

The project arborist shall document compliance with the above condition.

E.30 Level changes in the vicinity of trees

No level changes shall occur within the specified radius from the trunks of the following trees.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1	Waterhousia floribunda (Weeping Lily Pilly)	Rear yard western boundary	2
2	Melaleuca quinquenervia (Broad Leaf Paperbark)	Rear yard western boundary	5
3	Livistona australis (Cabbage Tree Palm)	Rear yard western boundary	1
4	Howea forsteriana (Kentia Palm)	Rear yard western boundary	1
8	Archontophoenix cunninghamiana (Bangalow Palm)	Rear yard centre	1

The project arborist shall document compliance with the above condition.

E.31 Hand excavation within tree root zones

Excavation undertaken within the specified radius from the trunks of the following trees shall be hand dug.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1	Waterhousia floribunda (Weeping Lily Pilly)	Rear yard western boundary	3
2	Melaleuca quinquenervia (Broad Leaf Paperbark)	Rear yard western boundary	5
3	Livistona australis (Cabbage Tree Palm)	Rear yard western boundary	2
4	Howea forsteriana (Kentia Palm)	Rear yard western boundary	2
8	Archontophoenix cunninghamiana (Bangalow Palm)	Rear yard centre	2

Small hand tools such as mattocks or using compressed air or water jetting only shall be used. Roots with a diameter equal to or in excess of 50mm shall not be severed or damaged unless approved in writing by the project arborist.

Mechanical excavation is permitted beyond this radius when root pruning by hand along the perimeter line is completed. Exposed roots to be retained shall be covered with mulch or a geotextile fabric and kept in a moist condition and prevented from drying out.

All root pruning must be undertaken in accordance with the Australian Standard 4373 "Pruning of Amenity Trees" and carried out by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent).

The project arborist shall document compliance with the above condition.

E.32 Footings in the vicinity of trees

Footings for any structure within the specified radius from the trunks of the following trees shall be supported using an isolated pier and beam system.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1	Waterhousia floribunda (Weeping Lily Pilly)	Rear yard western boundary	3
2	Melaleuca quinquenervia (Broad Leaf Paperbark)	Rear yard western boundary	10
8	Archontophoenix cunninghamiana (Bangalow Palm)	Rear yard centre	2

Excavations for installation of piers shall be located so that no tree root with a diameter equal to or in excess of 50mm is severed or damaged. The smallest possible area shall be excavated which allows construction of the pier. The beam is to be placed a minimum of 100mm above ground level and is to be designed to bridge all tree roots with a diameter equal to or in excess of 50mm.

The project arborist shall document compliance with the above condition.

F. Conditions which must be satisfied prior to any occupation or use of the building (Part 6 of the Act and Part 8 Division 3 of the Regulation)

F.1 Occupation Certificate (section 6.9 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 6.10 of the *Act*) unless an Occupation Certificate has been issued in relation to the building or part.

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

F.2 Amenity Landscaping

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

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

Standard Condition: F6

F.3 Commissioning and Certification of Systems and Works

The Principal Contractor or Owner-builder must submit to the satisfaction of the Principal Certifier 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 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 Certifier 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 PC 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 PC must submit to Council, with any Occupation Certificate, copies of WAE plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA upon which the PC has relied in issuing any Occupation Certificate.

Standard Condition: F7

F.4 Commissioning and Certification of Public Infrastructure Works

The Principal Contractor or Owner-builder must submit, to the satisfaction of 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* (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

F.5 Swimming and Spa Pools – Permanent Child Resistant Barriers and other Matters

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

- a) Permanent child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and the Building Code of Australia.
- b) The swimming pool must be registered in accordance with section 30B of the *Swimming Pools Act 1992* on the NSW Government Swimming Pool Register.
- c) The Principal Contractor or Owner must either obtain a certificate of compliance issued pursuant to section 22D of the *Swimming Pools Act 1992* or an appropriate Occupation Certificate authorising use of the swimming pool.
- d) Public pools must comply with the *NSW Health Public Swimming Pool and Spa Pool Guidelines* in force at that time and private pools are encouraged to comply with the same standards as applicable.
- e) Water recirculation and filtration systems must be installed in compliance with AS 1926.3-2010: Swimming pool safety Water recirculation systems.

Backwash must be discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

Water recirculation and filtration systems must be connected to the electricity supply by a timer that limits the systems operation such that it does not operate before 8 am or after 8 pm on any Sunday or public holiday or before 7 am or after 8 pm on any other day.

Note: NSW Health guidelines and fact sheets are available at www.health.nsw.gov.au/environment/publicpools/Pages/default.aspx Standard Condition: F13 (Autotext FF13)

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 (section 6.4 (c))

H.1 Fulfillment of BASIX Commitments – clause 154B of the Regulation

All BASIX commitments must be effected in accordance with the BASIX Certificate No. A380031, dated 25 June 2020.

Note: Clause 154B(2) of the *Environmental Planning and 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 Removal of Ancillary Works and Structures

The Principal Contractor or Owner must remove from the land and any adjoining public place:

- a) the site sign,
- b) ablutions,
- c) hoarding,
- d) scaffolding, and

e) waste materials, matter, article or thing.

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

Standard Condition: H12

H.3 Road Works (including footpaths)

The following works must be completed to the satisfaction of Council, in compliance with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012) unless expressly provided otherwise by these conditions at the Principal Contractor's or Owner's expense:

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

Note: Security held by Council pursuant to section 4.17(6) of the *Act* will not be release by Council until compliance has been achieved with this condition. An application for refund of security must be submitted with the Final Occupation Certificate to Council. This form can be downloaded from Council's website www.woollahra.nsw.gov.au or obtained from Council's customer service centre. Standard Condition: H13

H.4 Positive Covenant and Works-As-Executed Certification of Stormwater Systems

On completion of construction work, stormwater drainage works are to be certified by a professional engineer with works-as-executed drawings supplied to the Principal Certifier detailing:

- a) compliance with conditions of development consent relating to stormwater,
- b) that the works have been constructed in accordance with the approved design and will provide the detention storage volume and attenuation in accordance with the submitted calculations,
- c) pipe invert levels and surface levels to Australian Height Datum, and
- contours indicating the direction in which water will flow over land should the capacity
 of the pit be exceeded in a storm event exceeding design limits.

A positive covenant pursuant to section 88E of the *Conveyancing Act 1919* must be created on the title of the subject property, providing for the indemnification of Council from any claims or actions and for the on-going maintenance of the on-site-detention system and/or absorption trenches, including any pumps and sumps incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered with the NSW Land Registry Services.

Note: The required wording of the Instrument can be downloaded from Council's website www.woollahra.nsw.gov.au. The PC must supply a copy of the WAE plans to Council together with the Final Occupation Certificate.

Note: The Final Occupation Certificate must not be issued until this condition has been satisfied. Standard Condition: H20 (Autotext HH20)

H.5 Landscaping

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

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

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

I.1 Maintenance of BASIX Commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. A380031, dated 25 June 2020.

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: 124

I.2 Swimming and Spa Pools – Maintenance

Swimming and spa pools must be maintained:

- a) in compliance with the *Swimming Pools Act 1992* and the Building Code of Australia with regard to the provision of child-resistant barriers and resuscitation signs,
- b) in compliance with the NSW Health "Public Swimming Pools and Spa Pools Advisory Document" in force at that time. Private pools are encouraged to comply with the same standards as applicable,
- c) in compliance with AS 1926.3-2010 Swimming pool safety Water recirculation and filtration systems,
- d) with backwash being discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996, and
- e) with a timer that limits the recirculation and filtration systems operation such that it does not emit noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
 - before 8 am or after 8 pm on any Sunday or public holiday, or
 - before 7 am or after 8 pm on any other day.

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

Note: The NSW Health public swimming pools and spa pools guidelines are available at www.health.nsw.gov.au/environment/publicpools/Pages/default.aspx Standard Condition: I30

I.3 Outdoor Lighting – Residential

Outdoor lighting must comply with AS/NZS 4282:2019: *Control of the obtrusive effects of outdoor lighting*. The maximum luminous intensity from each luminare and threshold limits must not exceed the level 1 control relevant under tables in AS/NZS 4282:2019.

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

Note: This condition has been imposed to control the obtrusive effects of outdoor lighting. Standard Condition: 149

I.4 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*.

Note: 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 (www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government) and the NSW Industrial Noise Policy (www.epa.nsw.gov.au/your-environment/noise/industrial-noise) published by the NSW Environment Protection Authority. 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.

NSW Environment Protection Authority— see "noise" section www.environment.nsw.gov.au/noise. NSW Government legislation- access to all NSW legislation, including the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Noise Control Regulation 2000* is available at www.legislation.nsw.gov.au.

Australian Acoustical Society—professional society of noise related professionals www.acoustics.asn.au. **Association of Australian Acoustical Consultants**—professional society of noise related professionals www.aaac.org.au.

Liquor and Gaming NSW—<u>www.liquorandgaming.nsw.gov.au</u>. Standard Condition: 156

I.5 Noise from Mechanical Plant and Equipment

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

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

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

Note: Words in this condition have the same meaning as in the *Noise Policy for Industry* (2017) <u>www.epa.nsw.gov.au/your-environment/noise/industrial-noise/noise-policy-for-industry-(2017)</u>

and *Noise Guide for Local Government* (2013) <u>www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government</u> Standard Condition: 159

I.6 Noise Control - Swimming pool/spa pool pumps and associated equipment

The swimming pool/spa pool pump(s) and associated equipment are not to operate during the hours stipulated in the Protection of the Environment Operations (Noise Control) Regulation 2008 as follows:

- Before 8am of after 8pm during Saturdays, Sundays and public holidays;
- Before 7am or after 8pm on any other day.

J. Miscellaneous Conditions

Nil

K. Advisings

K.1 Criminal Offences – Breach of Development Consent and Environmental Laws

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

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

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

Warnings as to potential maximum penalties

Maximum penalties under NSW environmental laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

Warning as to enforcement and legal costs

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

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

Note: The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of *the Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. 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.1100.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 Building Standards - Guide to Standards and Tolerances

The Principal Certifier does not undertake detailed quality control inspections and the role of the Principal Certifier 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 "NSW Guide to Standards and Tolerances 2017" 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 Principal Certifier does not undertake this role.

Council, as the Principal Certifier or otherwise, does not adjudicate building contract disputes between the Principal Contractor, contractors and the Owner.

Note: For more information on the NSW Guide to Standards and Tolerances go to the NSW Fair Trading website www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/after-you-build-or-renovate/guide-to-standards-and-tolerances or call 133 220. Standard Condition: K6

K.4 SafeWork NSW Requirements

The Work Health and Safety Act 2011 and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

Note: For more information go to the SafeWork NSW website www.safework.nsw.gov.au or call 131 050.
Standard Condition: K7

K.5 Dividing Fences

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

Note: Further information can be obtained from the NSW Civil and Administrative Tribunal www.ncat.nsw.gov.au/Pages/cc/Divisions/dividing_fences.aspx

Note: Community Justice Centres provide a free mediation service to the community to help people resolve a wide range of disputes, including dividing fences matters. Their service is free, confidential, voluntary, timely and easy to use. Mediation sessions are conducted by two impartial, trained mediators who help people work together to reach an agreement. Around 75% of mediations result in an agreement being reached. Mediation sessions can be arranged at convenient times during the day, evening or weekends. To contact the Community Justice Centres go to www.cjc.nsw.gov.au or call 1800 990 777. Standard Advising: K10

K.6 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact George Lloyd, Assessment Officer, on (02) 9391 7059.

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

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

Standard Condition: K14 (Autotext KK14)

K.7 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 4.17 of the *Act*.

The securities will not be released until a Final Occupation Certificate has been 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 Refund of Security Bond Application form can be downloaded from

www.woollahra.nsw.gov.au

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 NSW Fair Trading.

Note: For more information go to the NSW Fair Trading website www.fairtrading.nsw.gov.au or call 133 220.

Standard Condition: K18

K.10 Pruning or Removing a Tree Growing on Private Property

The Woollahra Development Control Plan 2015 (DCP), Chapter E3 –Tree Management, 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 Woollahra DCP from Council's website www.woollahra.nsw.gov.au or call Council on 9391 7000 for further advice.

Standard Condition: K19

K.11 Dilapidation Report

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

- a) The dilapidation report will be made available to affected property owners on requested and may be used by them in the event of a dispute relating to damage allegedly due to the carrying out of the development.
- b) This condition cannot prevent neighbouring buildings being damaged by the carrying out of the development.
- c) Council will not be held responsible for any damage which may be caused to adjoining buildings as a consequence of the development being carried out.
- d) Council will not become directly involved in disputes between the developer, its contractors and the owners of neighbouring buildings.
- e) In the event that access for undertaking the dilapidation survey is denied the Applicant is to demonstrate in writing to the satisfaction of the Principal Certifier that all reasonable steps were taken to obtain access to the adjoining property. The dilapidation report will need to be based on a survey of what can be observed externally.

 Standard Advising: K23

K.12 Roads Act 1993 Application

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

• Construction of driveways and/or new or alterations to footpath paving

- Alteration and/or extension to Council drainage infrastructure
- Alteration and/or addition of retaining walls
- Pumping of water to Council's below ground stormwater system
- Installation of soil/rock anchors under the roadway
- Installation of Stormwater outlet pipes across the nature strip

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

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

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

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

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

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

Drainage design works must comply with the Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.

Temporary ground anchors may be permitted, in accordance with Council's "Rock Anchor Policy".

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

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

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

Note: When an application under the *Roads Act* is required, then four (4) weeks is to be allowed for assessment.

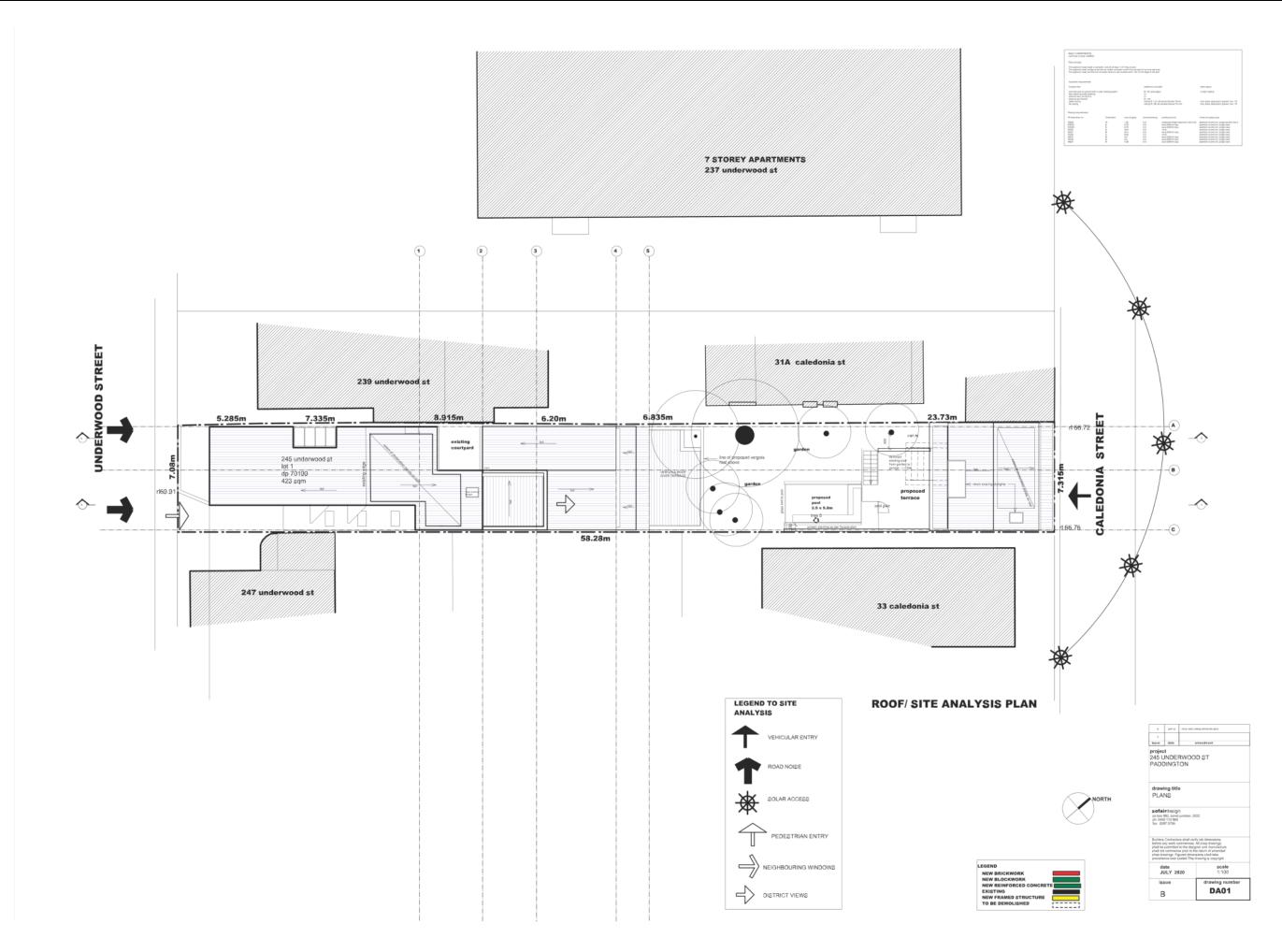
Note: road has the same meaning as in the Roads Act 1993.

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

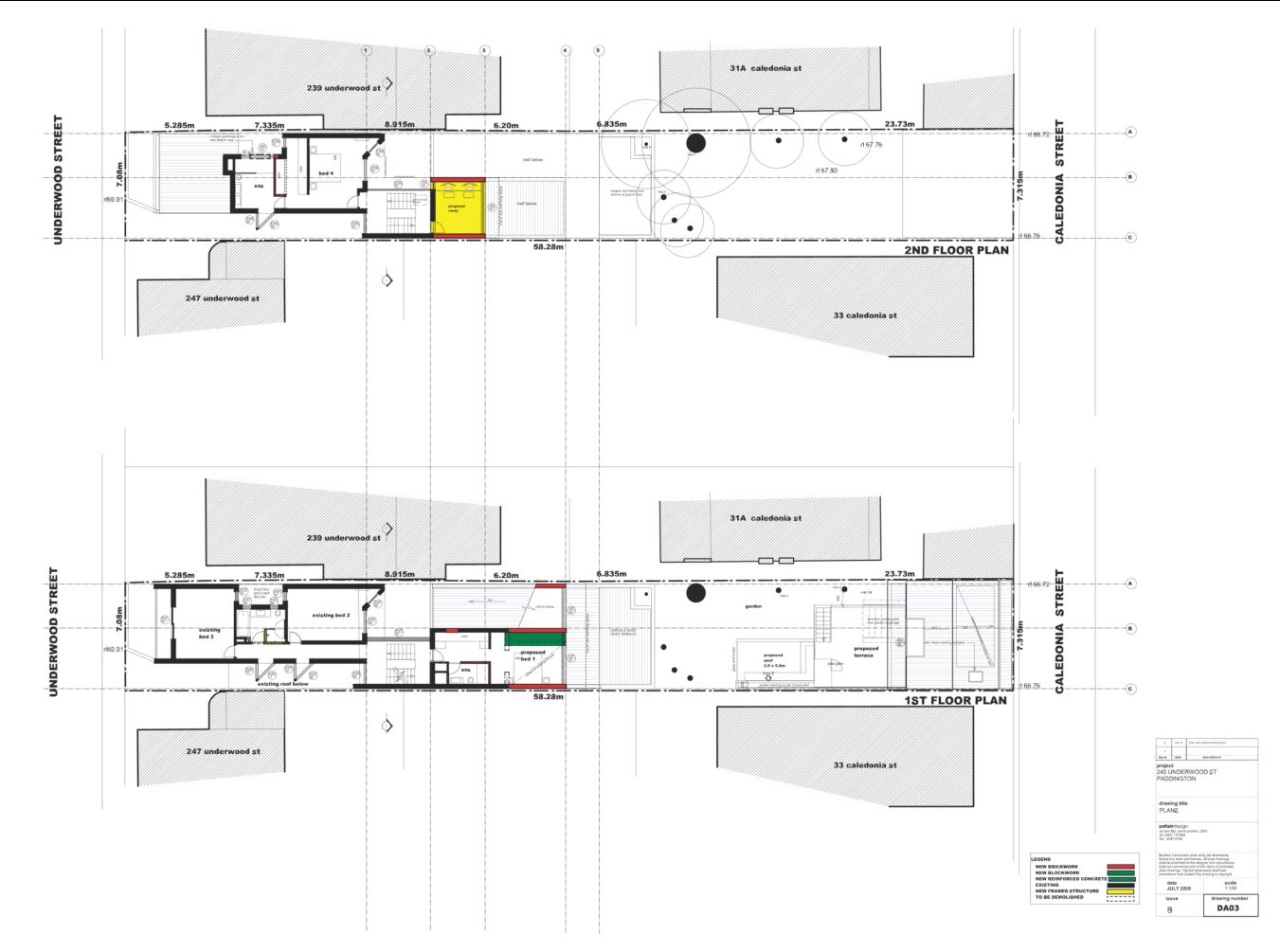
Standard Advising: K24

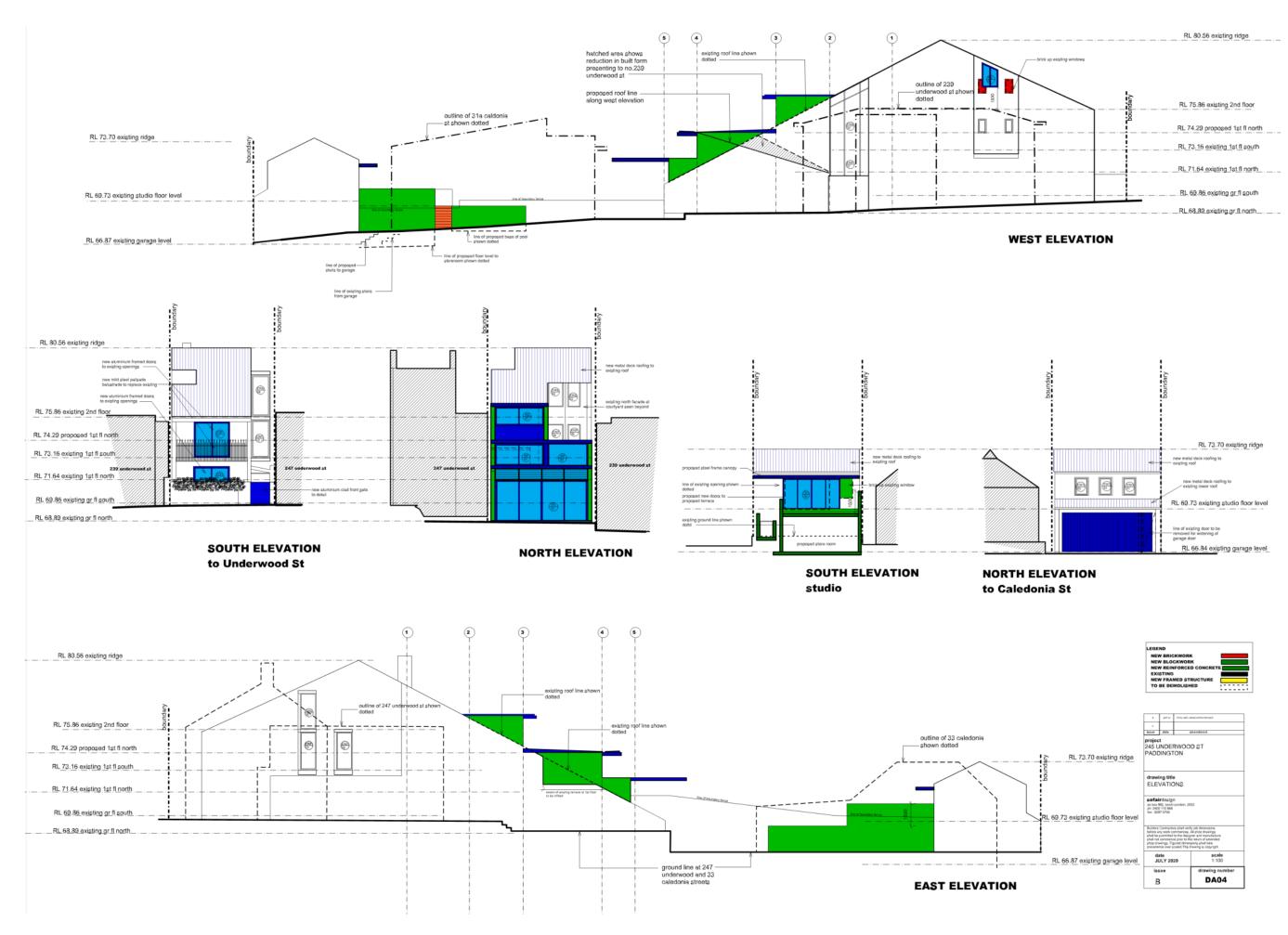
Annexures

- 1. Plans, Sections and Elevaitons J.
- 2. Clause 4.6 Written Request Height <u>J</u>
- 3. Re-Referral Response Heritage (including the original referral response) response a <u>U</u>
- 4. Referral Response Technical Services J
- 5. Referral Response Trees & Landscaping U











UNDERWOOD STREET

UNDERWOOD STREET



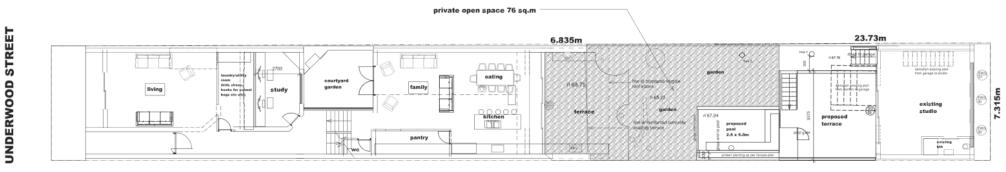
UNBUILT UPON AREA CALCULATION

REQUIRED AREA 18% 76.14 SQM PROPOSED AREA 22 % 96.91 SQM



DEEP SOIL AREA CALCULATION

REQUIRED AREA 12% 50.76 SQM PROPOSED AREA 73.18 sqm. REFER TO LANDSCAPE DRAWINGS



PRIVATE OPEN SPACE CALCULATION

REQUIRED AREA 35 SQM PROPOSED AREA 85.46 SQM

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project 245 UNDERWOOD ST PADDINGTON								
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245 UNDERWOOD STREET, PADDINGTON, NSW 2021

Landscape Documentation for Development Application



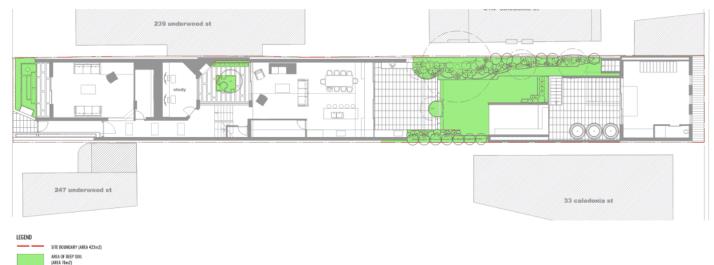


IMAGE TAKEN FROM NEARMAP 2020

LANDSCAPE DEEP SOIL PLAN

Drawing Register

Dwg No. Drawing Name Landscape Cover Sheet LDA-00 Tree Retention & Removal Plan LDA-01 Landscape Plan - Front LDA-02 LDA-03 Landscape Plan - Rear LDA-04 Landscape Detail Plans LDA-05 **Specification & Details** Planting Schedule & Imagery LDA-06



SITE PLAN

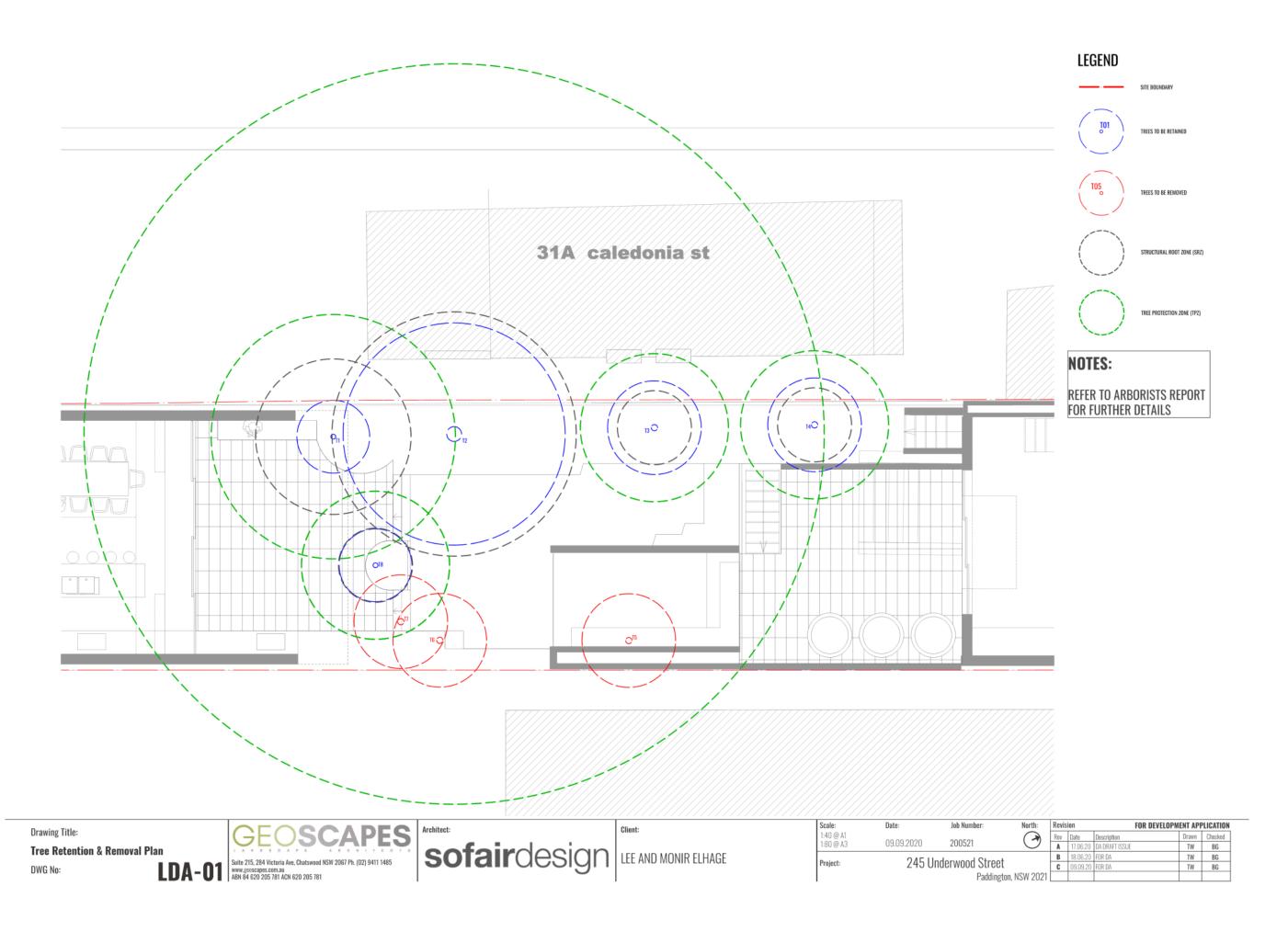
Drawing Title:

Landscape Cover Sheet DWG No:

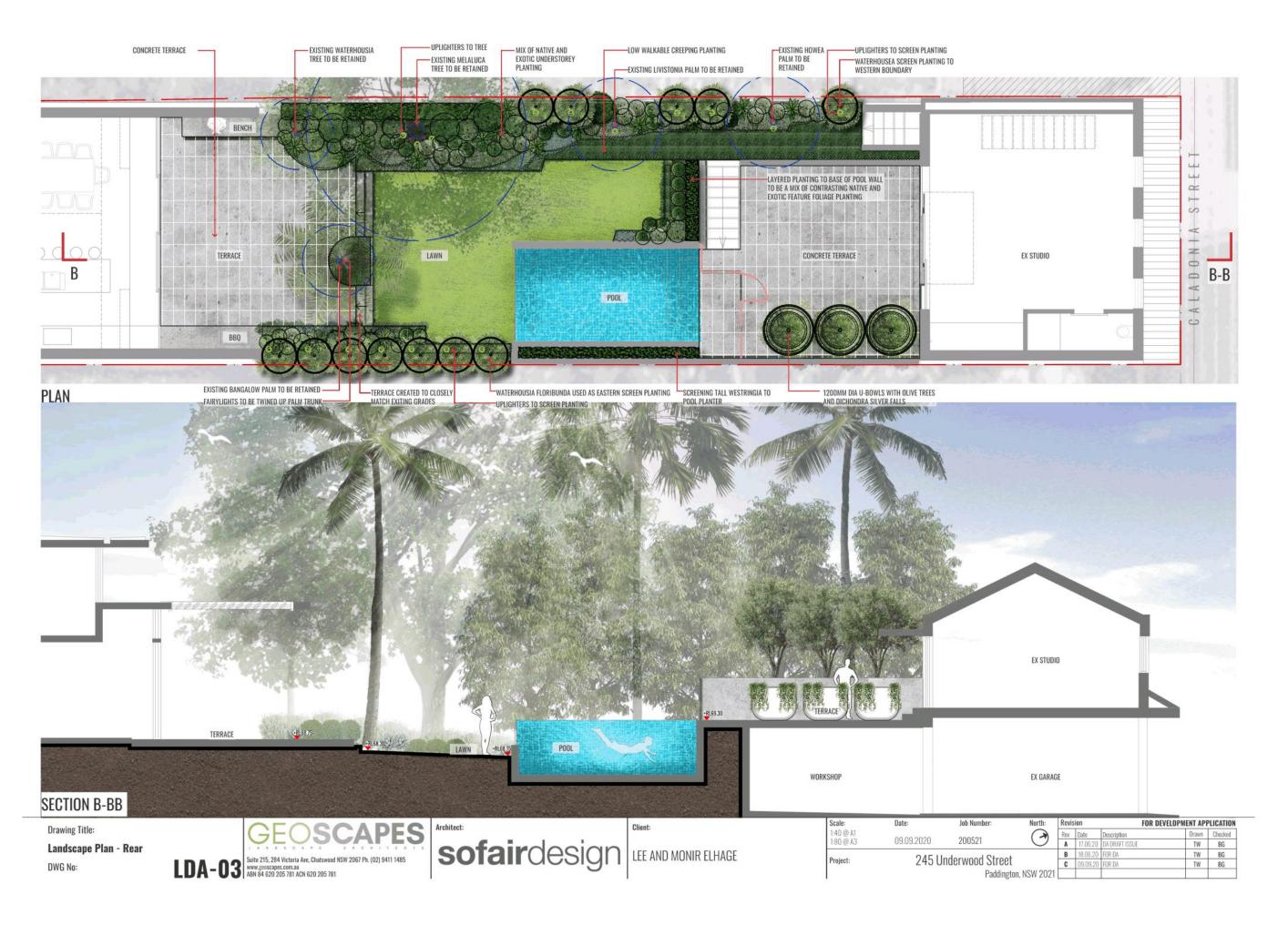


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	1:200 @ A1 1:400 @ A3	09.09.2020	200521		Rev		Description	Drawn	Checked
	1:400 @ A3	03.03.2020	200021	$\overline{}$	Α	17.06.20	DA DRAFT ISSUE	TW	BG
	D i t	245 Underwood Street			В	18.06.20	FOR DA	TW	BG
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	Paddington, NSW 2021 [

Page 323 Annexure 1 Plans, Sections and Elevaitons









MAINTENANCE PLAN

Maintenance shall mean the care and maintenance of the landscape works by accepted horticultural practice as rectifying any defects that become apparent in the landscape works under normal use. The landscape contractor shall attend the site on a weekly basis to maintain the landscape works commencing from practical completion.

Rubbish Removal

The Landscape Contractor shall undertake rubbish removal from the site on a weekly basis to ensure the site remains in tidy condition.

Weed growth that may occur in grassed, planted or mulched areas is to be removed using environmentally acceptable methods i.e. non-residual glyphosate herbicide (e.g. 'Roundup', applied in accordance with the manufacturer's direction.

Tree Replacement

Trees shall show signs of healthy vigorous growth and be free from disease and not exhibit signs of stress prior to handover to the client. Any trees or plant that die or fail to thrive, or are damaged or stolen will be replaced. Replacement material shall have the initial maintenance period extended in accordance with the landscape contract conditions. Trees and plant materials shall be equal to the minimum requirements of species specified and approved material delivered to site. Should the condition decline from the approved sample the Superintendent reserves the right to reject the tree / plants. Frequency: as required.

Stakes

Adjust and/or replace stakes and ties where required. Remove staking and guying when instructed by the Superintendent

Selective pruning may be required during the establishment period to promote a balanced canopy structure. These activities shall be carried out to the best horticultural and industry practice. All pruned material is to be removed from site.

Mulched Surfaces

All planter beds and garden areas shall have a minimum depth of 75mm organic mulch. All mulch is to be free of deleterious matter such as soil, weeds, sticks and should

Mulched surfaces are to be kept clean and tidy and free of any deleterious material and foreign matter. Reinstate depths to a uniform level of 75mm with mulch as specified, mulch to be free of any wood material impregnated with CCA or similar toxic treatment. Top up mulch levels prior to handover to client & estate management.

Implement an appropriate hand watering regime in areas not irrigated in association with current watering programme to maintain plant health and vigour. The program shall reflect seasonal conditions and plant species.

Frequency: Weekly or as required.

Soil In Natural Ground

Non-Australian native garden beds to have soil installed consisting of 50% existing site topsoil and 50% new topsoil equal or equivalent to 'Organic Garden Mix' as supplied by Australian Native Landscapes. Australian native garden beds to have soil installed consisting of 50% existing site topsoil and 50% new topsoil equal or equivalent to 'Native Low 'P' Mix' as supplied by Australian Native Landscapes. Soil to conform to AS4419 refer to typical detail.

Pest and Disease Control

The Landscape Contractor shall spray for pests and disease infestations when the pest and fungal attack has been positively identified and when their populations have increased to a point that will become detrimental to plant growth. Apply all pesticides to manufacturer's directions. Frequency: weekly inspection

Fertilising

Generally check for signs of nutrient deficiencies (yellowing of leaves, failure to thrive), and adapt fertiliser regime to suit. Fertiliser should be applied at the beginning and the end of the (summer) growing season.

Irrigation

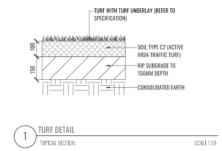
A sub surface dripper style, electrically automated self timed irrigation system is recommended to be supplied to all garden bed areas and planter container. Regular checks are to be made to ensure continued successful operation. The Landscape Contractor shall be responsible for coordination and engagement of a specialist irrigation designer and installation contractor to design, supply and install an automatic subterranean drip irrigation system to all raised planter beds.

The irrigation system will need to provide designated landscaped areas with enough water for vigorous healthy plant growth. As a general rule landscaped areas will need 20-25mm, species dependant, of water per week. The landscape Contractor will need to monitor natural rainfall using a rain switch in order to set irrigation flow rates accordingly on a monthly basis.

Standards

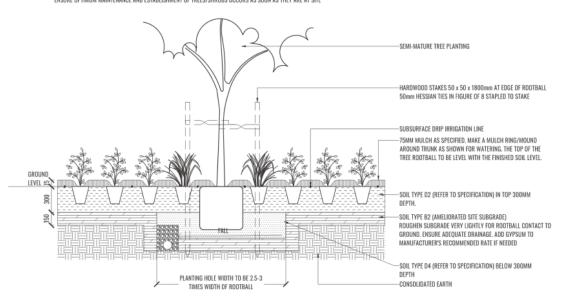
All grown or purchased plant stock must conform to all the conditions and requirements given in NATSPEC Guide: Specifying Trees. Soils to be in accordance with AS4419, mulching composts and conditioners to be in accordance with AS4454. Soils should conform to best practice specifications as listed in the Landscape Soils Handbook (Simon Leake & Elke Haege 2017).

TYPICAL LANDSCAPE DETAILS



TREE/SHRUB SIZE AND QUALITY TO BE TO NATSPEC STANDARD. SPECIES IS TO BE AS PER PLAN AND PLANT SCHEDULE. ENSURE ONLY HEALTHY AND VIGOROUS, DISEASE FREE, WELL

TAKE CARE TO ENSURE FOLIAGE, BRANCHES, TRUNKS AND ROOT CROWNS ARE NOT DAMAGED BEFORE, DURING AND AFTER PLANTING ENSURE OPTIMUM MAINTENANCE AND ESTABLISHMENT OF TREES/SHRUBS OCCURS AS SOON AS THEY ARE AT SITE



THOROUGHLY SOAK THE ROOTBALL OF TREE WITH FRESH WATER BEFORE TAKING OFF POT OR BAG. WHEN PLANTING HOLE IS COMPLETE USE A SHARP SPADE TO SHAVE OFF 20-50MM OF THE SIDES AND BASE OF ROOTBALL (TO ROOD PRUNE IT) BEFORE CAREFULLY PLACING INTO PLANTING HOLE. IF NORTH IS MARKED ON THE TREE, ENSURE ORIENTATION IS CORRECT WITH NORTH MARKING TO

- REMOVE ANY STAKES, TIES AND LABELS. WATER ROOTBALL THOROUGHLY.
 TOP OF ROOTBALL TO FINISH FLUSH WITH TOP OF SOIL



Drawing Title:

Specification & Details

DWG No:





Scale:	Date:	Job Number:	North:	Revis	ion	FOR DEVELOPM	OR DEVELOPMENT APPLICATION		
AS SHOWN @ A1	00.00.0000	000501		Rev	Date	Description	Drawn	Checked	
AS SHOWN @ A3	09.09.2020	200521		Α	17.06.20	DA DRAFT ISSUE	TW	BG	
	Project: 245 Underwood Street			В	18.06.20	FOR DA	TW	BG	
Project:	240 UI	iaerwood 2fleef		C 09.09.20 FOR DA		TW	BG		
		Paddington, N	ISW 2021						

PLANTING SCHEDULE

Code	Botanical Name	Common Name	Expected	Install Size	Spacing	Quantity	Native	Low Water Use
0000	Dotalisal Hallo	Common Name	Mature Height	IIIStaii Gizo	opaoms	quantity	Mativo	LOW WATER OSE
	TREES							
ACE PAL	Acer palmatum 'Elegans'	Japanese Maple	4m	200L	As Shown	1		
OLE EUR	Olea europaea 'Tolley's Upright'	Olive Tree	7m	100L	As Shown	3		✓
WAT FLO	Waterhousia floribunda	Weeping Lily Pily	6m	200L	As Shown	12	✓	✓
	SHRUBS							
BUX jap	Buxus microphylla var. japonica	Box	2m	300mm	400mm Ctrs	14		
CAR eme	Carissa macrocarpa 'Emerald Star'	Natal Plum	0.5-1m	300mm	500mm Ctrs	11		✓
CRA ova	Crassula arborescens 'Bluebird'	Bluebird Jade	0.6-1m	300mm	As Shown	9		✓
HEB eme	Hebe 'Emerald Green'	Emerald Green Hebe	0.4m	300mm	As Shown	25		✓
PIT mis	Pittosporum tobira 'Miss Muffet'	Miss Muffet Pittosporum	0.8m	300mm	As Shown	4		✓
WES nar	Westringia 'WES01' - Naringa™	Native Rosemary	1.2-2m	300mm	500mm Ctrs	14	✓	✓
WES gre	Westringia fruticosa 'Grey Box'	Native Rosemary	0.45m	300mm	As Shown	25	✓	✓
	ACCENT PLANTS							
AGA blu	Agave 'Blue Glow'	Agave	0.6m	300mm	As Shown	15		✓
ART cir	Arthropodium cirratum	New Zealand Rock Lily	1m	300mm	4/m2	9		✓
	GROUNDCOVERS & GRASSES							
CHR api	Chrysocephalum apiculatum 'Desert Flame'	Yellow Buttons	0.2-0.3m	140mm	4/m2	11	✓	✓
DIC rep	Dichondra repens	Kidney Weed	0.2m	TRAY	11/m2	86	√	
DIC sil	Dichondra argentea 'Silver Falls'	Silver Falls Kidney Weed	0.2m	TRAY	11/m2	29		
FES gla	Festuca glauca	Blue Mountain Grass	0.2m	140mm	7/m2	20		✓
SCL bif	Scleranthus biflorus	Cushion Bush	0.1-0.2m	140mm	4/m2	10	✓	
TRA mat	Trachelospermum FLAT MAT™	Star Jasmine	0.4m	140mm	4/m2	4		
	CLIMBERS							
CIS ant	Cissuc antarctica	Kangaroo Vine	Climber	140mm	As Shown	8	✓	

^{**} Final numbers to be confirmed at Construction Certicate stage

PLANT IMAGES









Olea europaea

Carissa 'Emerald Star'









Buxus microphylla var. japonica

Hebe 'Emerald Green'









Westringia 'Grey Box'

Agave 'Blue Glow'

Chrysocephalum 'Desert Flame'









Festuca glauca

Trachelospermum 'Flat Mat'

Scleranthus biflorus

Cissus antarctica

Drawing Title: **Planting Schedules & Imagery** DWG No:





	Client:
)	LEE AND MONIR ELHAGE

Scale:	Date:	Job Number:	North:	Revis	ion	FOR DEVELOPM	FOR DEVELOPMENT APPLICATION			
	00 00 0000	000001		Rev	Date	Description	Drawn	Checked		
09.09.2	09.09.2020	09.2020 200521		Α	17.06.20	DA DRAFT ISSUE	TW	BG		
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roject: 245 Underwood Street			C	09.09.20	FOR DA	TW	BG			
		Paddington, N	SW 2021							



245 Underwood Street, Paddington

REQUEST FOR VARIATION TO HEIGHT OF BUILDINGS DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6(3) OF WOOLLAHRA LEP 2014

Clause 4.3 - Building Height

Clause 4.3 of the Woollahra LEP 2014 and the associated map prescribe a maximum building height of 9.5m for this site. The existing dwelling has a maximum height of 10.8m which exceeds the height control.

The proposal seeks to replace the existing roof material but will maintain the maximum height of 10.8m. As the proposal seeks to undertake works above the height control, the proposal provides a non-compliance with this control. The percentage variation is 13.6%.

The proposal therefore seeks to vary the building height development standard.

The objectives of Clause 4.3 are as follows:

- (a) to establish building heights that are consistent with the desired future character of the neighbourhood,
- (b) to establish a transition in scale between zones to protect local amenity,
- (c) to minimise the loss of solar access to existing buildings and open space,
- (d) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion.
- (e) to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.

The zoning of the land is R2. The objectives of the R2 zone are:

 To provide for the housing needs of the community within a low density residential environment.

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- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.

Clause 4.6 - Exceptions to Development Standards

Clause 4.6 of the Woollahra Local Environmental Plan 2014 allows for exceptions of Development Standards. The objectives of this Clause 4.6 are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The clause goes on to state:

- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard
- (4) Consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:



- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Secretary has been obtained.

This document constitutes the written request referred to in Clause 4.6(3) in relation to the proposal's breach of the height of building development standard.

The NSW Department of Planning and Infrastructure (DP&I) provides guidance on how to prepare Clause 4.6 variations; 'Varying development standards: A Guide' (August 2011). This written request to vary the standards is based on the DP&I's Guide.

Clause 4.6(3) and 4.6(4)

The proposal is considered against the four matters required to be established under Clause 4.6.

1. Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:

In order to assess whether strict compliance with the development standard is unreasonable or unnecessary, a proposal is considered against the following five ways¹:

- 1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
- 2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
- The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard; or



3

¹ see Wehbe v Pittwater Council [2007] NSWLEC 827

 The zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to the land.

These five ways were re-emphasised by Commissioner Morris². Each 'test' offers a potential way of demonstrating that complaisance is unnecessary or unreasonable in a particular circumstance³. All tests are separate and not all tests may not be applicable in each case. Therefore, not all tests need to be met.

The most common way of establishing that compliance with a standard is unreasonable and unnecessary is to establish that the objectives of the standard are met, even though the standard is not complied with⁴. This objection relies on this method. Compliance with the objectives of the height standard is addressed under **Point 4 below**.

In addition, the following points are raised:

- Compliance with the development standard is unreasonable and unnecessary as the proposal will retain the existing roof and building height with the proposal seeking to alter the roof material only.
- Exceedance of the height control will not create additional unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity as the proposal seeks to alter the roof material only.

2. There are sufficient environmental planning grounds to justify contravening the development standard:

The components proposed above the height control are:

Replacement of roof material

Given the consistency of the proposal against the zone objectives and height objectives (see **Point 4 below regarding both**), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard.

Wehbe v Pittwater Council [2007] NSWLEC 827, Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 and Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245



4

² Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386

³ Mecone Pty Limited v Waverley Council [2015] NSWLEC 1312

There are sufficient environmental planning grounds that the proposed height can be achieved without adverse impacts for the following reasons:

- The proposal will not result in the loss of views from surrounding development;
- The proposal will not result in unreasonable overshadowing of adjoining properties;
- The proposal will not affect the visual and acoustic privacy of adjoining properties; and
- The proposal will not alter the existing scale of the development and will protect the heritage significance of the conservation area.

The proposal will provide a suitable design and of suitable amenity in terms of the built environment and represents the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979) and the proposal will protect the heritage significance of the conservation area.

3. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3):

The written request adequately addresses the matters referred to above by Clause 4.6(3).

4. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out:

Objectives of the Standard

The proposal will be in the public interest as it meets the objectives of the height development standard as follows:

Objective (a) seeks to establish building heights that are consistent with the desired future character of the neighbourhood.

Comment: The proposal will retain the existing height of the dwelling, which is consistent with the desired future character of the neighbourhood. The proposed change in roof material will not affect the setting of the dwelling within the conservation area.



Objective (b) seeks to establish a transition in scale between zones to protect local amenity.

Comment: Given the proposal will not alter the existing height or roof profile of the dwelling, the proposal will protect local amenity.

Objective (c) seeks to minimise the loss of solar access to existing buildings and open space.

Comment: Given the proposal will not alter the height or profile of the existing roof, the proposal will not result in any additional loss of solar access to existing buildings and open space.

Objective (d) seeks to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion.

Comment: The proposed replacement of the existing roof material with no change to the height or profile of the roof will not create any new impacts on adjoining or nearby properties in terms of view disruption, loss of privacy, overshadowing or visual intrusion.

Objective (e) seeks to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.

Comment: The proposal will not affect the public domain in terms of public views of the harbour and surrounding areas.

Objectives of the Zone

The zoning of the property is R2 and the objectives of the zone are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.

The proposal is consistent with the zone objectives, as it will continue to provide a dwelling within the low density residential environment, which is



compatible with the character and amenity of the surrounding neighbourhood and is of a height and scale which is compatible with the desired future character of the neighbourhood.

As demonstrated above, the proposed development will be in the public interest because it is consistent with the objectives of the height development standard and the objectives of the R2 zone.

In addition, the above demonstrates that compliance with the control is unreasonable and unnecessary in the circumstances of this case.

With respect to Clause 4.6(4)(b), concurrence of the Planning Secretary is taken to have been obtained as as a result of written notice dated 21 February 2018 attached to the Planning Circular PS 18-003⁵.

Conclusion

The consistency of the development with the zone objectives and the objectives of the height standard and the lack of impact arising is sufficient grounds to support that breach and confirms the lack of necessity for the development to comply. This therefore demonstrates sufficient environmental planning grounds to justify contravening the standard.

In addition, the resultant development will be in the public interest as it complies with the objectives of the zone and the objectives of the development standard.

Despite the breach with the standard, the proposal is consistent with the objects of Section 1.3 of the EP& A Act, 1979 (formerly 5(a)(i) and (ii) of the Act), which are to encourage development that promotes the social and economic welfare of the community and a better environment, to promote and coordinate orderly and economic use and development of land, to promote good design and amenity of the built environment and to protect the heritage of the built environment.

In the context of other requirements of Clause 4.6, it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

⁵ Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 at Para [28]



7

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to support the variation.

Jennie Askin

Director

aSquare Planning Pty Ltd

Jenne Usun

4 August 2020



22 July 2020

REFERRAL RESPONSE - HERITAGE

FILE NO: Development Applications/ 242/2020/1

ADDRESS: 245 Underwood Street PADDINGTON 2021

PROPOSAL: Alterations & additions to the existing dwelling, first & second floor

additions, new swimming pool & workshop

FROM: Charlotte Simons - Heritage Officer

TO: Mr G Lloyd

DOCUMENTATION

The following documentation provided by the applicant has been examined for this referral response:

- Drawing set by Sofair Design, dated July 2020, and numbered DA01-06
- Heritage Impact Assessment by Zoltan Kovacs Architect, dated July 2020
- Statement of Environmental Effects by aSquare Planning, dated July 2020
- Survey plan by SJ Dixon Surveyors Pty Ltd, ref 52831, dated 20 May 2020.

SITE INSPECTION / RESEARCH

The following research was undertaken in the preparation of this assessment:

• The site was previously inspected on 4 December 2019, including the interior and the general locality.

Review of the following documents and photographic evidence:

- Council's property system, to establish dates of earlier building and development applications for the subject and surrounding properties
- Review of building and development applications for the subject site
- Council's photography files relevant to the immediate area
- Council's heritage inventory sheets
- Council's aerial photography and mapping database
- Google Maps street view

STATUTORY AND POLICY DOCUMENTS

The following statutory and policy documents are relevant to the application:

- Woollahra LEP 2014
- Woollahra DCP 2015

ASSESSMENT OF HERITAGE IMPACT

Compliance with the relevant legislative framework and planning controls

SIGNIFICANCE OF SUBJECT PROPERTY/TO THE CONSERVATION AREA



The existing building on the subject property is a three storey rendered and painted cavity brick house that was designed in 1979 by local architect George Conomos. The building was constructed sometime after 1981. The form of the house is defined by a large transversal gable roof enclosing three levels. The roof features cut-out recesses and is clad with concrete tiles. While the existing building retains its original interior layout, the finishes have been recently updated.

The modern material palette of the existing building, comprising rendered brickwork, concrete and glass, and its overall expression references elements that are typical of the 'Sydney School' style, although it is not considered a representative example of this modern architectural style and does not exhibit notable architectural merit. The Heritage Impact Assessment provides the following Statement of Significance for the subject property:

The three storey brick and concrete tile contemporary house was built c. 1981 as a free standing house. It is not a significant contributory item due to its uncharacteristic principal form.

The land was originally part of James Underwood's land grant, which was gradually broken up from 1839.

The findings of the Heritage Impact Assessment by Kovacs Architect are considered to be accurate, and the existing building on the subject property is therefore classified as non-contributory infill development within the Paddington HCA. The building is not considered to be intrusive.

It is noted that the subject property appears to have been vacant until the early 20th century (Figure 1), after which time a single storey Inter-War era house of painted brick construction was added to the site (Figure 2). This cottage was demolished as part of the construction works for the existing house. The subject property does not retain any apparent fabric from this original house.

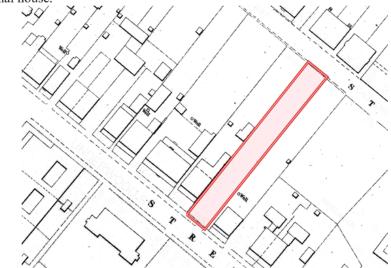


Figure 1: 1885-1895 Surveyor General's map indicating the subject property (outlined) was vacant at this time.

(Source: State Library NSW)





Figure 2: Former Inter-War house (since demolished) at 245 Underwood Street, Paddington. (Source: Woollahra Library, Local History Digital Archive)

Woollahra LEP 2014 Part 5.10 Heritage Conservation

The subject site is not a heritage item in Woollahra Local Environment Plan 2014 'the LEP' and is within a heritage conservation area. Therefore, Clause 5.10 does apply.

Significance of items in the vicinity

There are no listed heritage items in close proximity that would be adversely affected by the proposal.

Woollahra DCP 2015

The subject site is within the Paddington Heritage Conservation Area, and is not considered a contributory item or a significant item. The following consideration against the Paddington HCA controls and objectives under the Woollahra DCP is made:



Clause 1.2.3 Character elements

• The proposal retains the existing contemporary infill development on the subject property, and the proposed alterations and additions would achieve a more cohesive relationship with the significant 19th century residential character and context of the Paddington HCA. The contemporary design of the proposal responds appropriately to the streetscape character of the surrounding historical context. The form, articulation, detailing, materials and finishes of the proposed alterations and additions offer a modern design approach that interprets traditional terrace typologies along Underwood Street and also Caledonia Street to the rear, whilst adding a respectful new contemporary layer of development. The proposal complies under this clause.

Clause 1.2.4 Desired future character

 The proposal is consistent with Paddington's low scale high density development and the desired future character, retaining the unique significance of the area as a special residential precinct.

Clause 1.2.5 Contemporary design in Paddington

• The proposal simplifies existing elevations of the infill development, and responds to and respects the context of the Paddington HCA. The proposed alterations and additions to the existing infill development would establish a more cohesive relationship between the new development and surrounding Paddington HCA. The form, articulation, detailing, materials and finishes of the proposed alterations and additions offer a modern design approach that takes ques from traditional terrace typologies along Underwood Street and also Caledonia Street to the rear, whilst adding a respectful new contemporary layer of development. The proposal complies under this clause.

Clause 1.3.12 Existing contemporary infill Objectives O1, O2 Controls C1, C2

- The proposal is consistent with the character of the existing building including its massing and has been designed with regard to its context. The proposed alterations and additions are predominantly contained within the existing roof plane and side blade walls, which would maintain the existing bulk and massing of the contemporary infill development. This meets Objective O1 and complies with Control C2 and is supported.
- The removal of a portion of the existing transversal gable roof to the rear and
 proposed insertion of flat roof extensions and also a reverse skillion form at ground
 floor level would not be visible from the public domain and are not to a contributory
 item, and this is therefore supported in this instance.
- The proposed materials, comprising cement rendered external walls, steel profile
 metal roofing, simple contemporary metal balustrades and fine aluminium framing to
 windows and doors in neutral tones, offers a restrained palette of contemporary
 materials and finishes that are appropriate within the context of the Paddington
 HCA. The proposed materials and finishes meet Objective O1 and comply with
 Control C1, and are generally supported.
- Contemporary corrugated profile sheeting in appropriate colours is permissible for roofs for infill development. However it is noted the proposed 'Monument' colour is



not traditional within the Paddington HCA. New metal roofing is to be light to mid grey in colour in order to comply.

- The proposal would refine and simplify the elevations of the existing infill development, while maintaining the existing setbacks and alignments on the site. The introduction of new lightweight metal balustrades to the front elevation of the existing house would remove intrusive elements including cement planter boxes and would offer a contemporary reinterpretation of the terrace typology. This is considered appropriate in the context of the surrounding streetscape, which comprises a combination of historic terrace housing and modern development, and is supported in this instance.
- The existing building on the site does not retain any notable architectural merit, therefore compliance under Objective O2 is not relevant. It is considered that the proposal would maintain the overall form and massing of the building, and would provide localised alterations that would enhance the contribution the existing building makes to the surrounding streetscape context of the Paddington HCA.
- While new windows to the rear (north) elevation of the dwelling at upper levels are
 not vertically proportioned, they would be located to the rear of the dwelling and
 would not be readily visible from the public domain, and are therefore supported in
 this instance.
- Window WS03 to the ensuite at second floor level (west elevation) is not vertically
 proportioned and would be visible from the public domain. WS03 is to be vertically
 proportioned or otherwise maintain existing compliant openings in this location in
 order to comply.
- The proposed modifications to the solid masonry front boundary wall would
 maintain an existing intrusive element in the Paddington HCA streetscape. The fence
 to the street front zone is to be a contemporary interpretation of traditional fence
 details and materials (i.e. matched to the details of the proposed steel balustrade to
 the first floor level balcony on the front façade) to comply.

Clause 1.4.4 Roofs and roof form Objective O3 Controls C6, C8

- The proposal is largely contained within the existing roof form, which comprises a large transversal gable roof. The removal of portions of this existing roof form to the rear and replacement with additions that provide a stepped form to the rear is appropriate to the context of the building, including flat roofs and a reverse skillion roof form at ground floor level. The proposed skillion roof form at ground floor level would not be visible from the public domain and is not to a contributory item. The proposed modifications to the existing roof form of the non-contributory item meet Objective O3 and are supported in this instance.
- The proposal involves removal of the intrusive concrete roof tiles and replacement
 with contemporary corrugated metal sheeting, which complies with Control C8 and
 is supported. It is noted however the proposed 'Monument' colour of new metal
 roofing is not traditional within the Paddington HCA and is not supported. New
 metal roofing within the Paddington HCA is to be light to mid grey in colour in order
 to comply.

Clause 1.4.5 Building height, bulk, form and scale Objectives O3, O4



Control C3

The proposed alterations and additions are predominantly contained within the
existing built form of the house including the roof plane and side blade walls. As
such, the proposal would maintain the existing bulk and massing of the
contemporary infill development.

Clause 1.5.1 Dormers and skylights

Objective O1

Control C28, C30

• The proposal retains existing skylights to the dwelling and loft above garage.

Clause 1.5.3 Windows, doors, shutters and security Objective O2

Control C4

- The proposal includes vertically proportioned windows and doors that are relatively consistent with traditional solid to void ratios. While new windows to the rear (north) elevation of the dwelling at upper levels are not vertically proportioned, they would be located to the rear of the dwelling and would not be readily visible from the public domain, and are therefore supported in this instance.
- Window WS03 to the ensuite at second floor level (west elevation) is not vertically
 proportioned and would be visible from the public domain. WS03 is to be vertically
 proportioned or otherwise maintain existing openings in this location in order to
 comply.
- The proposed aluminium framed doors and windows in neutral tones are appropriate
 to the existing contemporary style of the infill building and are therefore supported
 in this instance.

Clause 1.5.4 Verandahs and balconies

Control C8

• The proposed metal balustrades to the front verandah of the existing dwelling would replace existing intrusive concrete planter boxes, and are supported.

Clause 1.5.5 Fences, walls and gates

Objective O4

Control C13, Table 5

• The proposed extension of the existing full height brick fence to the street front zone is inconsistent with the objectives of this clause, which require fences on infill sites to be of a contemporary design and of a form, height, detail, finish and material that responds to the physical and historical context of the streetscape. Under Clause 1.5.5, blank masonry fences on the street front elevation are identified as an unsympathetic fencing type that prevents glimpsed views of gardens and houses at street level. The fence to the street front zone of the subject property is to be contemporary and simply detailed metal fence (i.e. matched in detail to the balustrade to the first floor level of the front façade) to comply (Objective O4, Control C13).

Clause 1.5.6 On site vehicle parking, garages, carports, driveway access and servicing facilities

Objective O3, O4

Table 7



- There is an existing double garage on the subject property. Proposed works to the existing garage building involve minor modifications of its visual presentation, including new garage door, new metal roofing and planter box. The proposed planter box to the front elevation of the garage with loft structure is not traditional within the Paddington HCA and is not supported.
- There are no objections to the proposed new garage door and rear extension of the existing garage to form a workshop from a heritage perspective.

Clause 1.5.7 Lofts over garages and studios Objective O1

There is an existing double garage on the subject property. Proposed works to the
existing garage building involve minor modifications of its visual presentation,
including new garage door, new metal roofing and planter box. The proposed planter
box to the front elevation of the garage with loft structure is not traditional within the
Paddington HCA and is not supported.

Clause 1.5.8 Materials, finishes and details Objective O2

Controls C4, C5, C6, Table 8

- The proposed material palette, comprising fine aluminium windows and doors in neutral tones, steel profile metal roofing, cement rendered external walls and simple metal balustrades, provides a contemporary range of materials and finishes that are appropriate to the existing modern building and its context within the Paddington HCA. The proposed materials and finishes generally comply under this clause and are supported.
- Contemporary corrugated profile sheeting in appropriate colours is permissible for
 roofs for infill development as per Table 8. However it is noted the proposed
 'Monument' colour is not traditional within the Paddington HCA. New metal roofing
 is to be light to mid grey in colour in order to comply.
- The proposed modification to the fence to the street front zone involves a full height brick fence, which is classified as intrusive as per Table 8. New fences for infill development to be contemporary interpretation of traditional fence details and materials such as iron palisade and timber to comply (Table 8).

Clause 1.5.9 Exterior colours Objective O1

Controls C1, C3

- The proposed colour scheme generally has a hue and tonal relationship to the surrounding streetscape context and complies.
- The proposed 'Monument' colour of new metal roofing is not traditional within the Paddington HCA. New metal roofing is to be light to mid grey in colour in order to comply.

CONCLUSION

Woollahra LEP 2014

Clause 1.2 (2) (f) The development does conserve the built heritage of Woollahra.



Part 5.10

- Clause 1(a) The development does conserve the heritage of Woollahra.
- Clause 1(b) The impact upon the heritage significance of the conservation area will be neutral.
- Clause 4 This referral constitutes an assessment under this clause.

RECOMMENDATION

The proposal is generally acceptable, subject to conditions, as it complies with the relevant statutory and policy documents and would have a satisfactory impact.

Consent, subject to conditions:

- 1. The fence to the street front zone to be a contemporary interpretation of traditional fence details and materials (i.e. matched to the details of the proposed steel balustrade to the first floor level balcony on the front façade) to comply:
 - a. Woollahra DCP 2015, Chapter C1, Clause 1.5.5, Objective O4, Control C13
 - b. Woollahra DCP 2015, Chapter C1, Clause 1.5.8, Objective O2, Control C4, Table 7.
- 2. The proposed 'Monument' colour of new metal roofing is not a traditional colour/hue within the Paddington HCA and is not supported. New metal roofing is to be light to mid grey in colour to comply:
 - a. Woollahra DCP 2015, Chapter C1, Clause 1.4.4, Objectives O1, O3, Control C8
 - b. Woollahra DCP 2015, Chapter C1, Clause 1.5.8, Objective O2, Controls C4, C5, Table 8
 - c. Woollahra DCP 2015, Chapter C1, Clause 1.5.9, Objective O1, Control C1.
- 3. The proposed planter box to the front elevation of the garage with loft structure is not traditional within the Paddington HCA and is to be deleted from the plans to comply:
 - a. Woollahra DCP 2015, Chapter C1, Clause 1.5.6, Objective O4
 - b. Woollahra DCP 2015, Chapter C1, Clause 1.5.7, Objective O1.
- 4. Window WS03 to the ensuite at second floor level (west elevation) is not vertically proportioned and would be visible from the public domain. WS03 is to be vertically proportioned or otherwise maintain existing openings in this location in order to comply:
 - a. Woollahra DCP 2015, Chapter C1, Clause 1.5.3, Control C4.

Charlotte Simons - Heritage Officer

From: Charlotte Simons

To: George Lloyd
Subject: Re-Referral Response - Heritage - DA2020 242 1 - 245 Underwood Street PADDINGTON

Date: Wednesday, 5 August 2020 9:15:00 AM

Attachments: |mage003,jpq

Hi George,

I have reviewed the amended design drawings provided 4 August 2020 for DA 2020/242/1 – 245 Underwood Street, Paddington.

The amendments include deletion of the planter boxes to the front elevation of the garage with loft, revised colour of new metal roofing to be 'surfmist' or 'shale grey' in colour, and revised design of window to the ensuite at second floor level (WS03) to be vertically proportioned. These amendments comply and are supported.

There are no amendments to replace the existing solid masonry fence to the street front zone with a sympathetic contemporary fence. As there are no works or changes proposed to this existing element, the existing fence may be maintained in this instance.

On balance, I am satisfied that the amendments have resolved the issues raised in the Heritage Referral Response for DA2020/242/1 dated 22 July 2020.

Overall, the application is acceptable on heritage grounds as it generally complies with the relevant statutory and policy documents and would have a satisfactory impact.

Consent, no heritage conditions required.

Kind regards, Charlotte



Charlotte Simons Heritage Officer

Woollahra Municipal Council 536 New South Head Road, Double Bay NSW 2028

t: 02 9391 7062 f: 02 9391 7044

e: charlotte.simons@woollahra.nsw.gov.au w: www.woollahra.nsw.gov.au

Our Values: Respect for People | Integrity and Excellent Performance | Professional Quality Service | Open Accountable Communication

Completion Date: 24 September 2020

REFERRAL RESPONSE – DEVELOPMENT ENGINEERING

FILE NO: Development Applications/ 242/2020/1
ADDRESS: 245 Underwood Street PADDINGTON 2021

PROPOSAL: Alterations & additions to the existing dwelling, first & second floor

additions, new swimming pool & workshop

FROM: Mr R Lam
TO: Mr G Lloyd

1. ISSUES

None

2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced 1498, prepared by a²p, dated July 2020.
- Architectural Plans, referenced Rev B, prepared by Sofairdesign, dated Sept 2020.
- Survey, referenced 52831, prepared by S.J Dixon Surveyors P/L, dated 20 May 2020.
- Stormwater Management Plan, referenced 2020-027, prepared by WaterDesign Civil Engineers, dated 3 July 2020.
- Geotechnical Report, referenced G20050-PSD-R01F-Rev 0, prepared by Geo-Environmental Engineering, dated 22 June 2020.
- Construction Methodology Report, referenced 6286:RY:rp, prepared by James Taylor & Associates, dated 04/08/2020.
- Excavation Plan and Sections, referenced referenced 6286-S01-A, prepared by James Taylor & Associates, dated 04/08/2020.

3. ASSESSMENT

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

a. Site Drainage comments

The subject property has a total site area of less than 500m², in which case the installation of on-site detention (OSD) system is not required. Stormwater runoff generated from the site could be discharged to the street kerb and gutter by gravity.

Council's Technical Services Division is satisfied that adequate provision could be made for the disposal of stormwater from the land it is proposed to develop and complies with Chapter E2 "Stormwater and Flood Risk Management" DCP which will be conditioned accordingly.

Referral Response - Technical Services - DA20202421 - 245 Underwood Street PADDINGTON

1 of 7

b. Flooding & Overland Flow comments

Not relevant

c. Impacts on Council Infrastructure comments

Not relevant

d. Traffic comments

Not relevant

e. Vehicle Access & Accommodation comments

Not relevant

f. Geotechnical, Hydrogeological and/or Structural comments

A Geotechnical Report prepared by Geo-Environmental Engineering, referenced No: G20050-PSD-R01F-Rev 0, dated 22 June 2020, has been submitted in support of the application. The proposal involves the construction of a pool with maximum excavation of 1 metre from the existing ground levels.

The report identified that the subsurface conditions as:

- a) Fill comprising silty sand up to a depth of 0.75m.
- b) Depth of natural sand from a depth beneath the fill to a depth of 1.2m
- c) Sandstone bedrock was encountered beneath the natural sand.
- d) Groundwater was not encountered during field investigation.

The report made comments and recommendations on the following:

- Shoring and support,
- Vibration Monitoring,
- Excavation method,
- Further Geotechnical input.

In addition, the applicant has submitted construction methodology report (CMR) and excavation plan and sections prepared by a Structural Engineer. The Engineer has provided construction sequence and design strategy for the proposed excavation which will minimise disturbance to the soils at the property boundaries.

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

4. RECOMMENDATION

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

A. General Conditions

A.5 Approved Plans & Supporting documents

Reference	Description	Author/Drawn	Date(s)
G20050-PSD-R01F	Geotechnical Report	Geo-Environmental	22 June 20
Rev 0	_	Engineering	
6286:RY:rp	Construction Methodology Report	James Taylor & Associates	04/08/2020
6286-S01-A	Excavation Plan & Sections	James Taylor & Associates	04/08/2020
2020-027	Stormwater Management Plans	Waterdesign Civil Engineers	03/07/2020
SW1-SW3			

A8 Ancillary Aspect of the Development (Repair Damaged Infrastructure)

A.30 No Underpinning works (Special Condition)

This development consent does <u>NOT</u> give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties.

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

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

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

C.5 Security Deposits

Property Damage Security Deposit (S138) \$	\$19,994	No	T115
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- C.25 Soil and Water Management Plan Submissions & Approval
- C.35 Structural Adequacy of Existing Supporting Structures
- C.36 Professional Engineering Details

C.37 Engineer Certification (Special Condition)

This development consent does <u>NOT</u> give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties.

Any structural design is not to incorporate any underpinning works which encroaches outside the boundaries of the subject property. Engineer certification to this effect shall be submitted to the Certifying Authority prior to issue of any Construction Certificate.

C.40 Geotechnical and Hydrogeological Design, Certification and Monitoring

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

These details must be certified by the professional engineer to:

- a) Provide appropriate support and retention to ensure there will be no ground settlement or movement, during excavation or after construction, sufficient to cause an adverse impact on adjoining property or public infrastructure.
- b) Provide appropriate support and retention to ensure there will be no adverse impact on surrounding property or infrastructure as a result of changes in local hydrogeology (behaviour of groundwater).
- c) Provide tanking of all below ground structures to prevent the entry of all ground water, if deemed necessary by the geotechnical engineer upon detailed investigation, such that they are fully tanked and no on-going dewatering of the site is required. The investigation is to include a detailed inspection of the site during excavation and allowance for up to 1m of variation in ground water level are to be included in the investigation to allow for seasonal groundwater variation;
- d) Provide a Geotechnical and Hydrogeological Monitoring Program that:
 - will detect any settlement associated with temporary and permanent works and structures,
 - will detect deflection or movement of temporary and permanent retaining structures (foundation walls, shoring bracing or the like),
 - will detect vibration in accordance with AS 2187.2-1993 Appendix J including acceptable velocity of vibration (peak particle velocity),
 - will detect groundwater changes calibrated against natural groundwater variations,
 - details the location and type of monitoring systems to be utilised,
 - details the pre-set acceptable limits for peak particle velocity and ground water fluctuations,
 - details recommended hold points to allow for the inspection and certification of geotechnical and hydrogeological measures by the professional engineer, and
 - details a contingency plan.

Standard Condition: C40 (Autotext: CC40)

C.49 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,
- 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,
- 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 Woollahra DCP 2015 Chapter E2 Stormwater and Flood Risk Management.

For any works within the road reserve, 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* (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. For more information go to the Sydney Water website www.sydneywater.com.au/SW/plumbing-building-developing/index.htm or call 1300 082 746.

Note: Woollahra Municipal Council's Specification for Roadworks, Drainage and Miscellaneous Works dated January 2003 and the Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management can be downloaded from Council's website www.woollahra.nsw.gov.au Standard Condition: C49

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

D.4 Dilapidation Reports for existing Buildings

Dilapidation surveys and dilapidation reports shall be conducted and prepared by a *professional engineer* (structural) for all buildings and/or structures that are located within the likely "zone of influence" of any excavation, dewatering and/or construction induced vibration as determined applicable by a Structural Engineer.

These properties to be assessed by the Structural Engineer must include (but is not limited to):

No. 31A & 33 Caledonia Street No. 239 & 247 Underwood Street

All required dilapidation reports must be completed and submitted to the *Certifying Authority* with a copy submitted to Council with the *Notice of Commencement* prior to the commencement of any *development work*.

Where excavation of the site will extend below the level of any immediately adjoining building the *principal contractor* or *owner builder* must give the adjoining building owner(s) a copy of the dilapidation report for their building(s) and a copy of the *notice of commencement* required by S81A (2) of the *Act* not less than two (2) days prior to the commencement of any work.

Note: The reasons for this condition are:

- To provide a record of the condition of buildings prior to development being carried out
- To encourage developers and its contractors to use construction techniques that will minimise the risk of damage to buildings on neighbouring land
 Also refer to the Dilapidation Report Advising for more information regarding this condition Standard Condition: D4 (Autotext DD4)
- D.6 Adjoining buildings founded on loose foundation materials
- D.10 Work (Construction) Zone Approval & Implementation
- D.14 Erosion and Sediment Controls Installation
- E. Conditions which must be satisfied during any development work
- E.7 Maintenance of Vehicular and Pedestrian Safety and Access
- E.11 Maintenance of Environmental Controls
- E.12 Compliance with Geotechnical/Hydrogeological Monitoring Program
- E.13 Support of Adjoining Land Owners
- **E.14 Vibration Monitoring**
- E.15 Erosion and Sediment Controls Maintenance
- E.17 Disposal of Site Water during Construction
- E.20 Check Surveys Boundary location, building location, building height and storm water drainage system
- F. Conditions which must be satisfied prior to any occupation or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)
- F.7 Commissioning and Certification of Systems and Works

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

Nil

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

H.20 Works-As-Executed and Certification of Stormwater Systems

On completion of construction work, stormwater drainage works are to be certified by a professional engineer with works-as-executed drawings prepared by a registered surveyor and submitted to the Principal Certifying Authority detailing:

- a) compliance with conditions of development consent relating to stormwater,
- that the works have been constructed in accordance with the approved construction certificate stormwater management plans,
- c) pipe invert levels and surface levels to Australian Height Datum, and
- d) contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

Note: The Final Occupation Certificate must not be issued until this condition has been satisfied. Standard Condition: H20 (Autotext HH20)

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

Nil

J. Miscellaneous Conditions

Nil

K. Advisings

K.23 Dilapidation Report K.24 Roads Act Application

Referral Response - Technical Services - DA20202421 - 245 Underwood Street PADDINGTON

9 November 2020

REFERRAL RESPONSE – TREES & LANDSCAPING

FILE NO:	DA 2020/242/1
ADDRESS:	245 Underwood Street, Paddington
PROPOSAL	Alterations and additions to an existing
:	dwelling
FROM:	Jacki Brown - External Consultant
TO:	Development Officer, Woollahra Council

I refer to the following documents received for this report:

- Statement of Environmental Effects, prepared by So Fair Design, dated July 2020
- Survey Plan No. 52831, drafted by SJ Dixon Surveyors Pty Ltd, dated 20/5/2020
- Architectural Drawing No's DA01 06, drawn by So Fair Design, Issue B, dated September 2020
- Stormwater Drainage Plan No 2020-027 3, drawn by Water Design Civil Engineers, dated 03.07.2020
- Arboricultural Impact Assessment Report, written by Lee Hancock Consulting Arborist, dated 9.9.2020
- Landscape Plan No 200521, designed by Geoscapes, Rev C, dated 09.09.20

A site inspection was carried out on 30 July 2020.

Heritage Conservation - no Current TPO's -no

Relevant Control:

- Woollahra Local Environment Plan 2014
- Woollahra Development Control Plan 2015
- Woollahra Street Tree Master Plan 2014 Part 1, Part 2 (Precinct Plans), Part 3 (appendices)
- Significant Tree Register 1991 Volume 1 Significant Trees Under Private Ownership, Volume 2 Significant Trees Under Private Ownership, Volume 3 Significant Trees, Volume 4 Significant Trees in Public Parks
- The comments and recommendations within this Referral Response have taken into consideration the guidelines established within Australian Standard AS 4373 – Pruning of amenity trees and Australian Standard AS 4970 – Protection of trees on development sites

SUMMARY

The revised development layout allows for retention of all trees identified in the Arboricultural Impact Assessment (Lee Hancock) as having High Retention Values. Tree protection measures and tree sensitive construction methods will be required.

COMMENTS

The development layout on the current plans will not require removal of any prescribed trees from the site. Three exempt species can/will be removed. There is little room for replacement tree planting. The landscape planting including screening shrubs will replace some amenity. Careful tree management during the works with Project Arborist involvement will be needed. Screening shrubs are recommended to the east of the swimming pool as the raised pool deck is likely to overlook the neighbouring private open space and windows on that side.

RECOMMENDATIONS

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

CONDITIONS OF CONSENT

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

Amended Stormwater Drainage Plan

An amended Stormwater Drainage Plan shall be prepared in accordance with Council's DA Guide and submitted to Council's tree and landscape Officer for assessment. The amended plan must include the following:

Underground services shall not be positioned within the following radial distances:

Council	Species	Tree Location	Radius from centre
Ref No.			of trunk (metres)
1	Waterhousia floribunda	Rear yard western boundary	3m
	(Weeping Lily Pilly)		
2	Melaleuca quinquenervia	Rear yard western boundary	5m
	(Broad Leaf Paperbark)		
3	Livistona australis	Rear yard western boundary	lm
	(Cabbage Tree Palm)		
4	Howea forsteriana	Rear yard western boundary	lm
	(Kentia Palm)		

A. General Conditions

A.1 Tree Preservation & Approved Landscaping Works

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

The following trees shall be retained

• Trees on Private Land

Council Ref No.	Species	Location	Dimension (metres)
1	Waterhousia floribunda	Rear yard western	7 x 4
	(Weeping Lily Pilly)	boundary	
2	Melaleuca quinquenervia	Rear yard western	10 x 6
	(Broad Leaf Paperbark)	boundary	
3	Livistona australis	Rear yard western	10 x 3
	(Cabbage Tree Palm)	boundary	
4	Howea forsteriana	Rear yard western	9 x 3
	(Kentia Palm)	boundary	
8	Archontophoenix cunninghamiana	Rear yard centre	8 x 3
	(Bangalow Palm)		

b) The following trees may be removed:

Council	Species	Location	Dimension
Ref No.	_		(metres)
5, 6 & 7	*Syagrus romanzoffianum (Cocos	Rear yard eastern boundary	8 x 3
	Palm)		

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

A.2 Approved Plans and supporting documents

Reference	Description	Author/Drawn	Date(s)
200521	Landscape Plan	Geoscapes	09.09.20
-	Arboricultural Impact Assessment	Lee Hancock Consulting	9.9.20
	Report	Arborist	

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

B.1 Establishment of Tree Protection Zone (TPZ) Fence

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	Species	Tree Location	Fence Radius
Ref No.			from Centre of
			Trunk (Metres)

^{*}This species is exempt from the WMC DCP Chapter E.3 - Tree Management and can be removed without consent.

1	Waterhousia floribunda	Rear yard western	1
	(Weeping Lily Pilly)	boundary	
2	Melaleuca quinquenervia	Rear yard western	3
	(Broad Leaf Paperbark)	boundary	
3	Livistona australis	Rear yard western	1
	(Cabbage Tree Palm)	boundary	
4	Howea forsteriana	Rear yard western	1
	(Kentia Palm)	boundary	
8	Archontophoenix cunninghamiana	Rear yard centre	1
	(Bangalow Palm)		

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 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) Trunk protection shall be installed around the trunks of the following trees:

Council Ref No.	Species	
1	Waterhousia floribunda (Weeping Lily Pilly)	
2	Melaleuca quinquenervia (Broad Leaf Paperbark)	
3	Livistona australis (Cabbage Tree Palm)	
4	Howea forsteriana (Kentia Palm)	
8	Archontophoenix cunninghamiana (Bangalow Palm)	

Trunk protection shall consist of a padding material such as hessian or thick carpet underlay wrapped around the trunk. Hardwood planks (50mm x100mm or similar) shall be placed over the padding and around the trunk of the tree at 150mm centres. The planks shall be secured with 8 gauge wire at 300mm spacing. Trunk protection shall extend a minimum height of 2 metres or to the maximum possible length permitted by the first branches.

- d) 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.
- e) 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.
- f) Establishment of Ground protection Ground protection shall be established within the specified radius from the trunks of the following trees.

Council	Species	Tree Location	Radius from Centre
Ref No.			of Trunk (Metres)
1	Waterhousia floribunda (Weeping Lily Pilly)	Rear yard western boundary	3
2	Melaleuca quinquenervia	Rear yard western boundary	10

Document1

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	(Broad Leaf Paperbark)		
3	Livistona australis	Rear yard western boundary	2
	(Cabbage Tree Palm)		
4	Howea forsteriana	Rear yard western boundary	2
	(Kentia Palm)		
8	Archontophoenix	Rear yard centre	2
	cunninghamiana		
	(Bangalow Palm)		

Ground protection shall consist of geotech fabric placed directly over the ground surface with 100mm mulch / aggregate / rumble boards strapped over mulch / steel plating over 10mm mulch layer / retention of existing surface.

- g) 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 this consent.
- h) The site foreman must be made aware of all tree protection requirements associated with these conditions of consent by the project arborist. Any subsequent site personnel and contractors to the site must be made aware of all tree protection requirements by the site foreman.
- The project arborist shall provide written certification of compliance with the above condition.

B.2 Permissible work within Tree Protection Zones

The following works are permissible within the Tree Protection Zone:

Council Ref No.	Species	Radius from Trunk (metres)	Approved works
1	Waterhousia floribunda (Weeping Lily Pilly)	3	Above ground installation of terrace pavement without excavation & installation of Vergola roof no closer than 0.5m from the trunk and major branches.
2	Melaleuca quinquenervia (Broad Leaf Paperbark)	8	Above ground installation of steps, terrace pavement and garden edging without excavation & fill of maximum 150mm depth of topsoil. Excavation for pool footprint only and no deeper than 0.45m below existing ground level. Excavation for rear workshop without over excavation towards the tree.
4	Howea forsteriana (Kentia Palm)	2	Excavation 1m from base of tree using vertical excavation with no batter and no cutting of roots.
8	Archontophoenix cunninghamiana (Bangalow Palm)	2	Above ground installation of terrace pavement without excavation.

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

B.3 Demolition and Construction Management Plan

The Demolition and Construction Management Plan shall be reviewed and certified by the Project Arborist that appropriate tree protection measures have been accounted for. The Demolition and Construction Management Plan shall be prepared in accordance with all tree protection measures specified within this consent. Considerations by the Project

Arborist shall include but not be limited to:

- a) Drawings and method statement showing details and the location of hoarding and scaffold and any pruning required to accommodate the hoarding and scaffolding;
- b) The movement and positioning of heavy machinery, lifting cranes, pier drilling gantry etc;
- Site construction access, temporary crossings and movement corridors on the site defined;
- d) Contractors car parking;
- e) Phasing of construction works;
- f) The space needed for all foundation excavations and construction works;
- g) All changes in ground level;
- h) Space for site sheds and other temporary structures such as toilets;
- Space for sorting and storing materials (short or long term), spoil and fuel and the mixing of cement and concrete; and
- j) The effects of slope on the movement of potentially harmful liquid spillages towards or into tree protection areas

B.4 Arborists Documentation and Compliance Checklist

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

- A record of the condition of trees to be retained prior to and throughout development;
- Recommended actions to improve site conditions and rectification of noncompliance; and
- Recommendations for future works which may impact the trees

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

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

Stage of arboricultural	Compliance documentation and photos shall be		
inspection	included		
Installation of tree protection	Compliance with tree protection measures		
fencing and ground protection.			
Inspection of pier holes for all	Piers positioned to avoid the severance of and damage to roots		
footings	greater than 50mms		
Installation of vergola roof	Compliance with tree protection measures.		
	Vergola roof is constructed no closer than 0.5m from the trunk and		
	major branches of Tree 1.		
Inspection of irrigation set out	Appropriate distribution of irrigation water		
Prior to the issue of a Final	Supervise the dismantling of tree protection measures		
Occupation Certificate			

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

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

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

C.1 Tree Management Plan

The Construction Certificate plans and specifications shall show the following information:

- a) Trees to be numbered in accordance with these conditions:
 - shaded green where required to be retained and protected
 - shaded red where authorised to be removed
 - shaded yellow where required to be transplanted
 - shaded blue where required to be pruned
- References to applicable tree management plan, arborists report or transplant method statement.

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

C.2 Modification of details of the development (section 4.17 (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) Underground services shall not be positioned within the following radial distances:

Council	Species	Tree Location	Radius from centre	
Ref No.			of trunk (metres)	
1	Waterhousia floribunda	Rear yard western	3m	
	(Weeping Lily Pilly)	boundary		
2	Melaleuca quinquenervia	Rear yard western	5m	
	(Broad Leaf Paperbark)	boundary		
3	Livistona australis	Rear yard western	1m	
	(Cabbage Tree Palm)	boundary		
4	Howea forsteriana	Rear yard western	1 m	
	(Kentia Palm)	boundary		

- b) Landscape plan to be altered to include screening shrubs capable of attaining a mature height of at least 1.5m for privacy screening to the east of the swimming pool.
- A minimum setback of 500 mm between the proposed vergola and the trunk and branches of Tree 1.

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 4.15 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.

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

Nil

E. Conditions which must be satisfied during any development work

E.1 Tree Preservation

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

General Protection Requirements

- 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 50mm are exposed. The *principal contractor* must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- c) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

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

E.2 Paving in the vicinity of trees

Paving works within the specified radius from the trunks of the following trees shall be constructed in such a way as to ensure that the existing moisture infiltration and gaseous exchange to the tree root system are maintained. When preparing an area for paving within the specified radius the soil surface shall not be skimmed. The new surface shall be established above the former ground level.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1	Waterhousia floribunda (Weeping Lily Pilly)	Rear yard western boundary	3
2	Melaleuca quinquenervia (Broad Leaf Paperbark)	Rear yard western boundary	10
3	Livistona australis (Cabbage Tree Palm)	Rear yard western boundary	2
4	Howea forsteriana (Kentia Palm)	Rear yard western boundary	2
8	Archontophoenix cunninghamiana (Bangalow Palm)	Rear yard centre	2

Paving works are to be designed in consultation with a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent) and are to utilise such measures as semiporous material.

The project arborist shall document compliance with the above condition.

E.3 Level changes in the vicinity of trees

No level changes shall occur within the specified radius from the trunks of the following trees.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1	Waterhousia floribunda (Weeping Lily Pilly)	Rear yard western boundary	2
2	Melaleuca quinquenervia (Broad Leaf Paperbark)	Rear yard western boundary	5
3	Livistona australis (Cabbage Tree Palm)	Rear yard western boundary	1
4	Howea forsteriana (Kentia Palm)	Rear yard western boundary	1
8	Archontophoenix cunninghamiana (Bangalow Palm)	Rear yard centre	1

The project arborist shall document compliance with the above condition.

E.4 Hand excavation within tree root zones

Excavation undertaken within the specified radius from the trunks of the following trees shall be hand dug.

Council	Species	Location	Radius from centre
Ref No.			of trunk (metres)
1	Waterhousia floribunda	Rear yard western boundary	3
	(Weeping Lily Pilly)		
2	Melaleuca quinquenervia	Rear yard western boundary	5
	(Broad Leaf Paperbark)		
3	Livistona australis	Rear yard western boundary	2
	(Cabbage Tree Palm)		
4	Howea forsteriana	Rear yard western boundary	2
	(Kentia Palm)		
8	Archontophoenix cunninghamiana	Rear yard centre	2
	(Bangalow Palm)		

Small hand tools such as mattocks or using compressed air or water jetting only shall be used. Roots with a diameter equal to or in excess of 50mm shall not be severed or damaged unless approved in writing by the project arborist.

Mechanical excavation is permitted beyond this radius when root pruning by hand along the perimeter line is completed. Exposed roots to be retained shall be covered with mulch or a geotextile fabric and kept in a moist condition and prevented from drying out.

All root pruning must be undertaken in accordance with the Australian Standard 4373 "Pruning of Amenity Trees" and carried out by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent).

The project arborist shall document compliance with the above condition.

E.5 Footings in the vicinity of trees

Footings for any structure within the specified radius from the trunks of the following trees shall be supported using an isolated pier and beam system.

Council	Species	Location	Radius from
Ref No.			centre of trunk
			(metres)

1	Waterhousia floribunda	Rear yard western	3
	(Weeping Lily Pilly)	boundary	
2	Melaleuca quinquenervia	Rear yard western	10
	(Broad Leaf Paperbark)	boundary	
8	Archontophoenix cunninghamiana	Rear yard centre	2
	(Bangalow Palm)	-	

Excavations for installation of piers shall be located so that no tree root with a diameter equal to or in excess of 50mm is severed or damaged. The smallest possible area shall be excavated which allows construction of the pier. The beam is to be placed a minimum of 100mm above ground level and is to be designed to bridge all tree roots with a diameter equal to or in excess of 50mm.

The project arborist shall document compliance with the above condition.

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

F.1 Amenity Landscaping

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

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

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

Nil

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

H.1 Landscaping

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

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

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

Nil

J. Miscellaneous Conditions

Nil

K. Advisings

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

Woollahra Municipal Development Control Plan (DCP) 2015, Chapter E.3 Tree Management may require that an application be made to Council prior to pruning or

removing any tree. The aim is to secure the amenity of trees and preserve the existing landscape within our urban environment.

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

Tree Officer

LOCAL PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No. D4

FILE No. DA496/2019/1

ADDRESS 398 Oxford Street PADDINGTON

COUNCIL WARD Paddington
SITE AREA 128.6m²

ZONING B4 Mixed Use

PROPOSAL Demolition of the existing building, site remediation and construction

of a new two storey building (infill development) with a basement level and roof top terrace to be used as a restaurant with trading hours of 8am to 12am on Monday - Saturday and 8am -10pm on Sunday

with the roof terrace to close at 10pm

TYPE OF CONSENT Local development

COST OF WORKS \$1,925,000.00

DATE LODGED 17/12/2019 (Original application)

27/07/2020 (First replacement application)

13/11/2020 (Second replacement application)

APPLICANT Mr G Cirillo

OWNER Aris No 1 Pty Ltd
AUTHOR Mr M Moratelli

MANAGER Mr G Fotis

SUBMISSIONS 9 submissions by way of objections and one submission in support

RECOMMENDATION Approval, subject to conditions of consent

1. REASON FOR REPORT TO LOCAL PLANNING PANEL (LPP)

The application is to be determined by the Woollahra Local Planning Panel as it falls under the category of:

- Departure from development standards
 - (a) Development that contravenes a development standard (*Height and FSR*) imposed by an environmental planning instrument by more than 10%

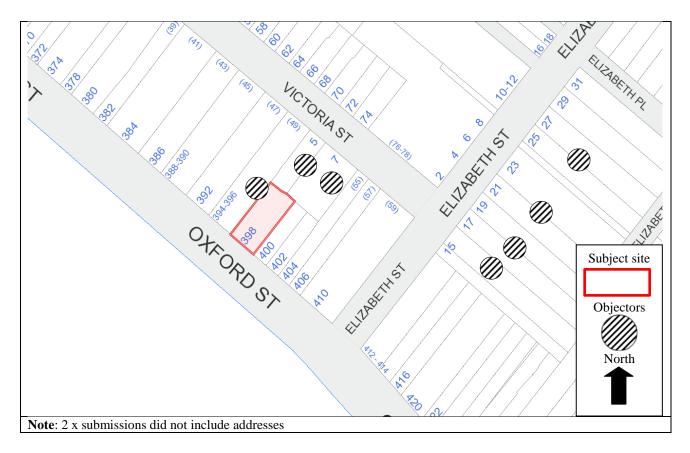
2. REASONS FOR RECOMMENDATION

The application has been assessed within the framework of the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is recommended for approval because:

• It is considered to be satisfactory with all relevant planning policies including the objectives of WLEP 2014 and WDCP 2015;

- The submitted Clause 4.6 Variation Request to Clause 4.3 Height of Buildings and 4.4 FSR are well founded and are in the public interest, and while non-compliant with the relevant development standards, the contraventions are supported and acceptable;
- It will not have an adverse heritage impact upon the subject contributory item, nor the wider Paddington Heritage Conservation Area;
- It will not have adverse effects on the local built and natural environment nor any adverse social and economic impacts in the locality;
- All likely impacts to adjoining properties including any submissions made have been addressed in the report, or are considered to be satisfactory;
- The site is suitable for the proposed development;
- The proposal is in the public interest.

3. LOCALITY PLAN



4. PROPOSAL

The proposal was amended on 27 July 2020 and a replacement application was lodged under Clause 55 of the Environmental Planning and Assessment Regulation 2000. It involved the following changes:

- Reconfigurations of plant equipment including plant area on rooftop;
- Partial replacement of the proposed louvered roof to the roof terrace with a solid roof and addition of mechanical exhaust.

The proposal was further amended on 13 November as follows:

• Addition of a solid acoustic barrier enclosing the plant area on the rooftop.

The proposal, as amended, involves the demolition of the existing building on the site, site remediation and the construction of a licensed restaurant comprising the following:

Basement Level

Cool room, bin room, storage and staff amenities.

Ground Floor

• Coffee/bar, toilets, kitchen, cool room and seating for 49 patrons.

First Floor

• Bar area, toilets and seating for 46 patrons.

Rooftop Level

• Partially covered rooftop terrace with seating for 47 patrons and enclosed area for mechanical plant equipment (AC and cool room condensers, kitchen exhaust, make up air intake).





Figure 1 – The two images above show the existing and proposed streetscape presentation to Oxford Street

5. ISSUES

5.1. Exceptions to Development Standards in Woollahra Local Environmental Plan 2014

Clause	Development Standard	Departure from Control	Conclusion
Part 4.3	Height of Buildings	1m or 10.5% departure from the 9.5m control	Satisfactory
Part 4.4	Floor Space Ratio	53.9m ² or 41% departure from the 1:1 (128.6m ²) control	Satisfactory

5.2. Primary Issues

Issue	Conclusion	Section
Acoustic	On the basis of the acoustic report submitted on 13 November 2020, and subject to	14.1.8
impacts	conditions of consent, the proposal would not result in an unacceptable acoustic impact to	
	adjoining properties, as a result of patron noise or mechanical plant.	

PROPERTY DETAILS AND REFERRALS

6. SITE AND LOCALITY

Physical features

The site comprises lot 3 of DP 224449, also known as 398 Oxford Street Paddington. The site has an area of 128.6m² with a frontage to Oxford Street of approximately 7.66m.

Topography

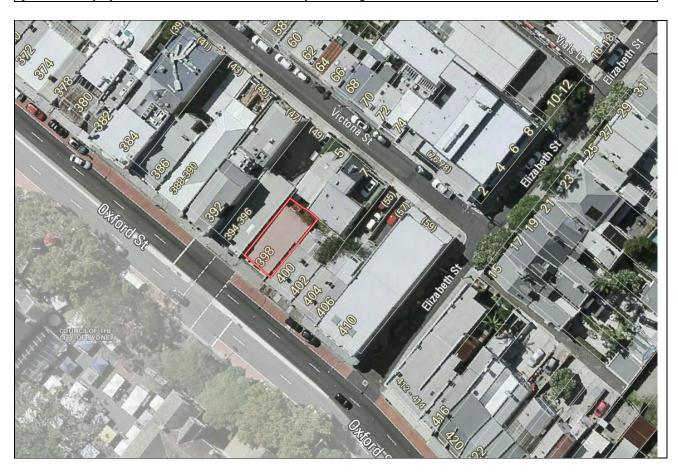
The site is fully occupied by the existing building on the property and its natural topography is unclear, although it likely slopes downwards away from Oxford Street, based on the local topography of the area.

Existing buildings and structures

The site is occupied by an existing single storey building, which currently operates as a gym. At the rear of the existing building there is a small courtyard area measuring approximately 5.3m².

Surrounding Environment

The site is located on Oxford Street, which is characterised by a mix of commercial premises, including shops, food and drink premises and licence premises. To the rear of the site is Victoria Street which adjoins residential properties on its northern side. The site is located within the Paddington Heritage conservation area which is characterised predominantly by Victorian and Federation terrace style housing.



7. RELEVANT PROPERTY HISTORY

Current use

Gym

Relevant Application History

DA 207/2018/1 was approved on 18 May 2018 for the following development:

- Change of use from a retail premises to a licensed restaurant trading from 7am – Midnight for all days.

DA 248/2019/1 was approved on 5 September 2019 for the following development:

- Change of use from a retail premises to a gym with associated fit out and signage.

Pre-DA

A Pre-DA Meeting was held with the applicant on 8 August 2019 in relation to the proposed development, which included several different design options for the front building façade.

Requests for Additional Information and Replacement Applications

- 1. On 18 December 2019 a stop-the-clock letter was issued for the following:
 - Remediation Action Plan

It was subsequently agreed that a remediation action plan could be provided prior to commencement of works if the development were to be approved.

- 2. On 12 March 2020 correspondence was issued to the applicant detailing the following issues:
 - Acoustic impact of the proposed mechanical plant equipment

- Exhaust ventilation system must be able to comply with the requirements of AS 1668.2-2012. On 6 April 2020 Council received a response from the applicant's consultants in relation to the above issues.
- 3. On 29 April 2020 Council issued further correspondence as follows:
 - Reiteration of previous concerns relating to acoustic impacts of the mechanical plant equipment
 - Construction methodology/structural report

On 27 July 2020 the applicant responded to the above matters by submitting further mechanical plant details, a structural report, and an additional acoustic comment.

8. REFERRALS

Referral	Summary of Referral Response	Annexure
Technical Services	The proposal is satisfactory subject to conditions of consent.	2
Traffic	The proposal is satisfactory subject to conditions of consent. Planning Comment: Council's Traffic Engineer recommended conditions requiring motorcycle parking on-site and bicycle parking for customers. These were modified to delete the requirement for motorcycle parking, as <i>there is no</i>	
	possibility for a vehicle crossover to the site, and any motorcycle parking would need to be located inside the restaurant, which is impractical. Similarly, it was deemed that the bicycle parking requirement may be met by providing staff spaces, as an alternative to customers, as the only space for	3
	bicycle parking is within the basement, which functions as a service area.	
Heritage	The proposal is satisfactory subject to conditions of consent.	4
Environmental Health	The applicant has not provided adequate information to demonstrate that kitchen exhaust will comply with AS1668.2-2012 relating to discharge of kitchen effluent exhaust air. The proposal is satisfactory with regard to acoustic impacts.	
	Planning Comment: Conditions C.12 and F.3 are recommended requiring the applicant to demonstrate that the proposed mechanical plant can comply with AS 1668.2-2012 prior to the issue of a construction certificate and requiring certification of the plant, prior to the issue of occupation certificate.	5
Fire Safety	The proposal is satisfactory subject to conditions of consent.	6
NSW Police	The proposal is satisfactory.	7
Transport for NSW	The proposal is satisfactory subject to conditions.	8

ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 include the following:

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

11. The public interest

9. ADVERTISING AND NOTIFICATION

9.1. Submissions

The application was advertised and notified from 22/01/2020 to 05/02/20202 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. Submissions were received from:

- 1. Deny Bernardo, 17 Elizabeth Street, Paddington
- 2. Elizabeth Gervay, address not provided.
- 3. George Sarakiniotis, 15 Elizabeth Street, Paddington
- 4. Ivan Gunarajan, 25 Elizabeth Street, Paddington
- 5. Patrick Lebon, Milestone Town Planning, obo 7 Victoria Street Paddington
- 6. Roberta Lauchlan, 21 Elizabeth Street, Paddington
- 7. Nick Malcolm, 394-396 Oxford Street, Paddington
- 8. Stephanie Piggott, address not provided
- 9. Trevor Boreham, 5 Victoria Street, Paddington
- 10. Sid Brandon, 45 Kings Road, Vaucluse (**Submission of support**)

The submissions raised the following issues:

• Visual privacy impact of rooftop terrace

<u>Comment:</u> The principle sightline from the rooftop terrace would be towards Oxford Street, and the proposal does not result on any significant level of overlooking to the private open space or windows of adjoining properties.

• Acoustic impact from the rooftop terrace

<u>Comment:</u> The acoustic impacts from patrons and music on the rooftop would comply with the Office of Liquor & Gaming's noise criterion for licensed premises, and is therefore considered to be acceptable. The applicant has provided an acoustic report that indicates that the noise emission from mechanical plant noise can comply with Council's noise target of background +0 dB(A) during the evening and night time period, subject to mitigating acoustic measures outlined in the report. **Condition I.18** requires these measures to be implemented.

• Impact of delivery trucks and garbage collection to local roads and difficulties in accessing the site for these purposes

<u>Comment:</u> It is acknowledged that the only access to the site is via Oxford Street, in the immediate frontage of the property, and this presents problems in relation to deliveries and garbage collection.

• Delivery times should be limited to 10am – 3pm and via Oxford Street only

<u>Comment:</u> Delivery is only possible from Oxford Street, due to the lack of any other street frontages to the site. Due to clearways on Oxford Street during the day it is unreasonable to limit deliveries to the daytime only.

Patrons should only enter and exit the site via Oxford Street

<u>Comment:</u> The site adjoins Oxford Street only, and the only access to the site is therefore via Oxford Street.

• Structural impacts to adjoining buildings as a result of the demolition and excavation

<u>Comment:</u> The applicant has submitted a geotechnical report and construction methodology report for the proposed development, which indicates that all construction and excavation works can be safely executed without adverse impacts to adjoining properties. These reports have been reviewed by Council's Development Engineer, who recommended appropriate conditions of consent. Subject to these conditions, this issue would not warrant the refusal or modification of the proposal.

• Builder's insurance to make good any damage that occurs as a result of building works

<u>Comment:</u> Damage as a result of construction works is a civil matter that must be resolved between the relevant parties concerned, and is beyond the scope of this assessment.

• Water infiltration into the basement, and capacity of the pump-out system to remove any water in the basement

<u>Comment:</u> Council's Development Engineer has recommended conditions of consent requiring the basement level to be fully tanked, and the provision of a below ground pump out system to comply with AS3500.3. Subject to this condition, the proposal is acceptable with regards to subterranean drainage and water seepage.

• Sewer line runs beneath properties to the rear

<u>Comment:</u> The location of the sewer line is an existing site constraint. If the existing sewer line does not have adequate capacity for the proposed development, an alternative solution may be warranted. These details are beyond the scope of the DA assessment process, and should be resolved at construction certificate stage.

Construction related noise impacts

<u>Comment:</u> Subject to **Condition E.6,** which limits the hours of construction work, noise impacts deriving from construction is a temporary issue and would not warrant the refusal of the proposal.

Users of the proposed development may park illegally in car spaces at the rear of 394 - 396
 Oxford Street

<u>Comment:</u> Illegal parking within the boundaries of nearby properties is a legal matter that is beyond the scope of this application, and this issue would not warrant the refusal or modification of the proposal.

• Excessive bulk and scale of the rear elevation, reducing ventilation to properties to the rear

<u>Comment:</u> Whilst the proposal exceeds the FSR and height standards, Clause 4.6 requests have been submitted which are assessed in Section 13.5 of the report. The bulk and scale of the proposal generally, is considered to be contextually appropriate to the site.

The retention of ventilation and breezes to adjoining property is not required by the provisions of the Woollahra DCP 2015 or Woollahra LEP 2014, and would not warrant modification or refusal of the proposal.

• No parking provision on the site, resulting in increased parking demand in the surrounding streets

<u>Comment:</u> There is no ability to provide on-site parking, as the site's only frontage is to Oxford Street. The lack of parking is considered to be acceptable for the reasons discussed in Section 14.2 of the report, and this issue would not warrant the refusal or modification of the proposal.

• The applicant should submit a remediation action plan for assessment by the Council

<u>Comment:</u> **Condition C.11** is recommended which requires the applicant to submit a Remediation Action Plan to Council prior to the issue of a construction certificate. Subject to this condition the proposal would meet the requirements of *SEPP 55: Remediation of Land*.

• A detailed odour impact assessment report should be submitted in relation to the odours generated by the cooking of food on the premises

<u>Comment:</u> The level and nature of odours that would be generated by the proposed kitchen exhausts will be dependent on the type of restaurant which occupies the site.

• The site notice was not displayed from 29/01/2020 - 04/02/2020 during the advertising period.

<u>Comment:</u> It is understood that the site notice was not displayed for approximately 5 days during the advertising and notification period. Council was informed that the site notice was not present on 31 January (a Friday), and the applicant erected a replacement site notice on the morning of 4 February (a Tuesday). It is understood that the site notice was then retained for an additional 5 days beyond the conclusion of the advertising and notification period.

In these circumstances, it is not considered that the temporary removal of the site notice hindered the proper notification or advertising of the application.

• Stormwater flows from the site to properties at the rear

<u>Comment:</u> Council's Development Engineer reviewed the proposal and advised that the stormwater drainage design is satisfactory in principle subject to conditions of consent. As such, this issue would not warrant refusal or modification of the proposal.

• Details of mechanical plant should be provided and an acoustic impact assessment should be undertaken for the plant

<u>Comment:</u> The updated acoustic report submitted to Council on 13 November 2020 indicated that with acoustic attenuation strategies, the proposed mechanical plant could comply with Council's noise target of background + 0dB(A) during the evening and night time periods. As such, the acoustic impact of mechanical plant is acceptable.

• Rooftop terraces are not permitted by Section C1.4.8 of the Woollahra DCP 2015

<u>Comment:</u> Notwithstanding the non-compliance with the controls on Section C1.4.8, the proposal achieves the objectives of that section and the rooftop terrace is therefore acceptable.

• The Plan of Management should be amended to detail patron management on the roof terrace

<u>Comment:</u> The Plan of Management has included general measures to manage patrons within the proposed premises, which would apply to the proposed roof terrace. Further specific details are not considered necessary to allow for an assessment of the proposal.

• Inadequate assessment of patron noise in the noise impact assessment

<u>Comment:</u> The acoustic assessment report has been reviewed by Council's Environmental Health Officer, who advises that the noise generated from patrons would comply with the Office of Liquor & Gaming's noise criterion for licensed premises.

• The social impact assessment report should not rely on the operating hours of licensed premises that do not possess roof terrace

<u>Comment:</u> The application is assessed on its own merits and the trading hours stipulated in the recommended **Condition I.1** do not rely on the hours of other licensed premises within the area.

• Radiation of heat from the rear elevation of the proposed building to properties to the rear

<u>Comment</u>: Thermal radiation from built surfaces is not a matter for consideration under the Woollahra LEP 2014 or the Woollahra DCP 2015, and is difficult to avoid in highly urbanised areas such as Paddington. Notwithstanding this, it is noted that the rear elevation of the proposed development will be painted off-white and would have a relatively low rate of heat absorption and radiation.

 Construction noise and vibration impact assessment should be submitted as part of the development application and submitted to Council

<u>Comment:</u> **Conditions E.6** and **C.7** are recommended which limit the hours of work and require geotechnical monitoring (including vibration detection) during the construction process. Subject to these conditions, the disruption that arises from the construction process would be reasonable and further analysis of these matters would not be required for the development assessment process.

• The noise impact assessment has not addressed the impact of the pump and sump drainage system within the basement

<u>Comment:</u> The pump and sump system is fully enclosed within the building and located underground and is unlikely to have a significant acoustic impact to adjoining properties.

• The Statement of Environmental Effects should be revised to address Amendment No.7 of the Woollahra DCP 2015 (Relating to Chapter C1 of the DCP) and Amendment No. 8 of the Woollahra DCP 2015 (Relating to Chapters E5 and F3 of the DCP).

<u>Comment</u>: In accordance with Section A1.1.9 of the Woollahra DCP 2015 – *Savings and Transitional Provisions Relating to Development Applications*, Amendment Nos. 7 and 8 are not applicable to the assessment of the proposed development, as the application was made prior to the commencement of these amendments.

• A dilapidation report should be prepared by a qualified engineer, for the adjoining property at 7 Victoria Street

<u>Comment:</u> Condition D.2 is recommended, requiring dilapidation reports to be undertaken for adjoining properties to the sides and rear.

• The final Plan of Management and details of the site manager should be provided to all adjoining property owners prior to the issue of the Occupation Certificate

<u>Comment:</u> Condition I.9 is recommended, which requires the PoM to be provided to adjoining property owners.

• A 12 month trial period should be imposed on the operation of the roof terrace beyond 8pm.

<u>Comment:</u> Conditions I.1 – I.3 allow for the use of the roof terrace until 10pm on Fridays and Saturdays only, on a reviewable basis. The core hours of the roof terrace are limited until 9pm.

• The proposed trading hours are excessive and the premises should close at 10pm.

<u>Comment:</u> Condition I.1 limits the core hours of the premises to 10pm and Condition I.2 allows for trading until midnight on a reviewable basis. This is considered to be appropriate for the precinct and will minimise amenity impacts to nearby residential properties, subject to appropriate management. If the hours result in an unacceptable amenity impact, due to poor management practices or otherwise, the reviewable condition gives Council the ability to remove the extended trading hours.

• Light pollution from the terrace

<u>Comment:</u> **Condition I.16** is recommended which requires lighting to the terrace to comply with AS/NZS 4282:2019. Subject to this condition, and the closure of the terrace at 10pm, the proposal is acceptable with regards to light pollution.

• Construction will disrupt pedestrian access on Oxford Street in the frontage of the site

<u>Comment:</u> Any interruptions to pedestrian traffic on Oxford Street would be temporary and are unavoidable given the lack of alternative locations for accessing the site. Any usage of the footpath to stand plant or equipment is subject to approval by Council, and if a 3m lane for travel cannot be maintained, a temporary road closure approval is required.

• Difficulties in accessing the site for construction

<u>Comment:</u> It is acknowledged that the site presents difficulties for access. **Condition D.4** requires the preparation of a construction management plan to be submitted to Council for approval prior to the issue of any construction certificate.

• Inefficient site layout

<u>Comment:</u> It is not considered that the proposal comprises any substantial inefficiencies in the layout of the premises that would warrant a redesign or refusal of the application.

• The proposed development will affect the property value of adjoining properties

<u>Comment</u>: The impact of the proposed development on property values is not a relevant consideration under S4.15 of the Act, which requires consideration of economic impacts in the locality. It is the long standing position of the Land and Environment Court that the loss of property values to individual owners in not a relevant planning consideration (Alphatex Australia v the Hills Shire Council) [2009].

• Air pollution from demolition

<u>Comment:</u> Subject to **Condition E.16** requiring dust mitigation measures, the proposed demolition would not generate unreasonable air pollution.

• The construction will reduce the viability of nearby retail premises

<u>Comment:</u> The impact of construction would be temporary, and subject to the recommended conditions of consent, it is not anticipated that it would unreasonably impact the viability of nearby retail premises.

9.2. Replacement Application

The amendments noted in Section 4 were not renotified to surrounding residents and previous objectors under the Woollahra Community Participation Plan as they did not raise the potential for additional impacts upon neighbours.

9.3. Statutory Declaration

The applicant has completed the statutory declaration dated 13/02/2020 declaring that the site notice for DA496/2019/1 was erected and maintained during the notification period in accordance with Chapter A2.3.5 of the Woollahra DCP 2015.

10. STATE ENVIRONMENTAL PLANNING POLICY 55: REMEDIATION OF LAND

Clause 7(1) (b) and (c) of the SEPP requires that where the land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed. If the land requires remediation Council must be satisfied that the land will be remediated before the land is used for that purpose.

The applicant submitted a detailed site investigation in relation to site contamination which found the presence of contaminated soils on the site, and recommended site remediation.

The proposed development comprises Category 1 remediation work under Clause 9 of the SEPP, being remediation work within a heritage conservation area. In accordance with Clause 17 of the SEPP, the applicant is required to prepare a Remediation Action Plan (RAP) in accordance with the contaminated land planning guidelines.

Conditions C.11, D.12 and F.5 are recommended, requiring the preparation of the RAP and its submission to Council, the submission of a notice of completion of remediation to the Council and validation monitoring in accordance with Clauses 17 and 18 of the SEPP. Subject to these conditions, the land would be suitable for the purpose of the development, and will be remediated prior to use.

11. SEPP (COASTAL MANAGEMENT) 2018

The provisions of this planning instrument that are relevant to the subject application involve managing development in the coastal zone and protecting the environmental assets of the coast.

It is considered that the proposal, as conditioned, will not have any significant adverse environmental impact upon the harbour coastal locality and therefore satisfactory with regard to the relevant provisions of the planning instrument.

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

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

13. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

13.1. Part 1.2: Aims of Plan

The proposal is consistent with the aims in Part 1.2(2) of the Woollahra LEP 2014.

13.2. Land Use Table

The proposal is defined as a food and drink premises and is permitted and consistent with the objectives of the B4 Mixed Use zone.

13.3. Part 4.3: Height of Buildings

Part 4.3 limits development to a maximum height of 9.5m.

	Proposed	Control	Complies
Maximum Building Height	10.5m	9.5m	No*

^{*}Clause 4.6 request submitted

The proposal does not comply with the maximum building height prescribed by Part 4.3 of Woollahra LEP 2014 as detailed and assessed in Section 13.5.

13.4. Part 4.4: Floor Space Ratio

Part 4.4 limits development on the site to a maximum floor space ratio of 1:1.

Site Area: 128.6m ²	Proposed	Control	Complies
Floor Space Ratio	1.41:1 (182.5m ²)	1:1 (128.6m ²)	No*

^{*}Clause 4.6 request submitted

The proposal does not comply with Part 4.4 of Woollahra LEP 2014 as detailed and assessed in Section 13.5.

13.5. Part 4.6: Exceptions to Development Standards

13.5.1 Departure

The proposal involves the following non-compliances with the Woollahra LEP 2014:

- Non-compliance with the height limit statutory control under Clause 4.3 of the Woollahra LEP 2014; and
- Non-compliance with the floor space ratio control under Clause 4.4 of the Woollahra LEP 2014.

A Clause 4.6 request has been received for each of the development standards for which a variation is sought.

13.5.2 Purpose

Clause 4.6 allows a contravention of a development standard with the objectives being to allow an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

13.5.3 Written Request

Clause 4.6(3) requires the consent authority to consider the applicant's written request that seeks to justify the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify the contravention.

The applicant has provided the following written request in relation to the departure from the height limit and floor space ratio standards (Clauses 4.3 and 4.4):

Compliance with Clauses 4.3 and 4.4 is considered unnecessary and unreasonable in the circumstances of the case for the following reasons:

- The height variation is relatively minor being at most 1m.
- Oxford Street and will be visible only from a very small section of Victoria Street.
- The total building height remains less than that of many of some existing surrounding buildings.
- O The FSR variation is relatively minor with the site exceeding its permitted maximum GFA by only 54m2 and is to enable a land use that is complementary to the area's desired character.
- O The building bulk is distributed so that it presents as two storeys to Oxford Street which is consistent with surrounding development.
- The FSR will be similar to, or in some cases less than, that of existing surrounding development.
- The variations support a positive built form and scale relationship with the neighbouring surrounding buildings.
- The increased height and bulk do not result in any adverse overshadowing of neighbouring developments or the public domain.

- The increased height and bulk do not result in any adverse privacy impacts.
- O The contravention of the height and FSR controls by the proposal does not give rise to any environmental effect of sufficient significance that would cause concern. The environmental benefits of the proposal result in a better planning outcome and a building which is on balance an appropriate environmental outcome, to justify the contravention of the development standard.

The outcome of the proposal is a building that fits within its surroundings and achieves the objectives of the zone while staying generally within the built form outcome and scale anticipated for the area.

In this context and in consideration of the nature of the variation sought, it cannot be argued that the proposal is seeking to effect general planning change. Essentially, the development remains compliant with the principles and general parameters of the built form controls and expectations within the planning framework. If approved, the built form outcome of the proposal will not be out of keeping with, nor detrimental to the amenity of its surroundings.

In view of all the above, compliance with Clauses 4.3 and 4.4 is unreasonable and unnecessary in the circumstances."

13.5.4 Clause 4.6(4) Assessment

Clause 4.6 (4) Consent must not be granted for development that contravenes a development standard unless:

- a) The consent authority is satisfied that:
 - i. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - ii. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- b) The concurrence of the Secretary has been obtained.

Clause 4.6(4)(a)(i) - Assessment

Clause 4.6(4)(a)(i) requires the consent authority to be satisfied that the applicant's written requests, seeking to justify the contravention of the development standard, have adequately addressed the matters required to be addressed by Cl 4.6(3). There are two separate matters for consideration contained within Cl 4.6(3) and these are addressed as follows:

a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

<u>Comment:</u> In arguing that compliance with the development standards is unreasonable or unnecessary, the applicant has argued that the objectives of the standards are achieved notwithstanding the non-compliance, and that the variation to the standards allows for a contextually appropriate built form.

b) That there are sufficient environmental planning grounds to justify contravening the development standard.

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be 'environmental planning grounds' by their nature: See *Four2Five Pty Ltd. v Ashfield Council*. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act including the objects in s1.3 of the EPA Act. '

S1.3 of the EPA Act reads as follows:

1.3 Objects of Act

(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicant's written requests support the proposed non-compliance with the maximum building height control and floor space ratio, on the following environmental planning grounds:

The proposed non-compliant building height results in a positive outcome for the site by allowing for the use of a roof terrace and facilitating a lift overrun and building plant. The lift overrun and building plant are both necessary for the function of the site. The roof terrace will allow the restaurant on site to service a greater number of patrons and thereby contribute to the dining scene along Oxford Street and complement its use a boutique shopping destination.

The proposed building's FSR being 1.4:1 is a function of it being a two-storey building. A compliant building bulk would be largely limited to a single storey which would be an inferior outcome for the site in comparison with the two-storey proposal from heritage and urban design points of view. The presentation of the building as two-storeys to Oxford Street is consistent with neighbouring building heights and presents greater opportunity to respond to the dominant window forms and articulation of the nearby buildings. Matching a 2-storey street wall height

allows the proposal to better correspond to the Paddington Heritage Conservation Area creates a more responsive infill building.

With regard to environmental amenity matters of consideration which are; overshadowing, privacy/overlooking, view loss and visual domination. These matters provide an indication of a proposal's suitability and reflect the matters of consideration under Section 4.15 of the Act. As indicated previously, the proposed variation in height and bulk will not adversely impact on any of those criteria. As reflected in the shadow diagrams submitted with the DA, there is no adverse overshadowing effect to neighbouring developments and there is no significant additional overshadowing to the public domain. To the extent that the proposal has a minor overshadowing effect on the southern side of Oxford Street, the effect is minor and is caused by the height compliant parapet.

Visual domination is usually associated with the perceptions from the public domain and from multi-storey buildings. In this case, the building responds to existing heights of the neighbouring buildings which are of similar or greater scale. From Oxford Street, the height exceedance will not be visible and the FSR exceedance facilitates a more appropriate two-storey form. The building has been designed to be sympathetic to neighbouring buildings and the Paddington Heritage Conservation Area and will not visually dominate the street. From Victoria Street, the tallest elements of the building may be visible from a small section of the street. However, the tallest elements are smaller than other surrounding building elements and will be largely obscured from view by 5 and 7 Victoria Street.

In determining the 'aesthetic character of the area' it is reasonable to review the type and form of development in the site vicinity as well as the future character of the area. The existing form is a mix of terraced retail buildings of between 2-3 storeys tall with a large school building to the south. The proposal for a new commercial terrace of two-storeys is an appropriate response to the character of the area.

The proposed use as a restaurant is consistent with the surrounding land uses, the desired future character of the area and the objectives of the B4 Mixed Use Zone.

Therefore, it would appear that the proposal does [sic] result in any significant negative environmental impact and that there are sufficient positive impacts justified on environmental planning grounds to justify the proposed contraventions."

Based on the above, the applicant has argued that the proposed variations to the standards allow for a building that is contextually appropriate to the location and constitutes a superior design outcome, as compliance with the 1:1 floor space ratio would result in a building that is incongruent with the streetscape. The height exceedance is not readily perceivable from the public domain, and to some extent is necessary for the provision of mechanical plant and the lift overrun. As such, it is considered that the Clause 4.6 request demonstrates that the proposal achieves Objects C and G of the Act, as it promotes the economic use and development of the site, and promotes good design and amenity within the built environment.

Clause 4.6(4)(a)(ii) - Assessment

Clause 4.6(a)(a)(ii) requires the consent authority to be satisfied that:

ii) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the height of buildings, and floor space ratio development standards, and the objectives of the B4 Zone. An assessment against these objectives is provided below:

Clause 4.3 – Height of Buildings

The proposal is assessed against the *Objective of the Development Standard* prescribed by *Clause 4.3* which states:

(a) To establish building heights that are consistent with the desired future character of the neighbourhood

<u>Comment:</u> The desired future character of the Paddington Heritage Conservation Area is determined by the controls and objectives of Chapter C1 of the Woollahra DCP 2015. The proposed development satisfies these provisions, and therefore the non-compliance with the building height does not result in a building that is contrary to the desired future character.

(b) To establish a transition in scale between zones to protect local amenity.

<u>Comment:</u> Although the subject site adjoins residential properties at the rear, these are located within the B4 Zone, and the closest properties with a residential (R2) zoning are to the north of Victoria Street. Subject to the recommended conditions of consent, the proposal would protect the amenity of properties within the R2 Zoning.

(c) To minimise the loss of solar access to existing buildings and open space.

<u>Comment:</u> As outlined in Section 14.1.3 of the report, the proposal does not reduce solar access to the habitable room windows or private open space of adjoining properties, and therefore it achieves objective (c).

(d) To minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion.

<u>Comment</u>: The proposal would not result in significant adverse impacts to adjoining or nearby properties with respect to view impacts, overshadowing or visual intrusion, and subject to the recommended conditions, the impacts on acoustic privacy would be acceptable.

(e) To protect the amenity of the public domain by providing public views of the harbour and surrounding areas.

<u>Comment:</u> There are no public views to the harbour or other significant vistas across the subject site, and the proposal achieves this objective.

Clause 4.4 – Floor Space Ratios

The proposal is assessed against the *Objective of the Development Standard* prescribed by *Clause 4.4* for development within the mixed use zone which states:

(b) To ensure that buildings are compatible with the desired future character of the area in terms of bulk and scale.

<u>Comment:</u> As outlined in Section 14.1 of the report, the proposed bulk and scale is satisfactory from a heritage perspective and makes a positive architectural contribution to the Oxford Street streetscape and the Paddington Heritage Conservation Area. As such, the proposal achieves objective b of the standard.

Objectives of the B4 Zone -Mixed Use

The proposal is furthermore considered against the objectives of the B4 Zone as follows:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- *To provide active ground floor uses to create vibrant centres.*
- To provide for development of a scale and type that is compatible with the amenity of the surrounding residential area.
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.

Comment: The proposal achieves the relevant objectives of the B4 Zone as follows:

- The proposal provides a new land use which is compatible with the area, being a food and drink premises;
- The proposed development is in a location that is accessible by public transport, walking and cycling, given its siting on a major bus corridor and in a medium density, walkable neighbourhood;
- The proposal would provide an active ground floor use which contributes to the vibrancy of the Oxford Street corridor;
- The scale of the proposal is compatible with the amenity of nearby residential properties, as subject to the recommended conditions of consent, the acoustic privacy impacts would be reasonable:
- The height and scale of the proposed development is satisfactory, as considered against the provisions of Chapter C1 of the Woollahra DCP 2015, relating to the Paddington Heritage Conservation Area. The proposal therefore is consistent with the desired future character of the neighbourhood, as defined by the DCP.

13.5.5 Conclusion

The proposal is in the public interest and consistent with the objectives of the height of buildings and floor space ratio development standards. Departure from the controls is supported in this instance.

13.6. Part 5.10: Heritage Conservation

Parts 5.10(2) and 5.10(4) require Council to consider the effect of works proposed to a heritage item, building, work, relic or tree, within a heritage conservation area or new buildings or subdivision in a conservation area or where a heritage item is located.

The proposed development is located in the Paddington Heritage Conservation Area. It is acceptable with regard to Part 5.10 of the Woollahra LEP 2014.

13.7. Part 6.1: Acid Sulfate Soils

Part 6.1 requires Council to consider any potential acid sulfate soil affectation so that it does not disturb, expose or drain acid sulfate soils and cause environmental damage.

The subject site is within a Class 5 area as specified in the Acid Sulfate Soils Map. However, the subject works are not likely to lower the water table below 1.0m AHD on any land within 500m of a Class 1, 2 and 3 land classifications. Accordingly, preliminary assessment is not required and there is unlikely to be any acid sulfate affectation. It is therefore acceptable with regard to Part 6.1.

13.8. Part 6.2: Earthworks

Part 6.2(1) requires Council to ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The proposal involves excavation to accommodate the proposed basement level. Bulk excavation will occur to within 500mm of the boundary and extend to a maximum depth of approximately 3.2m. Overall, it involves a total of 77m² and approximately 186m³ of excavation.

The extent and siting of excavation is discussed having regard to the following:

- (a) The likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development
- (b) The effect of the development on the likely future use or redevelopment of the land
- (c) The quality of the fill or the soil to be excavated, or both
- (d) The effect of the development on the existing and likely amenity of adjoining properties
- (e) The source of any fill material and the destination of any excavated material
- (f) The likelihood of disturbing relics
- (g) The proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area
- (h) Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development

Council's Development Engineer reviewed the proposal and provided the following comment:

"The consulting engineer has provided design strategy to safeguard the neighbouring properties from damages as a result of excavation. It is further noted that the engineer has concluded that all construction/excavation works can be safely executed without any adverse impacts caused to adjoining properties.

In light of the above, Council's Technical Services has no objections to the proposed excavation on technical grounds. Notwithstanding this, Council's Planning Officer is also to undertake an assessment of the proposed excavation against the relevant excavation objectives and controls prescribed under the LEP and DCP."

Conditions have been imposed requiring adequate dust mitigation, limitations on the times and duration of machine excavation, the preparation of dilapidation reports in relation to adjoining development, the implementation of hydrogeological/geotechnical and vibration detection programs, erosion and sediment controls and dust mitigation measures. Subject to these conditions, it is considered that the structural integrity and the amenity of adjoining residential properties will be maintained as much as is practically possible.

Condition C.11 is also recommended requiring the preparation of a remediation action plan and it submission to Council prior to the commencement of works.

The proposal is therefore acceptable with regard to Part 6.2 of the Woollahra LEP 2014.

13.9. Part 6.3: Flood Planning

Part 6.3 seeks to minimise the flood risk to life and property development, allow development on land that is compatible, consider projected changes as a result of climate change and avoid significant adverse impacts on flood behaviour and the environment in flood prone areas.

The proposal is acceptable with regard to Part 6.3 of Woollahra LEP 2014.

14. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

14.1. Chapter C1: Paddington Heritage Conservation Area

It is noted that the subject development application was lodged on 17 December 2020, prior to the commencement of Amendment No. 7 to the Woollahra DCP 2015. As such, the provisions of the DCP that were in force at the time of lodgement have been applied in the assessment of this application.

The proposal constitutes 'infill development' as at the time of lodgement infill development was defined as follows: "new development, usually a whole new building, within the context of an existing built up area. Infill development may occur where an existing building is to be demolished or where there is a vacant lot". It is noted that following Amendment No. 7 to the DCP, the definition of 'infill development' has been amended and the proposal would not qualify as 'infill development' as a result of these changes.

14.1.1 Section C1.3.8: Commercial and Industrial Buildings including Shops

Shopfront Elevations

C9 For new buildings and existing buildings where no significant fabric or layout is present in the shopfront, contemporary design is permitted if it is consistent with the building's historic streetscape context in terms of:

- a) materials, colours and finishes;
- b) proportions of windows and doorways, including the division of windows with their bases and vertical sections;

- c) detailing; and
- d) signage.

The proposed front façade, whilst contemporary, is reflective of the streetscape of Oxford Street with respect to the brick façade, solid to void ratios and the use of arched fenestration which are similar to those of nearby properties including Nos. 410, 394-396 and 392 Oxford Street. The proposal thereby satisfies the relevant control C9.

Commercial Development in Oxford Street

C1 The ground floor must contain active uses that add to the pedestrian experience on the street:

- a) retail uses including fashion boutiques and cafes; and
- b) non-retail uses, such as entertainment facilities, must provide strong visual connection with the street and retain and conserve the traditional shopfronts established by the predominant retail frontages.

The proposed development constitutes an active use that would add to the pedestrian experience of Oxford Street, being a food and drink premises. The proposed use of a stall-board with vertical metal detailing provides a contemporary interpretation of a traditional shopfront. The proposal thereby satisfies control C1.

C3 Uses must protect existing shopfronts and street elevations and must not compromise the established pattern and rhythm of frontages and the heritage character of the street.

The proposal enhances the rhythm of shop frontages and the heritage character of the street, due to the parapet alignment with the adjoining property at 400 Oxford Street and the utilisation of sympathetic materials.

C4 The height of development must conform to the predominant heights of adjacent buildings and the prevailing wall height in the streetscape.

The parapet of the front elevation of the building would align with that of the adjoining building at 400 Oxford Street and the proposal therefore conforms to the predominant height of the adjacent building and the streetscape.

C8 Sympathetic use of contemporary design and materials may be considered.

The use of painted masonry and glazing with vertical metal detailing is an appropriate use of contemporary materials and the proposal satisfies control C8.

C10 The range of colours, materials and finishes of new building work should complement existing heritage and contributory buildings, particularly above the awning line.

The use of painted masonry presents a transition between the rendered masonry of the building at 400 Oxford Street and the unpainted, un-rendered brick finish of the building at 394 Oxford Street. In this regard, it complements the adjoining contrary buildings and satisfies control C10.

C11 Colour schemes are to be appropriate to the individual building and the street as a whole. Extreme colour schemes diminish unity and detract from the streetscape, particularly if above the awning line.

C12 Colour schemes to the under awning façade may have greater variety and visual interest, but should not detract from the established streetscape character.

The use of an off-white colour scheme for the front building façade is appropriate to the building and the streetscape and the proposal satisfies controls C11 and C12.

C15 Infill development should include parapets and roof forms that respect the existing conditions in terms of parapet height, pitch and shape of roofs.

C21 New buildings must maintain and reflect:

- a) the established patterns and proportions of existing elevations which consist of a horizontal orientation below the awning line and a more vertical character above the awning line;
- b) the consistency of horizontal and vertical façade features such as window heights and widths, bay widths, awning and parapet lines;
- c) the established rhythm and pattern in the street arising from the original subdivision pattern; and
- *d) existing setbacks (generally zero setbacks) to front and side boundaries.*

The proposal reflects the adjoining building at 400 Oxford Street and the streetscape with respect to its parapet height. Unlike the adjoining properties it comprises a roof terrace, however this will be concealed behind the front parapet of the building, which is similar to the adjoining properties which possess flat roofs behind parapets.

It furthermore reflects the proportions and patterns of the adjoining buildings with respect to window heights, awning position and parapet lines, and maintains the existing zero setbacks.

As such, the proposal satisfies the relevant controls C15 and C21.

14.1.2 Section C1.4.4: Roofs and Roof Forms

C6 Roof forms are to be consistent with appropriate traditional roof forms, which reflect the diminishing scale of roofscapes towards the rear of buildings.

C8 which specifies that roofs are to be clad in materials with profiles that are appropriate to the architectural style of the building. Appropriate materials are described in Section 1.5.8 Materials, finishes and details.

The proposal does not comply with controls C6 or C8, however it achieves the relevant objective O3 as follows:

- The proposed contemporary roof form is consistent with the historic roofscape of the Oxford Street streetscape, which is characterised by parapets at the front elevation which conceal flat or pitched roofs that slope away from the street.
- The proposal comprises a roof terrace which is partially covered by a lightweight metal and louvered roof. The roof terrace will be generally concealed behind the front parapet, and the roof's visual appearance with therefore be consistent with the historic roofscape of Oxford Street.

As such, the proposal is acceptable with regards to Section C1.4.4.

14.1.3 Section C1.4.5: Building Height, Bulk, Form and Scale

	Proposed	Control	Complies
C4 Sunlight provided to the main ground level	Umahanaad	Min 50% (or 35m²) for two hours	Yes
private open space of adjoining properties	Unchanged	between 9am and 3pm on 21 June	ies
C5 Sunlight to north-facing windows to	Unahanaad	3 hours between 9am and 3pm on	Yes
habitable rooms of adjoining dwellings	Unchanged	21 June	res

C3 The height, bulk, form and scale of infill and new development must be consistent with the predominant height, bulk, form and scale of appropriate adjoining buildings. Conformity with adjoining buildings is not appropriate in circumstances where the development site adjoins a building which is a substantially taller landmark building, or is a building considered to be intrusive due to its excessive height and incompatible design.

The height, bulk and scale of the proposal will be consistent with that of the adjoining building at 400 Oxford Street, and satisfies the relevant control C3.

C4 Infill development and alterations and additions must be designed and sited so that sunlight is provided to at least 50% or 35m² with minimum dimensions of 2.5m, whichever is the lesser, of the main ground level private open space of adjoining properties for a minimum of two hours between 9am and 3pm on 21 June. Where existing overshadowing is greater than this, sunlight is not to be further reduced.

C5 Where adjoining dwellings have greater than three hours of sunlight to a habitable room, the north facing windows to the habitable room are not to have sunlight reduced to less than three hours between 9am and 3pm on 21 June.

The submitted shadow diagrams indicate that the proposal would cast shadow onto Oxford Street and onto the rooftop and awning of the adjoining property at 400 Oxford Street. As such, the proposal does not impact the private open space or north facing windows of adjoining properties on 21 June and it satisfies controls C4 and C5.

C7 Storey heights must conform to those of appropriate adjacent buildings.

The proposed storey heights align with those of the adjoining building at 400 Oxford Street and the proposal satisfies control C7.

14.1.4 Section C1.4.6: Site Coverage, Setbacks and Levels

	Proposed	Control	Complies
C1 Proportion of building footprint	100% site coverage	Consistent with similar properties	Yes

Site cover

C1 The proportion of building footprint is to be consistent with similar properties in the immediate vicinity.

The proposed building footprint would cover 100% of the site area. This is similar to many of the commercial properties in the vicinity and the proposal satisfies control C1.

Setbacks

C3 specifies that siting and setbacks of all structures are to continue the immediate established patterns.

C5 The existing siting pattern within the commercial area is to be maintained.

The siting and setback of the proposed building is similar to that of the existing building and consistent with the general pattern of Oxford Street. The proposal therefore satisfies the relevant controls C3 and C5.

14.1.5 Section C1.4.7: Excavation

General

C1 Excavation will not be permitted if:

- a) it will occur under common walls and footings to common walls, or freestanding boundary walls, or under any other part of adjoining land; and
- b) it will occur under or forward of the front façade; and
- c) the outer edge of the excavation is within 0.2m of the footings of the front wall, party walls, or freestanding boundary walls, where the existing footing has bearing directly on rock foundation; or
- d) the outer edge of the excavation is within 1m of the footing of the front walls, party walls, or freestanding boundary walls, where the existing footing has bearing on sand foundation or sandy soils up to 1m deep over a rock substratum; or
- e) the outer edge of the excavation is within 1.5m of the footing of the front wall, party walls, or freestanding boundary walls, where the existing footing has bearing on sand foundation or sandy soils of a depth greater than 1m but not more than 1.5m over a rock substratum;
- f) the rock substratum is greater than 1.5m below original footings; and
- *g)* habitable rooms formed from the excavation:
 - i) do not have at least one external wall fully above existing ground level; and
 - ii) will not receive adequate natural light and ventilation; and
- h) a geotechnical and structural report cannot ensure that the works will not have any adverse effect on the neighbouring structures. The report must be prepared in accordance with the Council's publication 'Guide for preparing Geotechnical and Hydrogeological Reports';
- i) the removal of the existing floor structure above the excavation is required in order to carry out the excavation other than the temporary, partial removal of floor boards to allow exploratory investigation of subsurface conditions.

Due to the fact that the existing building and adjoining buildings are built to the boundaries, there is limited scope to ascertain the status of the footings of neighbouring buildings for the purposes of undertaking an assessment against control C1.

Notwithstanding the above, the proposal achieves the relevant objectives O1, O2, and O6 as follows:

• The geotechnical report and structural report (construction methodology report) comprise detailed recommendations for the proposed excavation, which indicate that the proposed works can be undertaken without significant risks to the structural integrity of adjoining buildings;

- Council's Development Engineer has reviewed the proposed excavation, including the geotechnical report and structural report and has imposed detailed conditions of consent for the construction process;
- The proposed excavation would not detract from the original fabric of significant buildings in the area.

As such, the proposal satisfies the relevant controls and objectives of Section C1.4.7.

14.1.6 Section C1.4.8: Private Open Space, Swimming Pools, Lightwell Courtyards and Landscaping

C12 Private and communal space is generally not permitted in the form of a roof terrace.

The proposal does not comply with control C12. Notwithstanding this, the proposal achieves the relevant objective O8, which is to ensure adequate visual and acoustic privacy to adjoining properties, as follows:

- The submitted Acoustic Report indicates that the cumulative noise emission of patrons and background music would comply with the NSW Liquor & Gaming (OLGR) LA10 Noise Condition of background + 5 dB. This report has been reviewed by Council's Environmental Health Officer, who has confirmed that the proposed licensed premise would comply with the OLGR criteria for licensed premises.
- The recommended conditions of consent **I.1 I.3** limit the use of the roof terrace to 9pm, with the exception of Fridays and Saturdays, when it may operate until 10pm on a reviewable basis. This will mitigate the acoustic impacts to the residential properties at the rear, during the sensitive evening period.
- The subject site is located within the B4 Mixed Use Zone, as are the adjoining properties. Within this context, and along the busy commercial corridor of Oxford Street, there is a reasonable expectation of a greater level of acoustic impact, when compared to residential areas of Paddington.

14.1.7 Section C1.4.9: Views

The proposal would not obscure any significant public views and Council did not receive any objections which raised the issue of private view loss.

As such, the proposal satisfies the relevant controls and objectives of Section C1.4.9.

14.1.8 Section C1.4.10: Acoustic and Visual Privacy

C4 Direct overlooking of the main living areas and private open space areas of adjoining and adjacent properties should be minimised by the sensitive location of windows, balconies, and screening devices.

The proposal does not comprise any windows or balconies to the rear elevation and would not overlook the residential properties to the rear. The roof terrace would attain views towards the street and rooftops of adjoining properties, but would not overlook private open space.

01: To ensure an adequate degree of acoustic and visual privacy in building design. -

O2: To minimise the impact of new development on the acoustic and visual privacy of existing development on neighbouring lands. –

The proposal has been considered against the relevant objectives O1 and O2, and the following comments are made in relation to acoustic privacy:

- The submitted Acoustic Report indicates that the cumulative noise emission of patrons and background music would comply with the NSW Liquor & Gaming (OLGR) LA10 Noise Condition of background + 5 dB. This report has been reviewed by Council's Environmental Health Officer, who has confirmed that the proposed licensed premise would comply with the OLGR criteria for licensed premises.
- Conditions I.1 I.3 limit the use of the roof terrace to 9pm, with the exception of Fridays and Saturdays, when it may operate until 10pm on a reviewable basis. This will mitigate the acoustic impacts to the residential properties at the rear, during the sensitive evening period.
- The subject site is located within the B4 Mixed Use Zone, as are the adjoining properties. Within this context, and along the busy commercial corridor of Oxford Street, there is a reasonable expectation of a greater level of acoustic impact, when compared to the expectation for the residential areas of Paddington.

14.1.9 Section C1.5.8: Materials, Finishes and Details

C6 Infill buildings must use materials, finishes, textures and details appropriate to the building type and style but should not replicate traditional details.

The proposed infill building utilises painted masonry, with detailing that reflects the streetscape as well as windows with dark metal detailing. The proposed materials, finishes and details are appropriate to an infill building without replicating traditional details.

14.1.10 Section C1.5.11: Satellite Dishes, Aerials, Air Conditioning Units and Other Site Facilities

	Proposed	Control	Complies
C2 Air Conditioning Units – Location:	Rooftop plant area	Behind Front Building Line	Yes
C2 Air Conditioning Units – Visibility from Public Domain	Not visible	Not Visible	Yes
C2 Air Conditioning Units – Setback From Site Boundaries	<3m	3.0m	No
C2 Air Conditioning Units – Setback From Neighbouring Bedrooms	<5m	5.0m	No

External Condenser and Air Conditioning Units

C2 Condensers and units must be located:

- *a) behind the outer front wall of the building and not be visible from the public domain;*
- b) a minimum of 3m from all other property boundaries (including party walls) and not less than 5m from a bedroom window in an adjoining residential property; and

c) at existing ground level or at the ground level above a basement level or part underground level (but not on a roof).

The proposed cool room condensers are located approximately 750mm from the side boundary to 400 Oxford Street and approximately 4.7m from the rear boundary, and as such they do not comply with control C2.

Notwithstanding the above, the relevant location of the condenser units are acceptable as follows:

- The objectives of Section C1.5.11 relate to the retention of the original roof-scape of Paddington; the protection of original fabric of roofs and chimneys; and ensuring that plant does not adversely impact the character and individual buildings and the streetscape. The proposal is consistent with these objectives to the extent that they are relevant to the proposal, as the plant would be concealed on the roof and would not adversely impact the streetscape character or significance of the heritage conservation area.
- Subject to the acoustic measures outlined in the acoustic report from *The Acoustic Group* dated 13 November 2020, the rooftop plant would not generate unacceptable acoustic impacts to adjoining properties.

C3 Condensers and units must not be visible from an adjoining property.

The proposed plant equipment on the roof in located within an enclosed area, would not be visible from adjoining properties and therefore satisfies control C3.

Site Facilities

C8 Site facilities, including mail boxes, external storage facilities, clothes drying areas and laundry facilities, should be unobtrusively integrated into new development.

The proposed site facilities are located within an enclosed area on the rooftop and are unobtrusively integrated into the proposed development. The proposal thereby satisfies control C8.

14.1.11 Section C1.6.2: Views and Vistas

The proposal would not impact any existing views and satisfies the relevant controls and objectives of Section C1.6.2.

14.2. Chapter E1: Parking and Access

14.2.1 Section E1.5.2 Non-Residential Parking Generation Rates

	Minimum Parking Generation Rate	Proposed Floor Space	Compliance
Food and drink premises	7 spaces per 100m ²	182.5m ²	No

The minimum parking generation rates in Table 2 require that a licensed restaurant provides 7 off-street car parking spaces per 100m². The proposal does not comprise any off-street parking spaces.

14.2.2 Section E8.4: Variations to the Parking Generation Rates

Despite the non-compliance with the parking generation rates of Section E1.5.2, the proposal is satisfactory for the following reasons:

- Unlike many other properties along Oxford Street, the subject site does not extend to a rear lane, and the only frontage is to Oxford Street. Any on-site car parking would require driveway access from Oxford Street, which would detract from the streetscape and heritage significance of this street, and generate the potential for pedestrian and vehicle traffic hazards;
- The subject site is well-serviced by public transport, including bus routes to Sydney CBD and Bondi Junction;
- The subject site is located in a medium density area within walking distance to residential neighbourhoods.

14.3. Chapter E2: Stormwater and Flood Risk Management

Subject to the recommended conditions of consent, the proposal is acceptable with regard to Chapter E2.

14.4. Chapter E4: Contaminated Land

As discussed in Section 10, the proposal is subject to SEPP 55. It has been considered against the provisions of the SEPP and appropriate conditions are recommended. The proposal is therefore acceptable with regards to Chapter E4.

14.5. Chapter E5: Waste Management

Chapter E5 is applicable to all development and seeks to establish waste minimisation and sustainable waste management during demolition and construction phases and throughout the ongoing use of the building.

The SWMMP addresses volume and type of waste and recyclables to be generated, storage and treatment of waste and recyclables on site, disposal of residual waste and recyclables and operational procedures for ongoing waste management once the development is complete.

The applicant provided a SWMMP with the development application and it was found to be satisfactory.

Section E5.2: Demolition and Construction Phase

The proposal is acceptable with regard to Part E5.2 of the Woollahra DCP 2015.

Section E5.3: On-Site Waste and Recycling Controls for all Development

C3 Waste and recycling storage areas are located behind the building line or within non-habitable areas of the building.

The proposed waste storage area is located at the basement level, which is a non-habitable area of the building. In this regard the proposal satisfies control C3.

C8 Bins may be collected from a kerb side location where site characteristics, number of bins and length of street frontage do not compromise safety.

It is considered that the site characteristics, number of bins and length of street frontage do not preclude the proposed development from using kerb side collection, and the proposal satisfies control C8.

Section E5.6: Commercial and Non-Residential Developments

The applicant's Waste Management Plan detailed the following estimates for waste generation, based on the proposed use of the development:

	L/week
General Waste	798
Commingled Recycling	798
Total	1,596

Waste Stream	Bin Size and No of bins	Clearance (frequency/ week)	Capacity (Weekly)	Estimated Volume/week
General Waste	4 – 240 L bin	1	960	798
Commingled recycling	4 – 240 L bin	1	960	798

Based on the above estimates, the proposal comprises adequate capacity for waste storage and collection, and satisfies the relevant control C4.

C7 The SWMMP submitted with the development application must include:

- a) the location of glass and recycling collection and sorting areas, which are to be shown on the DA plans. Note the installation of a glass crushing machine is encouraged to minimise noise from glass sorting.
- b) the waste management operating procedures, including the collection times. These must minimise noise and disturbances to residential amenity, especially between 10pm and 7am

The submitted waste management plan has not detailed hours for waste collection, and has advised that collection will be initially undertaken once a week by private contractors. Given the difficulties in achieving kerbside collection during the day due to clearways on Oxford Street, it is not recommended that garbage collection be restricted to daytime hours only, despite Control C7(b).

Notwithstanding this, **Condition I.11** does restrict the collection of glass, due to the potential for glass collection to result in greater acoustic impacts.

As such, the proposal satisfies the relevant controls and objectives of Section E5.6.

14.6. Chapter E7: Signage

Council's Compliance Officer has carried out an assessment of the proposal against Chapter E7 and provided the following comment:

"The site is located in the Paddington HCA. The proposed signage is consistent with surrounding signage types in the area.

The proposed signage satisfies the advertising sign provisions in Chapter E7 of WDCP 2015 and the objectives and assessment criteria specified in schedule 1 of SEPP 64."

As such, the proposal satisfies Chapter E7.

14.7. Chapter F3: Licensed Premises

As discussed elsewhere in the report, the subject development application was lodged prior to the commencement of Amendment No. 8 of the Woollahra DCP 2015, which came into effect on 20 January 2020 and related to Chapter F3. This assessment has therefore considered the provisions of Chapter F3 that were in effect at the time of lodgement.

14.7.1 **Rating**

The premises comprises an on-premises licensed café/restaurant with a capacity of over 100 patrons, and has a risk rating level of high in accordance with Table F3.2.

14.7.2 Assessment

In accordance with C1, assessment of the licensed premises must consider the following:

- a) The location of the premises and the proximity of residential and other sensitive uses
 - The proposal is located in the Zone B4 Mixed Use, and directly adjoins properties that are similarly zoned. To the north, on the opposite side of Victoria Street, there are properties that are zoned R2 Low Density Residential and B1 Neighbourhood Centre.
 - The locality of Oxford Street within the vicinity of the site is characterised by a mix of retail, food and drink premises and other commercial uses, with a school located on the opposite side of the street.
- b) The type of licensed premises
 - The proposed licence is an On-Premises Liquor License.
- *c)* The size and capacity of the premises
 - The proposed premises has an internal floor area of 182.5m2 with a rooftop terrace measuring 48m2. There is also a basement level, however this is non-habitable and to be used by staff only.
 - The submitted Plan of Management (PoM) details that the proposal will hold a maximum of 142 patrons at any one time.
 - Council's Fire Safety Officer reviewed the proposal and raised no concerns in relation to fire safety for the patrons.

• Patron capacity is reiterated by **Condition I.4**.

d) Trading hours

- In accordance with control C2, the core trading hours are to be limited to 8am-10pm for internal areas on Mondays Saturdays and Sundays. Core trading hours for the roof terrace are recommended to be limited to 8am-9pm on all days.
- In accordance with control C4 a reviewable condition is recommended to allow extended trading until midnight on Mondays Saturdays for the internal areas of the premises, and allow the use of the roof terrace until 10pm on Fridays and Saturdays.
- Trading hours are noted in **Condition I.1**, reviewable in **Condition I.2**.
- e) Existing and likely cumulative impacts, including social impacts, of licensed premises on the amenity of surrounding areas
 - For the reasons discussed in Section 14.1.18, the proposal is not considered to result in an unsatisfactory acoustic impact to properties within the immediate vicinity, subject to conditions of consent.
 - The application was accompanied by a social impact statement that has discussed the social and demographic characteristics of the area, and correctly identified that the major potential negative impacts are acoustic impacts and anti-social behaviour.
 - Positive social impacts include the proposal's contribution to the activation of Oxford Street by the provision of a new business that will generate pedestrian traffic.
 - Subject to conditions of consent, it is considered that the acoustic and anti-social impacts that would arise from the proposal can be appropriately managed and would not warrant the refusal of the proposal.
- f) Existing and proposed management practices relating to the operation of the premises and of the areas in the vicinity of the premises
 - The proposed plan of management has been reviewed by Council's Senior Assessment
 Officer and NSW Police and is deemed to be acceptable. Satisfactory ongoing
 management is ensured by conditions of consent.
- g) The density of licensed premises in the vicinity of the proposed development
 - The following licensed premises are located within the vicinity of the subject site:
 - A licensed restaurant, Fred's, located at 380 Oxford Street, which is approved to trade until midnight Tuesday – Sunday;
 - o A licensed restaurant, *Saint Peter's*, located at 362 Oxford Street, which is approved to trade until midnight Monday Sunday;
 - A licensed restaurant, *Italian Bar*, located at 438 Oxford Street, which is approved to trade until 11pm Monday to Thursday, 10pm on Sunday and until midnight on Friday and Saturday;
 - A pub, *The Paddington*, located at 384 Oxford Street, which is approved to trade until midnight Monday – Thursday, 10pm on Sunday and until 3am on Friday and Saturday.

- The density of licensed premises within the vicinity of the subject site is considered to be satisfactory having regard to the fact that the majority of licensed premises within the vicinity are classified as 'Low Risk', being licensed restaurants.
- h) Availability of car parking and proximity and access to public transport
 - The subject site is well serviced by public transport, with bus routes along Oxford Street connecting to Bondi Junction, North Bondi, the City, Chatswood, Marrickville and Rozelle.
 - Parking is available along both sides of Oxford Street in the vicinity of the site, although it is subject to clearway restrictions from 6am 10am and 4pm 7pm from Monday to Friday.
- i) Any recommendations/comments provided by NSW Police
 - NSW Police reviewed the proposal and did not raise any objections. The comments of NSW Police is attached as Annexure 7.

14.7.3 Conclusion

Subject to the recommended conditions of consent, the proposal satisfies the relevant controls and objectives of Chapter F3.

15. SECTION 7.12 CONTRIBUTIONS PLAN

15.1. Section 7.12 Contributions Plan 2011

In accordance with Schedule 1, a 1% levy applies with the monies being used for a variety of works as outlined in Schedule 2 of the Section 7.12 Contributions Plan 2011. Refer to **Condition C.1**.

Cost of Works	Rate	Contribution Payable
\$1,925,000	1%	\$19,250

15.2. Application of Contributions

Section 3.5 of the Section 94A Contributions Plan 2005 states:

'A condition under section 94 of the Act may be imposed on a development consent as an alternative to imposing a condition authorised by this Plan, depending on the nature of the development and the demand for public facilities.'

In this instance, given the increase in the density of the site, Section 7.12 contributions have been applied. Accordingly, Section 7.11 contributions are not applicable.

16. APPLICABLE ACTS/REGULATIONS

Demolition of Structures

The development is required to comply with Australian Standard AS 2601-1991: *The demolition of structures*. These requirements are enforced by standard conditions.

Building Code of Australia

The proposal is required to comply with the relevant provisions of the Building Code of Australia. These requirements are enforced by standard conditions.

17. THE LIKELY IMPACTS OF THE PROPOSAL

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

18. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development.

19. THE PUBLIC INTEREST

The proposal is considered to be in the public interest.

20. CONCLUSION

The proposal is acceptable against the relevant considerations under Section 4.15.

21. DISCLOSURE STATEMENTS

There have been no disclosure statements regarding political donations or gifts made to any Councillor or to any council employee associated with this development application by the applicant or any person who made a submission.

22. RECOMMENDATION: PURSUANT TO SECTION 4.16 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, is of the opinion that the written requests from the applicant under Clause 4.6 of the Woollahra Local Environmental Plan 2014 to the floor space ratio and height of buildings development standards under Clauses 4.3 and 4.4 of Woollahra LEP 2014 have adequately addressed the relevant matters and the proposed development will be in the public interest because it is consistent with the relevant objectives of the particular standard and the zone. The Panel assumes the concurrence of the Secretary, Department of Planning, Industry and Environment.

AND

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, grant development consent to Development Application No. 496/2019/1 for the demolition of the existing building, site remediation and replacement with a new two storey building (infill development) with a basement level and roof top terrace to be used as a restaurant with trading hours of 8am - 12am Monday - Saturday and 8am -10pm Sunday with the roof terrace to close at 10pm on land at 398 Oxford Street Paddington, subject to the following conditions:

A. General Conditions

A.1 Conditions

Consent is granted subject to the following conditions imposed pursuant to section 4.16 of the *Environmental Planning and 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 4.15 of the *Act*.Standard Condition: A1 (Autotext AA1)

A.2 Definitions

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

Applicant means the applicant for this consent.

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

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

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

Council means Woollahra Municipal Council

Court means the Land and Environment Court

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

Stormwater drainage system means all works, facilities and documentation relating to:

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

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

Owner-builder has the same meaning as in the Home Building Act 1989.

PC means the Principal Certifier under the Act.

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

Professional engineer has the same meaning as in the BCA.

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

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

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

Site means the land being developed subject to this consent.

Woollahra LEP means Woollahra Local Environmental Plan 2014

Woollahra DCP means Woollahra Development Control Plan 2015

Work for the purposes of this consent means:

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

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

Standard Condition: A2 (Autotext AA2)

A.3 Approved Plans and Supporting Documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with both the architectural plans to which is affixed a Council stamp "Approved" and supporting documents listed below as submitted by the Applicant unless modified by any following condition.

Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
50.5387.R1B:MCC	Acoustic Report	The Acoustic Group	13 Nov 2020
DA-010 Rev. C	Site Plan	Squillace	11/11/2020
DA-100 Rev.B	Ground floor plan		23/06/2020
DA-101 Rev.A	Level 1 floor plan		26/11/2019
DA-102 Rev. C	Roof terrace floor plan		11/11/2020
DA-103 Rev.A	Basement level floor plan		26/11/2019
DA-104 Rev.B	Roof Plan		23/06/2020
DA-200 Rev.A	West Elevation & Finishes Schedule		26/11/2019
DA-201 Rev.B	South Elevation & Finishes schedule		11/11/2020
DA-202 Rev.B	East Elevation & Finishes Schedule		11/11/2020

DA-203 Rev.B	North Elevation & Finishes Schedule		11/11/2020
DA-300 Rev C	Section Sheet 1		11/11/2020
DA-301 Rev.A	Section Sheet 2		26/11/2019
DA-103 A	Mechanical Plant Details		26/11/2019
DA-100 B			23/6/2020
DA-101 A			26/11/2019
DA-102 B			23/06/2020
DA-104 B			23/06/2020
200442.R0	Structural Report	Australian Consulting	18 Nov 2019
	-	Engineers	
200442	Structural Drawings	Australian Consulting	30 Jun 2020
S0000-Rev A		Engineers	
S0100-Rev A			
S0101-Rev A			
E24344.G03	Geotechnical Report	EI Australia	18 Oct 2019
19868	Stormwater Management Plans	C.K Engineering	Oct 2019
Sheet 1 to 8-Issue 0		Services	
19.440r01v02	Traffic & Parking Impact Assessment	Traffix	12 Dec 2019
E24344. E02_Rev0	Contaminated Land - Detailed Site	EI Australia	29 Oct 2019
	Investigation Report (Stage 2)		
N/A	Plan of Management	Planning Lab –	4 Dec 2019
		Giovanni Cirillo	
N/A	Operational, Demolition and	Waste Audit and	Oct 2019
	Construction Waste Management Plan	Consultancy Services	

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 4.17(1)(g) of the *Act* modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)

Standard Condition: A5 (Autotext AA5)

A.4 Ancillary Aspects of Development (section 4.17(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* (2012) unless expressly provided otherwise by these conditions at the Owner's expense.

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

Standard Condition: A8 (Autotext AA8)

A.5 No Underpinning works

This development consent does <u>NOT</u> give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties.

A.6 Transport for NSW (TfNSW) Conditions

- 1. All buildings and structures (other than pedestrian footpath awnings), together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited in height or depth), along the Oxford Street boundary.
- 2. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@rms.nsw.gov.au
 - A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.
- 3. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2012/001.
 - The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Please send all documentation to development.sydney@rms.nsw.gov.au If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.
- 4. The development kerbside frontage on Oxford Street is in close proximity to the eastbound bus lane enforcement camera. This camera must not be impacted or obstructed during construction.
- 5. A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.
- 6. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Oxford Street during construction activities. A ROL can be obtained through https://myrta.com/oplinc2/pages/security/oplincLogin.jsf
- 7. All construction and demolition vehicles are to access the site via Victoria Street as no works zone will be permitted on Oxford Street.

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 6.6 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 Principal Certifier, and Notice of Commencement under the *Act*.

Note: See Over our Dead Body Society Inc v Byron Bay Community Association Inc [2001] NSWLEC 125. Standard Condition: B1 (Autotext BB1)

B.2 Identification of Hazardous Material

In accordance with Australian Standard AS2601: *The Demolition of Structures*, the Owner shall identify all hazardous substances located on the site including asbestos, polychlorinated biphenyls (PCBs), lead paint, underground storage tanks, chemicals, etc. per clause 1.6.1 of the Standard.

In this regard, **prior to the commencement of any work**, Council shall be provided with a written report prepared by a suitably qualified competent person detailing:

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

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

Standard Condition: B6

B.3 Public Road Assets Prior to Any Work/Demolition

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

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

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

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

If the required report is not submitted then Council will assume there was no damage to any infrastructure in the immediate vicinity of the site prior to the commencement of any work under this consent.

Note: If the Applicant or Owner fails to submit the asset condition report required by this condition and damage is occasioned to public assets adjoining the site, Council will deduct from security any costs associated with remedying, repairing or replacing damaged public infrastructure. Nothing in this condition prevents Council making any claim against security held for this purpose Standard Condition: B7

C. Conditions which must be satisfied prior to the issue of any Construction Certificate

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

The Certifying Authority must not issue any certificates under section 6.4 of the *Act* 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 www.longservice.nsw.gov.au/bci/levy/other- information/levy-calculator	Contact LSL Corporation or use online calculator	No			
SECURITY under section 4.17(6) of the Environmental Planning and Assessment Act 1979					
Property Damage Security Deposit -making good any damage caused to any property of the Council	\$49,847	No	T115		
Infrastructure Works Bond – remedying any defects in any public work that arise within 6 months after the work is completed	\$12,700	No	T113		
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 7.12)	\$19,250 + Index Amount	Yes, quarterly	Т96		
INSPECTION FEES under section 608 of the Local Government Act 1993					
Public Road/Footpath Infrastructure Inspection Fee	\$480	No			
Security Administration Fee	\$190	No	T16		
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$82,467 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 Service Corporation or to Council. Further information can be obtained from the Long Service Corporation website www.longservice.nsw.gov.au or the Long Service Corporation on 131 441.

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 7.12 levy (formerly known as 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 levy.

Do you need HELP indexing the levy?

Please contact Council's Customer Service Team on ph 9391 7000. Failure to correctly calculate the adjusted development levy will delay the issue of any certificate issued under section 6.4 of the *Act* and could void any such certificate (eg Construction Certificate, Subdivision Certificate, or Occupation Certificate).

Deferred or periodic payment of section 7.12 levy (formerly known as 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 7.12 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 7.12 levy will be adjusted in accordance with clause 3.13 of the Plan. The Applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.

Standard Condition: C5

C.2 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, hydrogeological, geotechnical, mechanical and civil work complying with this consent, approved plans, the statement of environmental effects and supporting documentation.

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

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

C.3 Acoustic Certification of Mechanical Plant and Equipment

The Construction Certificate plans and specification required to be submitted pursuant to clause 139 of the *Regulation* must be accompanied by a certificate from a professional engineer (acoustic engineer) certifying that the noise level measured at any boundary of the site at any time while the proposed mechanical plant and equipment is operating will not exceed the *background noise level*. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed *background noise level*, at any time.

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

Where sound attenuation is required this must be detailed.

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

- **1. Australian Acoustical Society**—professional society of noise-related professionals www.acoustics.asn.au
- **2. Association of Australian Acoustical Consultants**—professional society of noise related professionals www.aaac.org.au. Standard Condition: C62 (Autotext CC62)

C.4 Road and Public Domain Works

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

1. Road & Footpath Works

a) The reconstruction of the existing full width footpath with Oxford Street pavers (PPX49-60 - 300x300 pavers by Pebblecrete P/L - pattern to match existing) for the full frontage of the site in Oxford Street to Council's Specification for Roadworks, Drainage and Miscellaneous Works. A design longitudinal surface profile (scale 1:100) and three cross sections (scale 1:50) across the frontage of the site must be submitted for assessment.

- b) The submission of detailed structural drawings and design certification prepared by a Chartered Structural Engineer for the construction of "New Awning" over the Council's property in accordance with the relevant Australian Standards as denoted in the revised architectural drawings, job no. DA-100-B, dated 23/06/20 and DA-201-A dated 26/11/19.
- c) Observe condition for the creation of positive covenant requirements.
- d) Reinstatement of damaged kerb and gutter and road pavement to match existing.
- e) The developer shall be responsible for carrying out all service investigations to allow a gravity connection.

2. Bonds

- A bond of \$12,700 will be used as security to ensure the satisfactory completion of the infrastructure works. The security or bank guarantee must be the original unconditional bank guarantee with no expiry date.
- b) Council may use all or part of the Infrastructure Bond as well as the Property Damage Security Deposit to meet the cost of removing or completing the works if they do not meet Council's requirements.
- c) The Deposit/Bond will not be released until Council has inspected the site and is satisfied that the Works have been completed in accordance with Council approved drawings and to Council requirements

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

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

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

Note: See condition K24 in Section K. Advisings of this Consent titled Roads Act Application. Standard Condition: C13

C.5 Soil and Water Management Plan – Submission and 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" 2004 published by the NSW Government (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 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*" publication can be downloaded from www.woollahra.nsw.gov.au, and *The Blue Book* is available at www.environment.nsw.gov.au/stormwater/publications.htm.

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

C.6 Engineering Certification

This development consent does <u>NOT</u> give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties.

Any structural design is not to incorporate any underpinning works which encroaches outside the boundaries of the subject property. Engineer certification to this effect shall be submitted to the Certifying Authority prior to issue of any Construction Certificate.

C.7 Geotechnical and Hydrogeological Design, Certification and Monitoring

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

These details must be certified by the professional engineer to:

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

- details recommended hold points to allow for the inspection and certification of geotechnical and hydrogeological measures by the professional engineer, and
- details a contingency plan.
 Standard Condition: C40 (Autotext: CC40)

C.8 Parking Facilities

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

The plans must satisfy the following requirements(s):

a) Three (3) bicycle parking spaces are to be provided on-site for customers or staff, as per Council's DCP 2015.

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

C.9 Stormwater Management Plan

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

- a) General design in accordance with stormwater plans prepared by C.K Engineering Services, referenced 19868-Issue 0, dated October 2019 except with the following amendments:
 - 1) All below ground structures must be fully tanked and no subsoil drainage/seepage water to be discharged to the Council's kerb and gutter;
 - 2) Stormwater treatment is required for this development. In this regard, the installation of proprietary treatment system such as gross pollution trap is to be provided. The applicant must carry out a pollution modelling such as "MUSIC" and demonstrate that stormwater treatment system provided will achieve the water quality targets stipulated in Chapter E2.2.3 of Council's DCP;
 - Provision of a below ground pump out system to collect surface runoff from the proposed driveway. The storage capacity and the pumpout system shall be designed to comply with Section 8.5.6 of AS3500.3 and in any case it shall be not less than 3m³. Full supporting calculations and details of the proposed pumpout system shall be clearly depicted on the revised stormwater plans.
- b) Compliance the objectives and performance requirements of the BCA;
- c) General compliance with the Council's Woollahra DCP 2015 Chapter E2 Stormwater and Flood Risk Management.

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

Layout plan

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

- a) All pipe layouts, dimensions, grades, lengths and material specification,
- b) Location of proposed rainwater tanks,
- c) All invert levels reduced to Australian Height Datum (AHD),
- d) Location and dimensions of all drainage pits,
- e) Point and method of connection to Councils drainage infrastructure, and
- f) Overland flow paths over impervious areas.

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

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

C.10 Flood Protection

The Construction Certificate plans and specifications, required by clause 139 of the *Regulation*, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL) detailing:

a) A permanent flood risk management plan shall be installed in the kitchen or other area frequented by the occupants.

Flood protection is to comply with Woollahra DCP 2015, Part E General Controls for All Development, Chapter E2 –Stormwater and Flood Risk Management.

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

C.11 Remediation Action Plan

The Remediation Action Plan required as a recommendation within the EI Australia Detailed Site Investigation report (Reference: E24344.E02_Rev0) dated 29th October 2019 is to be submitted to Council prepared in accordance with the NSW EPA "Guidelines for Consultants reporting on Contaminated Sites and Planning NSW Guidelines "Managing Land Contamination Planning Guidelines".

C.12 Compliance with AS 1668.2-2012 – Kitchen Exhaust Ventilation

The rooftop mechanical plant is to comply with the requirements of AS 1668.2-2012 in relation to the effluent exhaust from the kitchen and other exhaust systems.

C.13 Surrender of Consent (section 4.17(1)(b) and section 4.17(5) of the *Act*)

A notice of surrender of DA 207/2018/1 dated 10 October 2018 must be provided to Council in writing by the Owner of the land in compliance with clause 97 of the *Regulation*.

No Construction Certificate must be issued until Council has acknowledged in writing that this condition has been satisfied.

Standard Condition: C1

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 4.17(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 <u>Home Building Act 1989</u> 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, or
- b) to the erection of a temporary building.

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

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

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

D.2 Dilapidation Reports for Existing Buildings

Dilapidation surveys and dilapidation reports shall be conducted and prepared by a *professional engineer* (structural) for all buildings and/or structures that are located within the likely "zone of influence" of any excavation, dewatering and/or construction induced vibration as determined applicable by the Structural Engineer.

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

- a) 394-396 Oxford Street
- b) 400 Oxford Street
- c) 5 Victoria Street
- d) 7 Victoria Street

The dilapidation reports must be completed and submitted to the *Certifying Authority* for approval. An approved copy of the reports shall be submitted to Council with the *Notice of Commencement* prior to the commencement of any *development work*.

Where excavation of the site will extend below the level of any immediately adjoining building the *principal contractor* or *owner builder* must give the adjoining building owner(s) a copy of the dilapidation report for their building(s) and a copy of the *notice of commencement* required by Section 6.6(2) of the *Act* not less than two (2) days prior to the commencement of any work.

Note: The reasons for this condition are:

- To provide a record of the condition of buildings prior to development being carried out.
- To encourage developers and its contractors to use construction techniques that will minimise the risk of damage to buildings on neighbouring land.

Note: Also refer to the Dilapidation Report Advising for more information regarding this condition Standard Condition: D4 (Autotext DD4)

D.3 Adjoining Buildings Founded on Loose Foundation Materials

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

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

Standard Condition: D6 (Autotext DD6)

D.4 Construction Management Plan

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

The Principal Contractor or Owner must submit an application for approval of the CMP by Council's Traffic Engineer and pay all fees associated with the application.

The CMP must be submitted as a self-contained document that outlines the nature of the construction project and as applicable, include the following information:

- a) Detail the scope of the works to be completed including details of the various stages, e.g. demolition, excavation, construction etc. and the duration of each stage.
- b) Identify local traffic routes to be used by construction vehicles.
- c) Identify ways to manage construction works to address impacts on local traffic routes.
- d) Identify other developments that may be occurring in the area and identify ways to minimise the cumulative traffic impact of these developments. Should other developments be occurring in close proximity (500m or in the same street) to the subject site, the developer/builder is to liaise fortnightly with the other developers/builders undertaking work in the area in order to minimise the cumulative traffic and parking impacts of the developments.
- e) Detail how construction workers will travel to and from the site and parking arrangements for those that drive.

- f) Identify any proposed road closures, temporary traffic routes, loss of pedestrian or cyclist access or reversing manoeuvres onto a public road and provide Traffic Control Plans (TCPs) prepared by an accredited RMS Red or Orange card holder to manage these temporary changes.
- g) Detail the size (including dimensions), numbers and frequency of arrival of the construction vehicles that will service the site for each stage of works.
- h) Provide for the standing of vehicles during construction.
- i) If construction vehicles are to be accommodated on the site, provide a scaled drawing showing where these vehicles will stand and the vehicle swept path to show that these vehicles can access and egress the site in a forward direction (including dimensions and all adjacent traffic control devices, such as parking restrictions, pedestrian facilities, kerb extensions, etc.).
- j) If trucks are to be accommodated on Council property, provide a scaled drawing showing the location of any proposed Works Zone (including dimensions and all adjacent traffic control devices, such as parking restrictions, pedestrian facilities, kerb extensions, etc.).
- k) Show the location of any site sheds and any anticipated use of cranes and concrete pumps and identify the relevant permits that will be required.
- If a crane/s are to be accommodated on site, detail how the crane/s will be erected and removed, including the location, number and size of vehicles involved in the erection/removal of the crane/s, the duration of the operation and the proposed day and times, any full or partial road closures required to erect or remove the crane/s and appropriate Traffic Control Plans (TCPs) prepared by an approved RMS Red or Orange Card holder.
- m) Make provision for all materials, plant, etc. to be stored within the development site at all times during construction.
- n) State that any oversized vehicles proposed to operate on Council property (including Council approved Works Zones) will attain a Permit to Stand Plant on each occasion (Note: oversized vehicles are vehicles longer than 7.5m or heavier than 4.5T.)
- o) Show the location of any proposed excavation and estimated volumes.
- p) When demolition, excavation and construction works are to be undertaken on school days, all vehicular movements associated with this work shall only be undertaken between the hours of 9.30am and 2.30pm, in order to minimise disruption to the traffic network during school pick up and drop off times.
- q) Show the location of all Tree Protection (Exclusion) zones (Note: storage of building materials or access through Reserve will not be permitted without prior approval by Council).

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

Standard Condition: D9

D.5 Works (Construction) Zone – Approval and Implementation

A Works Zone may be required for this development. The Principal Contractor or Owner can apply for a works zone. If the works zone is approved the Principal Contractor or Owner must pay all fees for this Works Zone before it can be installed.

The Principal Contractor must pay all fees associated with the application and occupation and use of the road as a Works Zone. All Works Zone signs must have been erected by Council to permit enforcement of the Works Zone by Council's Rangers and NSW Police before commencement of any work. Signs are not erected until full payment of works zone fees.

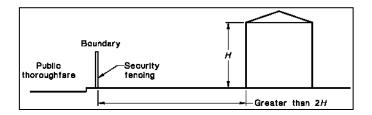
Note: The Principal Contractor or Owner must allow not less than four to six weeks (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under the clause 22 of the *Transport Administration (General) Regulation 2000* to exercise those functions delegated by the Roads and Maritime Services under section 50 of the *Transport Administration Act 1988*.

Note: The enforcement of the works zone is at the discretion of Council's Rangers and the NSW Police Service. The Principal Contractor must report any breach of the works zone to either Council or the NSW Police Service.

Standard Condition: D10

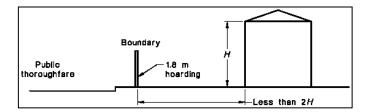
D.6 Security Fencing, Hoarding and Overhead Protection

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



Type A Hoarding

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 1.8m adjacent to the thoroughfare.



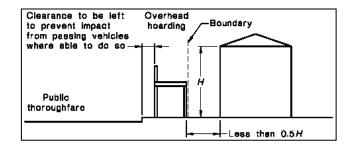
Type B Hoarding

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 4.0m; 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 2.1m,
- 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 0.5m 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 ensure that overhead protective structures are installed and maintained in accordance with the NSW "Code of Practice - Overhead Protective Structures 1995". This is code available at www.safework.nsw.gov.au/ data/assets/pdf_file/0008/52883/Overhead-protective-structures-Code-of-practice.pdf

All Hoardings

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.

Hoardings on Public Land

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.

A creative hoarding (i.e. an approved artwork or historic image affixed to the hoarding) is required if the hoarding meets the criteria in Council's Creative Hoardings Policy (adopted March 2020). The cost of printing and affixing the creative hoarding is the responsibility of the Principal Contractor or Owner-builder. The Creative Hoardings Policy can be downloaded from Council's website www.woollahra.nsw.gov.au

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.

Note: Council seeks to increase public art in the public domain by requiring artwork or historic images on hoardings located on public land. Under the Creative Hoardings Policy an application for a hoarding proposed on public land will require an approved artwork or historic image affixed to the hoarding if the hoarding meets the criteria in section 3 of the Policy:

- A. Hoardings proposed on land zoned B2 Local Centre, or B4 Mixed Use, or SP2 Infrastructure under Woollahra Local Environmental Plan 2014 AND erected for 8 weeks or more OR
- B. Hoardings proposed on land located along a State classified road (regardless of the zone) AND erected for 8 weeks or more
 OR

- C. Hoardings proposed in any other location than that referred to in A. and B. above AND erected for 12 weeks or more, except where:
 - i. the capital investment value of the work to which the hoarding relates is less than \$1 million
 - ii. the land is zoned R2 Low Density Residential
 - iii. the land is zoned R3 Medium Density Residential and the hoarding located in a lane or street that does not have through traffic (eg a cul-de-sac or no through road).

Artwork and historic images for the hoardings are assessed and approved in accordance with the Creative Hoardings Policy. Details of the artwork or images proposed to be affixed to the hoardings must be submitted with Council's form "Application for a permit to use a footpath for the erection of a hoarding/scaffolding".

The Creative Hoardings Policy can be downloaded from www.woollahra.nsw.gov.au or for more information contact Council's Cultural Development Team.

Standard Condition: D11 (Autotext DD11)

D.7 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 4.17(11) of the Act, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- A sign must be erected in a prominent position on any site on which building work, subdivision `work or demolition work is being carried out:
 - showing the name, address and telephone number of the Principal Certifier for the work, and
 - showing the name of the principal contractor (if any) for any building work and a telephone b. number on which that person may be contacted outside working hours, and
 - stating that unauthorised entry to the work site is prohibited. c.
- 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 6.28 of the Act, to comply with the Building Code of Australia.

Clause 227A of the *Regulation* provides:

Signs on development sites

If there is a person who is the Principal Certifier 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 Principal Certifier it will provide the sign to the Principal Contractor or Owner-builder who must ensure that the sign is erected and maintained as required by clause 98A and clause 227A of the Regulation.

Standard Condition: D12 (Autotext DD12)

D.8 Toilet Facilities

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

Each toilet provided:

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

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

In this condition:

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

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

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

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

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

Standard Condition: D13 (Autotext DD13)

D.9 Erosion and Sediment Controls – Installation

The Principal Contractor or Owner-builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:

- a) The Soil and Water Management Plan if required under this consent;
- b) "Do it Right On Site, Soil and Water Management for the Construction Industry" published by the Southern Sydney Regional Organisation of Councils, 2001; and
- c) "Managing Urban Stormwater Soils and Construction" 2004 published by the NSW Government (The Blue Book).

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

Note: The International Erosion Control Association – Australasia (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" publication can be downloaded from www.woollahra.nsw.gov.au and *The Blue Book* is available at www.woollahra.nsw.gov.au and *The Blue Book* is available at www.environment.nsw.gov.au/stormwater/publications.htm

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 (Autotext DD14)

D.10 Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 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 Certifier for the building work, and
 - notified the Principal Certifier that the person will carry out the building work as an Owner-builder, if that is the case, and
- c) The Principal Certifier 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 Certifier 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 1.4 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 6.1 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 6.6(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, PC 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 6.6(2) of the *Act*.

Standard Condition: D15 (Autotext DD15)

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

- a) For the purposes of section 4.17(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 <u>Home Building Act 1989</u> must not be carried out unless the Principal Certifier 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 Certifier 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 6.28 of the *Act*, to comply with the Building Code of Australia. Standard Condition: D17 (Autotext DD17)

D.12 Notice of Completion of Category 1 Remediation Work

Pursuant to clause 17 of *State Environmental Planning Policy No 55 - Remediation of Land* (SEPP 55) notice of completion of a category 1 remediation work must be given to the Council within 30 days after the completion of the work. This notice must be in accordance with clause 18 of SEPP 55.

Note: Category 1 remediation work is defined in clause 9 of SEPP 55.
Standard Condition: D3

E. Conditions which must be satisfied during any development work

E.1 Compliance with BCA and Insurance Requirements under the *Home Building Act 1989*

For the purposes of section 4.17(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 (BCA),
- b) in the case of residential building work for which the <u>Home Building Act 1989</u> requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

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

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

Note: All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia. Standard Condition: E1 (Autotext EE1)

E.2 Compliance with Australian Standard for Demolition

Demolition of buildings and structures must comply with Australian Standard AS 2601—2001: *The Demolition of Structures*.

Standard Condition: E2 (Autotext EE2)

E.3 Compliance with Construction Management Plan

All development activities and traffic movements must be carried out in accordance with the approved Construction Management Plan (CMP). All controls in the CMP must be maintained at all times. A copy of the CMP must be kept on-site at all times and made available to the Principal Certifier or Council on request.

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

Standard Condition: E3 (Autotext EE3)

E.4 Requirement to Notify about New Evidence

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

Standard Condition: E4 (Autotext EE4)

E.5 Critical Stage Inspections

Critical stage inspections must be called for by the Principal Contractor or Owner-builder as required by the Principal Certifier, any PC service agreement, the *Act* and the *Regulation*.

Work must not proceed beyond each critical stage until the Principal Certifier 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 6.5 of the *Act* or as required by the Principal Certifier and any PC Service Agreement.

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

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

Standard Condition: E5 (Autotext EE5)

E.6 Hours of Work - Amenity of the Neighbourhood

- a) No *work* must take place on any Sunday or public holiday.
- b) No *work* must take place before 7am or after 5pm any weekday.
- c) No *work* must take place before 7am or after 1pm any Saturday.
- 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 <u>any equipment</u> 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 a separate penalty infringement notice or prosecution.

Note: The delivery and removal of plant, equipment and machinery associated with wide loads subject to RMS and NSW 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 2017*.

Note: NSW EPA Noise Guide is available at www.epa.nsw.gov.au/noise/nglg.htm Standard Condition: E6 (Autotext EE6)

E.7 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 heritage listed 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 148B of the *Road Transport Act 2013*, section 138 of the *Roads Act 1993* or section 68 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.

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

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.

 Standard Condition: E7 (Autotext EE7)

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.

Standard Condition: E11

E.9 Compliance with Geotechnical / Hydrogeological Monitoring Program

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

The Principal Contractor and any sub-contractor must strictly follow the Geotechnical / Hydrogeological Monitoring Program for the development including, but not limited to:

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

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

Standard Condition: E12 (Autotext EE12)

E.10 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 and 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 Regulation 2008* 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 (Autotext EE13)

E.11 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" 2004 published by the NSW Government (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 (Autotext EE15)

E.12 Disposal of Site Water During Construction

The Principal Contractor or Owner-builder must ensure:

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

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

Standard Condition: E17 (Autotext EE17)

E.13 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 registered surveyor 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 Principal Certifier'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 (Autotext EE20)

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 68 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.

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

Standard Condition: E21 (Autotext EE21)

E.15 Prohibition of Burning

There must be no burning of any waste or other materials. The burning of copper chrome arsenate (CCA) or pentachlorophenol (PCP) 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 (Clean Air) Regulation 2010* all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.

Standard Condition: E22 (Autotext EE22)

E.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 downloaded from Council's website 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.safework.nsw.gov.au and www.epa.nsw.gov.au. Other specific conditions and advice may apply.

Note: Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution. Standard Condition: E23 (Autotext EE23)

E.17 Compliance with Council's Specification for Roadworks, Drainage and Miscellaneous Works, Road Works and, Work within the Road and Footway

All work carried out on assets which are under Council ownership or will revert to the ownership, care, control or management of Council in connection with the *development* to which this consent relates must comply with Council's *Specification for Roadworks*, *Drainage and Miscellaneous Works* (2012).

The Owner, Principal Contractor or Owner-builder must meet all costs associated with such works.

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

Note: A copy of Council's *Specification for Roadworks, Drainage and Miscellaneous Works* can be downloaded from Council's website www.woollahra.nsw.gov.au
Standard Condition: E24 (Autotext EE24)

E.18 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, and
- 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 NSW Environment Protection Authority, and relevant occupational health and safety legislation administered by SafeWork NSW, and
- e) evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained.

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

Standard Condition: E31 (Autotext EE31)

E.19 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 and 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, and
- k) retain all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as Council, the NSW EPA or SafeWork NSW.

Standard Condition: E32 (Autotext EE32)

E.20 Asbestos Removal

All asbestos removal work must be carried out safely according to NSW work health and safety legislation.

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

- a) Be undertaken by contractors who hold a current SafeWork NSW "demolition licence" and a current SafeWork NSW "Class A licence" for friable asbestos removal.
- b) Be carried out in accordance with the relevant SafeWork NSW codes of practice.
- c) No asbestos products may be reused on the site.
- d) No asbestos laden skip or bins shall be left in any public place.

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

E.21 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 EPA *Waste Classification Guidelines, Part1: Classifying Waste, 2014.*

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.22 Disposal of Asbestos and Hazardous Waste

Asbestos and hazardous waste, once classified in accordance with **Condition E.21** 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 NSW EPA requirements. Standard Condition: E41

E.23 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.24 Notification of Asbestos Removal

In addition to the requirements for licensed asbestos removalists to give written notice to SafeWork NSW 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 6 of the Act and Part 8 Division 3 of the Regulation)

F.1 Occupation Certificate (section 6.9 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 6.10 of the *Act*) unless an Occupation Certificate has been issued in relation to the building or part.

Note: New building includes an altered portion of, or an extension to, an existing building. Standard Condition: F1 (Autotext FF1)

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.

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 6.1 of the Act. Standard Condition: F4

F.3 Commissioning and Certification of Systems and Works

The Principal Contractor or Owner-builder must submit to the satisfaction of the Principal Certifier works-as-executed (WAE) plans, Compliance Certificates and evidence of suitability in accordance with 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 plans, Compliance Certificates and evidence of suitability in accordance with 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 stormwater drainage and storage systems.
- d) All mechanical ventilation systems.
- e) All hydraulic systems.
- f) All structural work.
- g) All acoustic attenuation work.
- h) All waterproofing.
- i) Such further matters as the Principal Certifier 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 PC 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 PC must submit to Council, with any Occupation Certificate, copies of WAE plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA upon which the PC has relied in issuing any Occupation Certificate.

Standard Condition: F7

F.4 Commissioning and Certification of Public Infrastructure Works

The Principal Contractor or Owner-builder must submit, to the satisfaction of 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* (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

F.5 Validation Reporting – State Environmental Planning Policy No. 55

At the completion of the remediation activities, a validation assessment report shall be prepared for the site by an Environmental Consultant in accordance with EPA *Contaminated Land Guidelines Consultants Reporting on Contaminated Land* (2020) (EPA, 2020) and other appropriate guidance documentation. The validation report shall detail the methodology, results and conclusion of the assessment and make a statement regarding the suitability of the site for the proposed land use.

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 (section 6.4(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 (Autotext HH12)

H.2 Road Works (including footpaths)

The following works must be completed to the satisfaction of Council, in compliance with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012) unless expressly provided otherwise by these conditions at the Principal Contractor's or Owner's expense:

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

Note: Security held by Council pursuant to section 4.17(6) of the *Act* will not be release by Council until compliance has been achieved with this condition. An application for refund of security must be submitted with the Final Occupation Certificate to Council. This form can be downloaded from Council's website www.woollahra.nsw.gov.au or obtained from Council's customer service centre. Standard Condition: H13

H.3 Covenant for Private Works on Council Property

Prior to issue of any Occupation Certificate and to ensure the encroaching structures on Council public road reserve accord with Council's "Policy for Managing Encroachments on Council Road Reserves", the person with the benefit of this consent, being the owner of No. 398 Oxford Street, Paddington, must do the following:

- a) lodge an "Application to Formalise the Encroachment on Council land" with the Council in consultation with Council's Property & Projects Department **AND**;
- b) enter into a legal agreement with the Council for the "Proposed Awning" as depicted in the revised architectural drawings, job no. DA-100-B, dated 23/06/20 and DA-201-A dated 26/11/19.

The owner must enter into a legal agreement as follows:

- The registration on the title to the subject property to which this consent relates of a Public Positive Covenant pursuant to S88E of the Conveyancing Act 1919 burdening the subject property and benefiting the Council providing for the indemnification of Council from any claims or actions, and the ongoing maintenance of any private structures encroaching on the public road reserve for which consent has been given, such as steps, retaining walls, access ways, overhang, balconies, awnings, signs and the like. This process has an estimated timeframe of 2 months.
- The wording of the Public Positive Covenant must be in accordance with Council's standard format and the Instrument must be registered at the Land Property Information Office prior to issue of any Occupation Certificate.
- The property owner must pay Council monetary compensation for the Public Positive Covenant, as determined by the Council, and must also pay all of Council's associated costs.

Note: The required wording of the Instrument can be downloaded from Council's web site www.woollahra.nsw.gov.au. The PCA must supply a copy of the WAE Plans to Council together with the *Occupation Certificate*.

Note: No *Occupation Certificate* must be issued until this condition has been satisfied. Standard Condition: H19

H.4 Positive Covenant and Works-As-Executed Certification of Stormwater Systems

On completion of construction work, stormwater drainage works are to be certified by a professional engineer with works-as-executed drawings supplied to the Principal Certifier detailing:

- a) compliance with conditions of development consent relating to stormwater,
- b) the structural adequacy of the stormwater system,
- c) that the works have been constructed in accordance with the approved design,
- d) pipe invert levels and surface levels to Australian Height Datum, and
- e) contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

Note: The required wording of the Instrument can be downloaded from Council's website www.woollahra.nsw.gov.au. The PC must supply a copy of the WAE plans to Council together with the Final Occupation Certificate.

Note: The Final Occupation Certificate must not be issued until this condition has been satisfied. Standard Condition: H20 (Autotext HH20)

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

I.1 Trading Hours

Trading hours are limited to:

Indoor Areas

- a) Monday to Friday: 8am 10pm
- b) Saturday: 8am 10pm
- c) Sunday and Public Holiday: 8am 10pm

Roof Terrace

- a) Monday to Friday: 8am 9pm
- b) Saturday: 8am 9pm
- c) Sunday and Public Holiday: 8am 9pm

This condition has been imposed to mitigate amenity impacts upon the neighbourhood by commercial or retail trading including, but not limited to, external impacts associated with clients attending the site for business or otherwise.

Note: This condition does not apply to deliveries to, or dispatches from, the site of wholesale goods or internal activities that occur under the approved hours of use. General use and deliveries or dispatches may be restricted by hours of use conditions. This condition does not restrict the operation of noise pollution laws.

Standard Condition: I2

I.2 Extended Hours of Operation for Licensed Premises – Reviewable Condition

The hours of operation for the indoor and outdoor areas of the licensed premises are extended as follows:

a) <u>Indoor Areas</u>

From **8am – 10pm** as contained in **Condition I.1** to: **8am – 12am (Midnight)** on all days.

b) Roof Terrace:

From 8am - 9pm as contained in Condition I.1 to: 8am - 10pm on Fridays and Saturdays only.

This condition is a reviewable condition as referred to under section 4.17(10B-10D) of the *Act*. The extended trading hours will be reviewed in accordance with **Condition I.3**.

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

Note: Council's consideration of the extended hours of operation of licensed premises will take into account:

- a) compliance of the premises in terms of security and its general management;
- b) the number and nature of substantiated complaints regarding the operation of the premises;
- c) compliance with the conditions of this consent; and
- d) any other matters considered relevant to the environmental evaluation of the premises. Standard Condition: 14 (Autotext: II4)

I.3 Review of Extended Hours of Operation for Licensed Premises

Council will review the extended trading hours as referred to in **Condition I.2** generally as follows:

- a) Within one (1) year following the issue of any Occupation Certificate applicable to this application,
- b) Two (2) years following the first review, and
- c) Every five years thereafter.

The review will be undertaken in accordance with clause 124D of the *Regulation*. This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

Note: A review will only be undertaken if Council has satisfactory evidence to suggest the extended trading hours are unduly impacting on the amenity of the neighbourhood or NSW Police has requested a review.

Note: The review will be presented to the equivalent delegated decision making panel that determined the

application and all stakeholders will be notified of the meeting.

Note: As a result of a review a reviewable condition may be changed.

Standard Condition: I5

I.4 Maximum Patron Capacity

The total number of patrons on the premises at any time must not exceed **142** patrons. Of these 142 patrons, no more than **47** are to occupy the roof terrace at any one time.

Any person/s attending the premises for the purpose of 'takeaway' products/services will not be considered a 'patron' as detailed above, provided no food and or drink is consumed by those persons on the premises.

Standard Condition: I6

I.5 Signage to be Displayed – Licensed Premises

Signage (in lettering not less than 15mm in height on a contrasting background) is to be erected in a prominent position near the principal entry to the premises in accordance with clause 98D of the *Regulation*.

The signage shall state the following and may change from time to time due to reviewable conditions in accordance with **Conditions I.2 and I.3**:

"Approved hours of operation – Indoor Area

Monday to Sunday: 8am – Midnight

Approved hours of operation – Roof terrace

Fridays and Saturdays: **8am to 10pm** Sunday to Thursday: **8am to 9pm**

Approved patron capacity:

Indoor Areas: 95 patrons

Roof terrace: 47 patrons

Upon leaving please respect local residents by minimising noise."

The signage required by this condition is to be erected prior to the commencement of operations. This condition has been imposed to clearly identify the hours and patron capacity of the licensed premises.

Standard Condition: 19

I.6 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 compliant/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: II0 (Autotext: III0)

I.7 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, NSW Police and/or Liquor and Gaming NSW authorised officers.

Standard Condition: I12 (Autotext: II12)

I.8 Sale/Consumption of Liquor

Licensed Restaurant (Primary Service Authorisation)

- a) No liquor may be sold, supplied or consumed on the premises except with the approval and authorisation from Liquor and Gaming NSW.
- b) The primary use of the premises must be that of a restaurant with the provision of genuine meals, prepared upon the premises.
- c) The sale and/or supply of liquor must cease 15 minutes prior to the cessation of the respective hours of operation for the specified indoor and outdoor seating areas.
- d) No patron shall be permitted to take glasses or open containers of liquor off the premises.
- e) Management is responsible for ensuring the number of patrons in the premises does not exceed the approved capacity specified in **Condition I.4**.

 Standard Condition: 114

I.9 Operation in Accordance with Plan of Management (POM)

- a) The operation and management of the premises shall be in accordance with the POM prepared by Giovanni Cirillo of Planning Lab and referenced in **Condition A.3**.
- b) The POM shall be filed with the Licensing Police of the Eastern Suburbs Police Area Command prior to the commencement of operations.

- c) The POM cannot be altered without the written consent of Council.
- d) A copy of the POM is to be provided to the owners of all adjoining properties. Standard Condition: 115

I.10 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: II6 (Autotext: III6)

I.11 Glass Sorting and 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 has been imposed to protect the amenity of neighbouring residents. Standard Condition: II7 (Autotext: III7)

I.12 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.13 Waste Management - Commercial

The owner and/or occupier must comply with the approved site waste minimisation and management plan (SWMMP) and with Woollahra DCP 2015, Chapter E5–Waste Management.

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.

Note: This condition has been imposed to ensure that the provisions of the approved SWMMP and Woollahra DCP 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: 132

I.14 Food Premises - Maintenance of Food Premises

The food premises must be maintained in accordance with the *Food Act 2003*, *Food Regulation 2004*; the Food Standards Code as published by Food Standards Australia and New Zealand and Australian Standard AS 4674-2004: *Construction and fit out of food premises*.

Note: This condition has been imposed to protect public health. Standard Condition: 141

I.15 Outdoor Lighting – Roof Terraces

Outdoor lighting must comply with AS/NZS 4282:2019: Control of the obtrusive effects of outdoor lighting. The maximum luminous intensity from each luminare and threshold limits must not exceed the level 1 control relevant under tables in AS/NZS 4282:2019.

All lighting to be installed on the roof terrace must be recessed lights or will be surface wall/balustrade mounted lights at a maximum height of 600mm above the finished floor level of the roof terrace.

Note: This condition has been imposed to protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting.

Note: Council may consider, subject to an appropriate Section 4.55 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: I51

I.16 Outdoor Lighting - Commercial

Outdoor lighting must comply with AS/NZS 4282:2019: *Control of the obtrusive effects of outdoor lighting*. The maximum luminous intensity from each luminare and threshold limits must not exceed the level 1 control relevant under tables in AS/NZS 4282:2019.

Note: 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 4.55 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: I50

I.17 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*.

Note: 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 (www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government) and the NSW Industrial Noise Policy (www.epa.nsw.gov.au/your-environment/noise/industrial-noise) published by the NSW Environment Protection Authority. 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.

NSW Environment Protection Authority— see "noise" section www.environment.nsw.gov.au/noise. NSW Government legislation- access to all NSW legislation, including the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Noise Control Regulation 2000* is available at www.legislation.nsw.gov.au.

Australian Acoustical Society—professional society of noise related professionals www.acoustics.asn.au. **Association of Australian Acoustical Consultants**—professional society of noise related professionals www.aaac.org.au.

Liquor and Gaming NSW—www.liquorandgaming.nsw.gov.au.

Standard Condition: I56

I.18 Maintenance of Sound Attenuation

Sound attenuation must be maintained in accordance with the Acoustic Report prepared by the Acoustic Group (Ref.50.5387.R1B:MCC) dated 13 November 2020.

Standard Condition: 157

I.19 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 07:00am 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 07:00am.

Note: 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 LA10 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 reflects the minimum standard condition imposed by the former Casino Liquor and Gaming Control Authority. Liquor & Gaming NSW or the Independent Liquor & Gaming 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 Secretary of the Department of Industry is responsible for resolving such complaints and may impose temporary or permanent conditions on any licence. For more information go to Liquor and Gaming NSW website www.liquorandgaming.nsw.gov.au

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

Standard Condition: I58

I.20 Noise from Mechanical Plant and Equipment

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

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

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

Note: Words in this condition have the same meaning as in the *Noise Policy for Industry* (2017) www.epa.nsw.gov.au/your-environment/noise/industrial-noise/noise-policy-for-industry-(2017)

and *Noise Guide for Local Government* (2013) <u>www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government</u>
Standard Condition: 159

I.21 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*.

Note: 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 (www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government) and the NSW Industrial Noise Policy (www.epa.nsw.gov.au/your-environment/noise/industrial-noise) published by the NSW Environment Protection Authority. 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.

NSW Environment Protection Authority— see "noise" section www.environment.nsw.gov.au/noise. **NSW Government legislation-** access to all NSW legislation, including the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Noise Control Regulation 2000* is available at www.legislation.nsw.gov.au.

Australian Acoustical Society—professional society of noise related professionals www.acoustics.asn.au. **Association of Australian Acoustical Consultants**—professional society of noise related professionals www.aaac.org.au.

 ${\bf Liquor\ and\ Gaming\ NSW-}\underline{www.liquor and gaming.nsw.gov.au}.$

Standard Condition: I56

I.22 Provision of Off-street Parking

The owner and occupier, in compliance with AS 2890.1:2004 *Parking facilities - Off-street car parking*, must maintain off-street parking as follows:

Use	Number of spaces		
Bicycle Parking (Customers and/or staff)	3		

This condition has been imposed to ensure adequate on-site parking is maintained. Standard Condition: 121

J. Miscellaneous Conditions

Nil.

K. Advisings

K.1 Criminal Offences – Breach of Development Consent and Environmental Laws

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

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

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

Warnings as to potential maximum penalties

Maximum penalties under NSW environmental laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

Warning as to enforcement and legal costs

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

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

Note: The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of *the Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. Standard Advising: K1 (Autotext KK1)

K.2 Dial Before You Dig



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

When you contact Dial Before You Dig you will be sent details of all Dial Before You Dig members who have underground assets in the vicinity of your proposed excavation. Standard Advising: K2 (Autotext KK2)

K.3 Builder's Licences and Owner-builders Permits

Section 6.6(2)(d) 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.

The Owner(s) must appoint the Principal Certifier. The Principal Certifier must check that the required insurances are 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.

Note: For more information go to the NSW Fair Trading website www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating
Standard Condition: K5 (Autotext KK5)

K.4 Building Standards - Guide to Standards and Tolerances

The Principal Certifier does not undertake detailed quality control inspections and the role of the Principal Certifier 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 "NSW Guide to Standards and Tolerances 2017" 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 Principal Certifier does not undertake this role.

Council, as the Principal Certifier or otherwise, does not adjudicate building contract disputes between the Principal Contractor, contractors and the Owner.

Note: For more information on the NSW Guide to Standards and Tolerances go to the NSW Fair Trading website www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/after-you-build-or-renovate/guide-to-standards-and-tolerances or call 133 220. Standard Condition: K6 (Autotext KK6)

K.5 SafeWork NSW Requirements

The Work Health and Safety Act 2011 and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

Note: For more information go to the SafeWork NSW website <u>www.safework.nsw.gov.au</u> or call 131,050

Standard Condition: K7 (Autotext KK7)

K.6 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Mr M Moratelli, Team Leader - Development Control North East Team, on (02) 9391 7165.

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

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

Standard Condition: K14 (Autotext KK14)

K.7 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 4.17 of the *Act*.

The securities will not be released until a Final Occupation Certificate has been 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 Refund of Security Bond Application form can be downloaded from

www.woollahra.nsw.gov.au Standard Condition: K15 (Autotext KK15)

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 (Autotext KK17)

K.9 Dilapidation Report

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

- a) The dilapidation report will be made available to affected property owners on requested and may be used by them in the event of a dispute relating to damage allegedly due to the carrying out of the development.
- b) This condition cannot prevent neighbouring buildings being damaged by the carrying out of the development.
- c) Council will not be held responsible for any damage which may be caused to adjoining buildings as a consequence of the development being carried out.
- d) Council will not become directly involved in disputes between the developer, its contractors and the owners of neighbouring buildings.
- e) In the event that access for undertaking the dilapidation survey is denied the Applicant is to demonstrate in writing to the satisfaction of the Principal Certifier that all reasonable steps were taken to obtain access to the adjoining property. The dilapidation report will need to be based on a survey of what can be observed externally.

 Standard Advising: K23 (Autotext KK23)

K.10 Roads Act 1993 Application

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

- Construction of driveways and/or new or alterations to footpath paving
- Alteration and/or extension to Council drainage infrastructure
- Alteration and/or addition of retaining walls
- Pumping of water to Council's below ground stormwater system
- Installation of soil/rock anchors under the roadway
- Installation of Stormwater outlet pipes across the nature strip

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

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

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

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

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

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

Drainage design works must comply with the Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.

Temporary ground anchors may be permitted, in accordance with Council's "Rock Anchor Policy".

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

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

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

Note: When an application under the *Roads Act* is required, then four (4) weeks is to be allowed for assessment.

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

Note: The intent of this condition is that the design of the road, footpaths, driveway crossings and public stormwater drainage works must be detailed and approved prior to the issue of any Construction Certificate. Changes in levels may arise from the detailed design of buildings, road, footpath, driveway crossing grades and stormwater. Changes required under Road Act 1993 approvals may necessitate design and levels changes under this consent. This may in turn require the Applicant to seek to amend this Standard Advising: K24 (Autotext KK24) consent.

Annexures

- 1. Architectural Drawings J
- Technical Services Referral J. 2.
- Traffic Referral 🗸 🖫 3.
- Heritage Referral 🗓 🖺 4.
- 5. Health Referral J
- Fire Safety Referral $\sqrt[4]{2}$ 6.
- 7. NSW Police Comments J
- Transport for NSW Referral U 8.
- Clause 4.6 Variation J 9.

398 OXFORD ST, PADDINGTON

DEVELOPMENT APPLICATION

SUBJECT SITE

	DA DRAW	UNIC LICT			
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NUMBER	NAME	CURRENT	DRAWN	CHECKED	ISSUED
DA-001	COVER SHEET, DRAWING LIST, SITE LOCATION PLAN	C	FS	SC	11.11.20
DA-010	SITE PLAN + SITE ANALYSIS PLAN	c	FS	SC	11.11.20
DA-020	EXISTING + DEMOLITION PLAN	A	FO	SC	26.11.19
DA-100	GROUND FLOOR PLAN	В	FS	SC	23.06.20
DA-101	LEVEL 1 FLOOR PLAN	A	FO	SC	26.11.19
DA-102	ROOF TERRACE FLOOR PLAN	C	FS	SC	11.11.20
DA-103	BASEMENT LEVEL FLOOR PLAN	A	FO	SC	26.11.19
DA-104	ROOF PLAN	В	FS	SC	23.06.20
DA-200	MATERIAL / FINISHES ELEVATIONS - SHEET 1	A	FO	SC	26.11.19
DA-201	MATERIAL / FINISHES ELEVATIONS - SHEET 2	В	FS	SC	11.11.20
DA-202	MATERIAL / FINISHES ELEVATIONS - SHEET 3	В	FS	SC	11.11.20
DA-203	MATERIAL / FINISHES ELEVATIONS - SHEET 4	В	FS	SC	11.11.20
DA-300	SECTION SHEET 1	C	FS	SC	11.11.20
DA-301	SECTION SHEET 2	A	FO	SC	26.11.19
DA-310	STREETSCAPE	A	FO	SC	26.11.19
DA-400	SHADOW DIAGRAMS WINTER SOLSTICE	A	FO	SC	26.11.19
DA-510	FSR + GFA CALCULATIONS	A	FO	SC	26.11.19
DA-520	SITE COVERAGE AND EXCAVATION PLAN	A	FO	SC	26.11.19
DA-700	PHOTOMONTAGE	A	FO	SC	26.11.19



LOCATION PLAN

PHOTOMONTAGE

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PROJECT
398 OXFORD ST

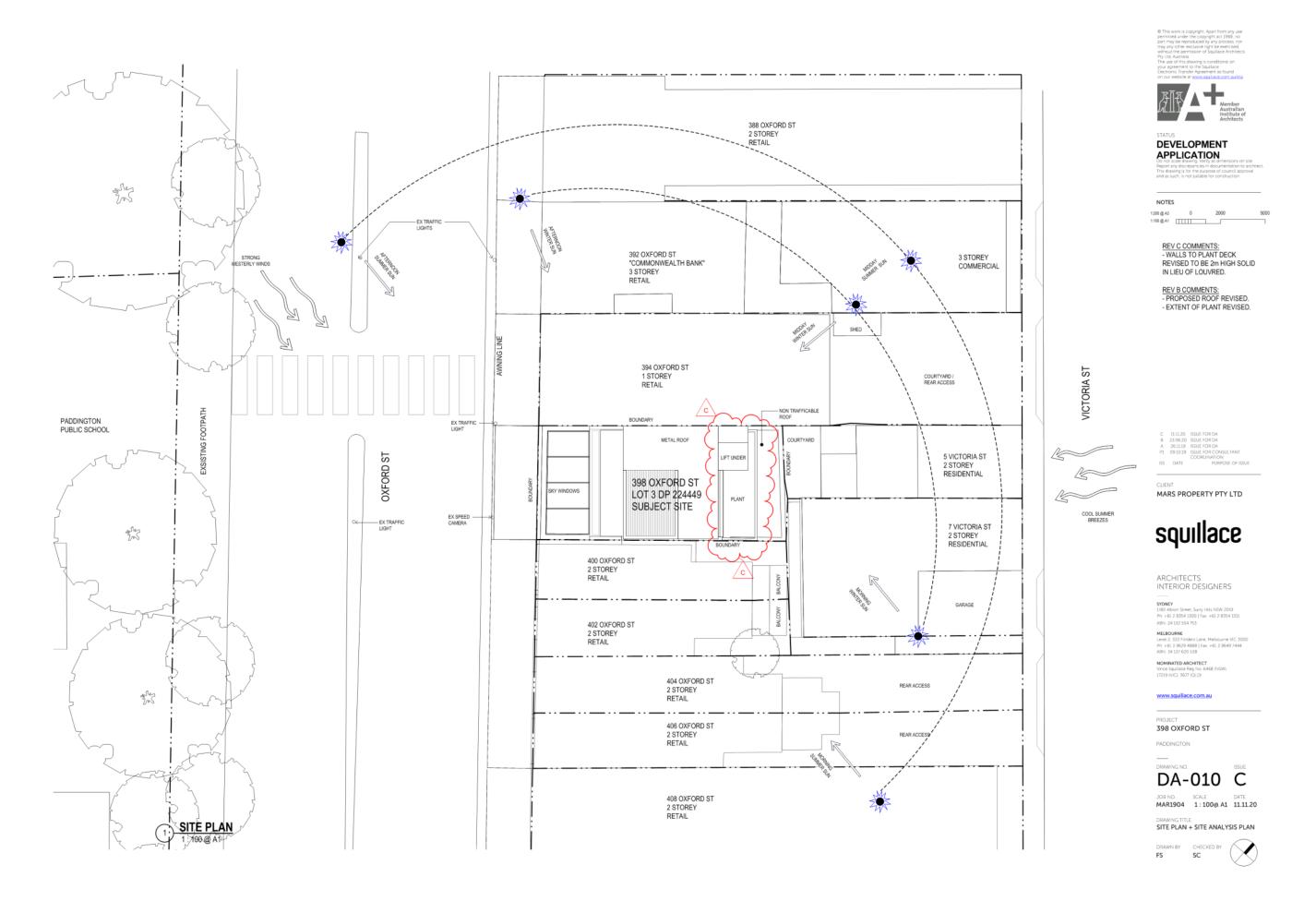
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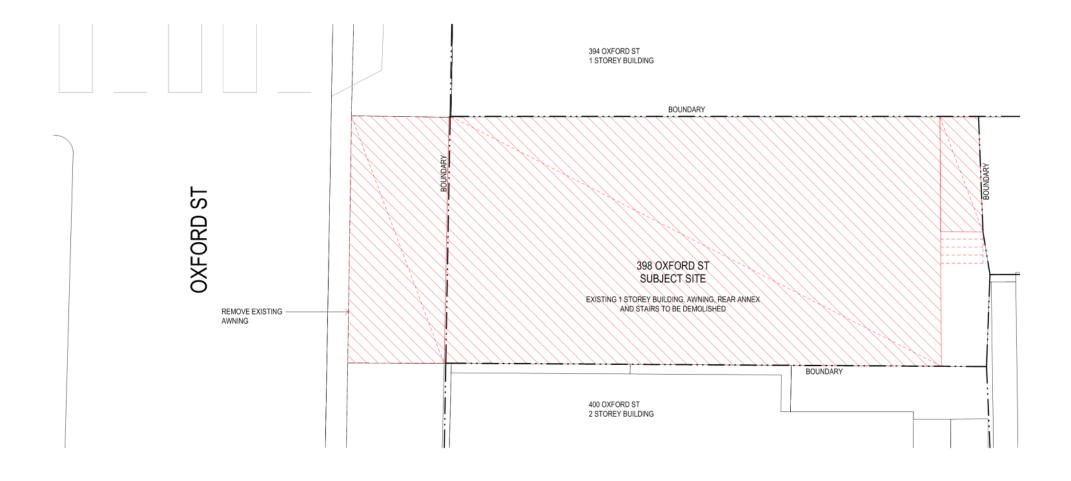
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COVER SHEET, DRAWING LIST, SITE
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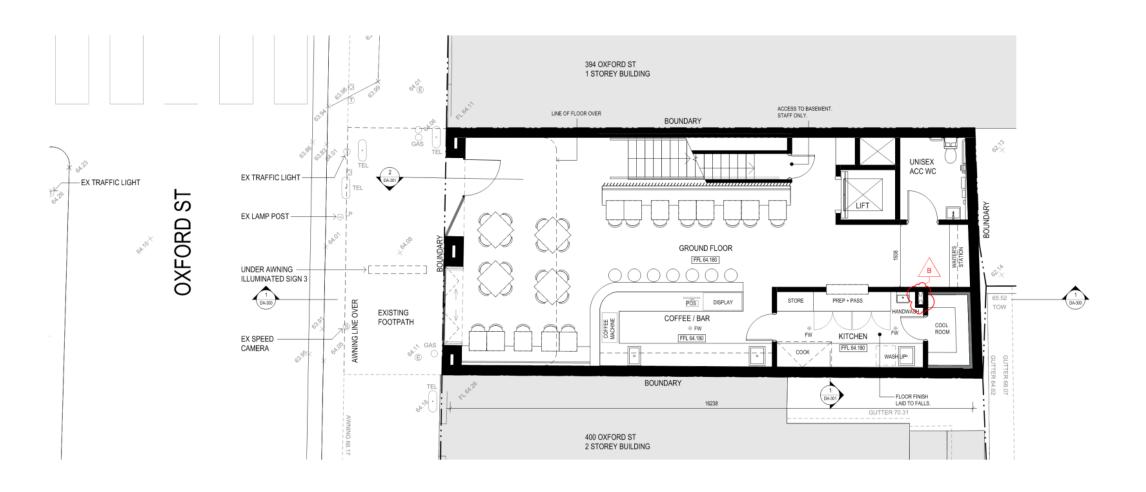
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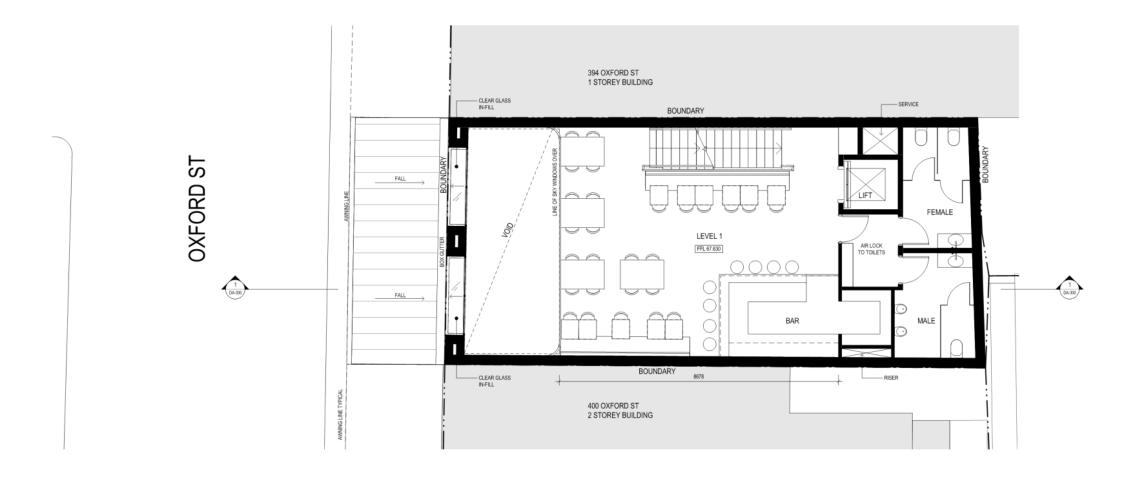
GROUND LEVEL EXISTING AND DEMOLITION PLAN

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GROUND LEVEL FLOOR PLAN



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GROUND FLOOR PLAN



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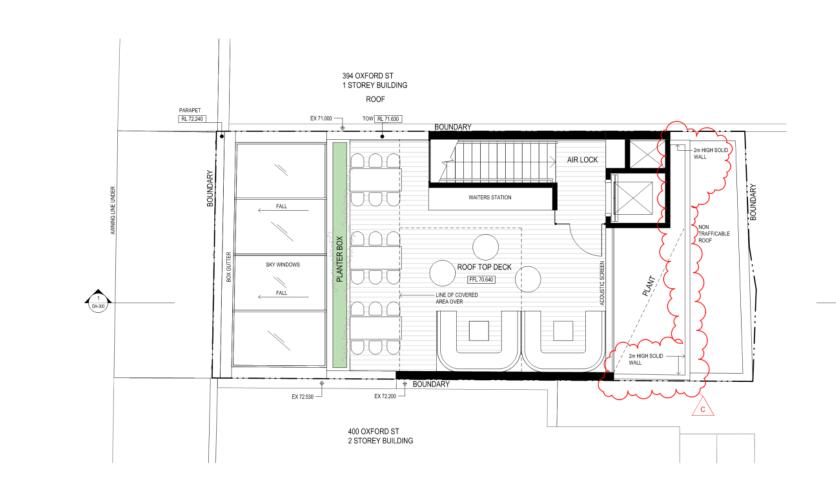
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LEVEL 1 FLOOR PLAN

1 LEVEL 1 FLOOR PLAN 1:50 @ A1

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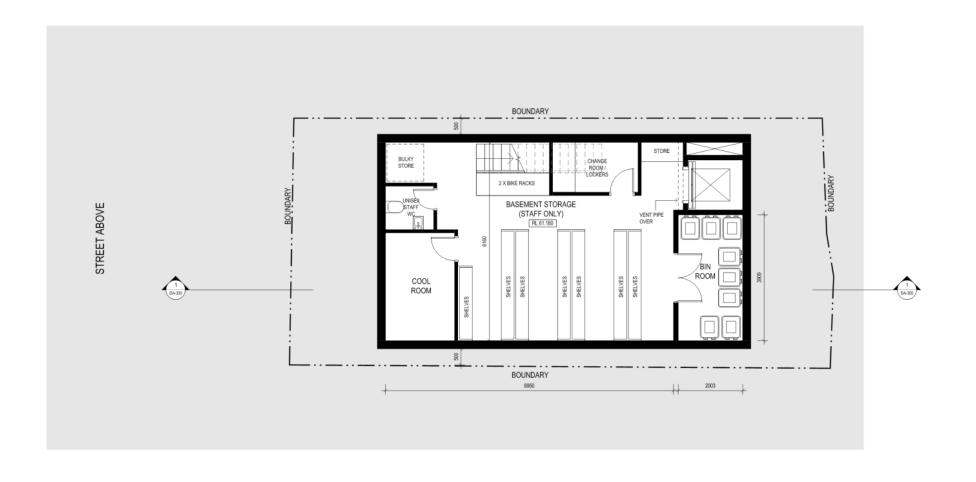
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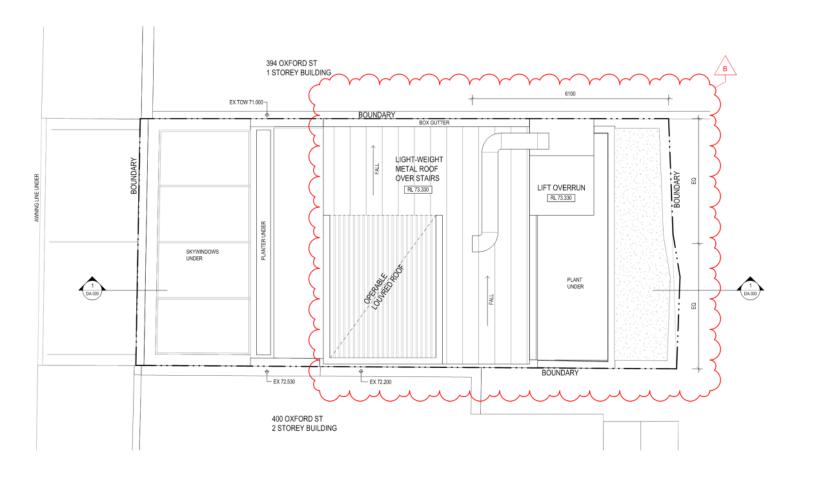
OXFORD ST



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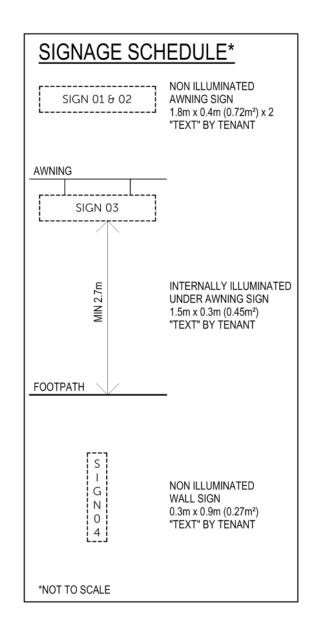
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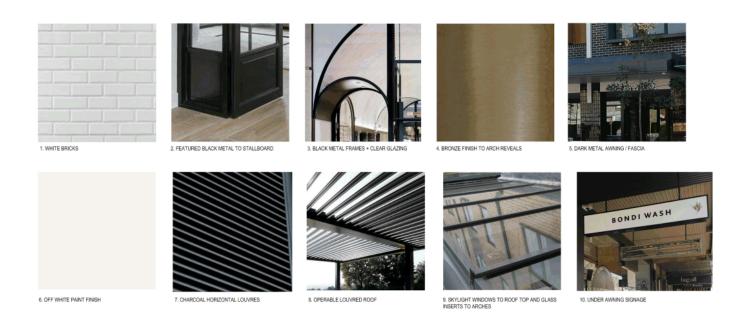


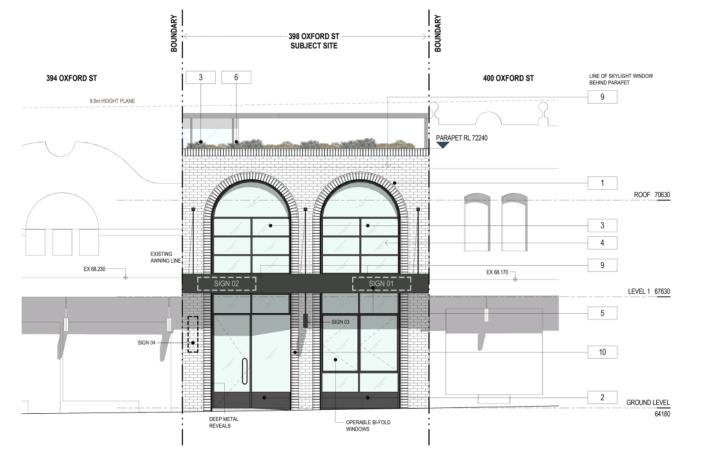
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ROOF PLAN

1 ROOF PLAN 1:50 @ A1







① WEST ELEVATION (OXFORD ST)
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DEVELOPMENT APPLICATION NOTES

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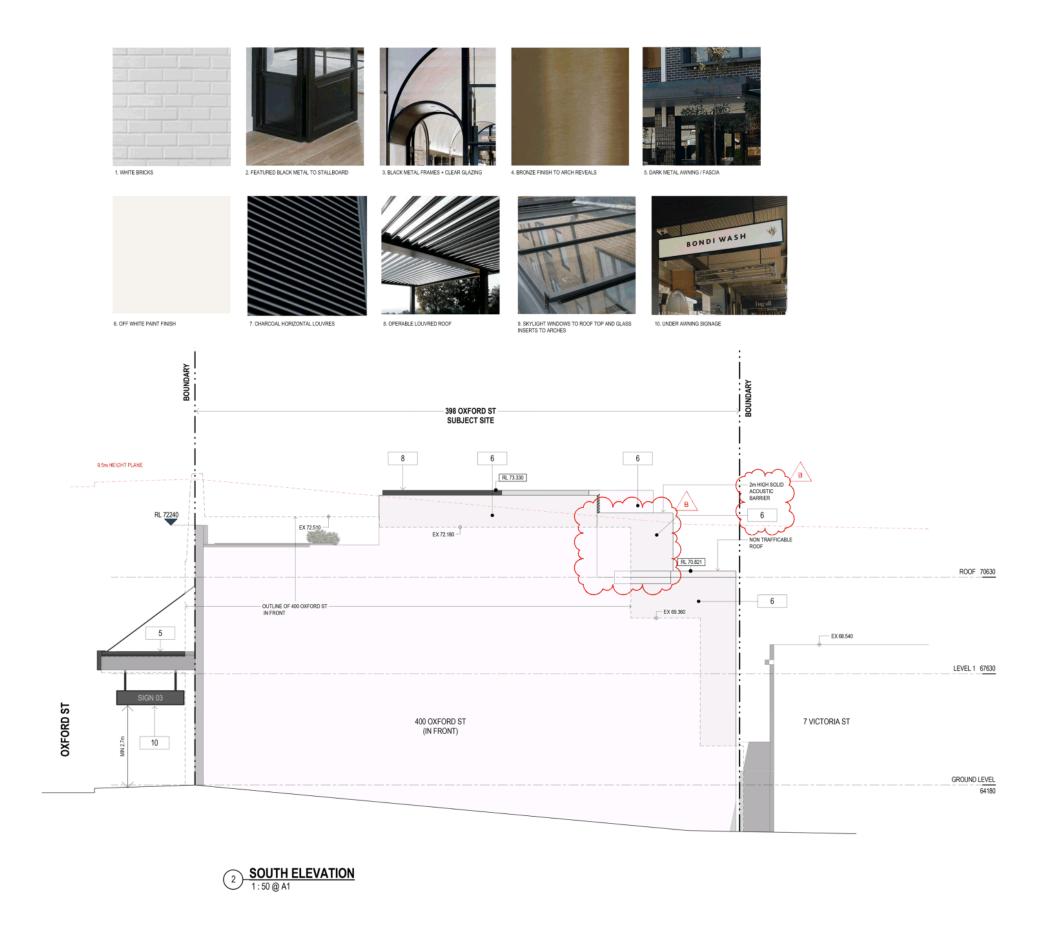
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Page 457 Annexure 1 Architectural Drawings



DEVELOPMENT

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MATERIAL / FINISHES ELEVATIONS SHEET 2

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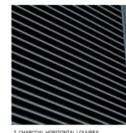
2. FEATURED BLACK METAL TO STALLBOARD







6. OFF WHITE PAINT FINISH



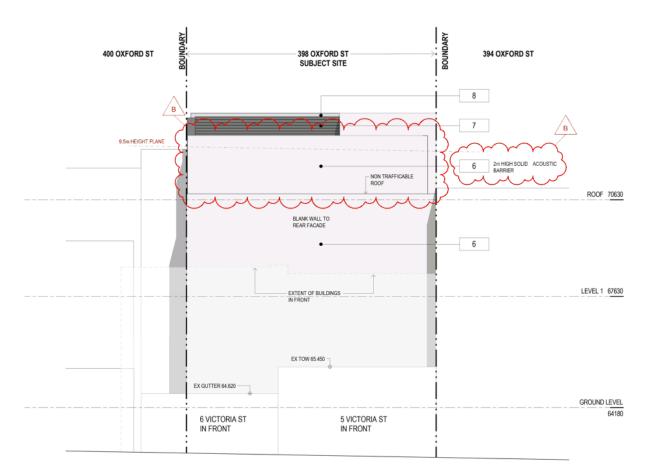






9. SKYLIGHT WINDOWS TO ROOF TOP AND GLASS INSERTS TO ARCHES

10. UNDER AWNING SIGNAGE



1 EAST ELEVATION (REAR)

Development

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NOMINATED ARCHITECT Vince Squillace Reg No. 6468 (NSW), 17219 (VICL 3677 (OLD)

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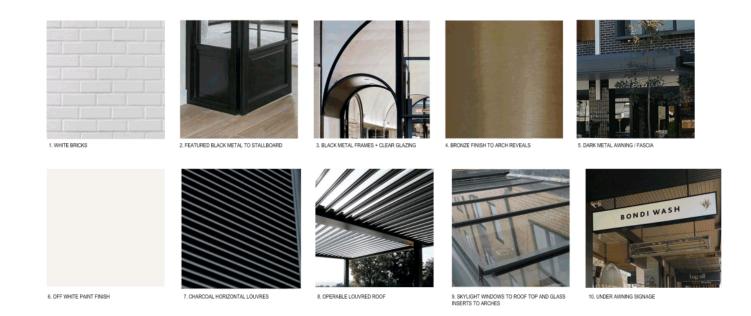
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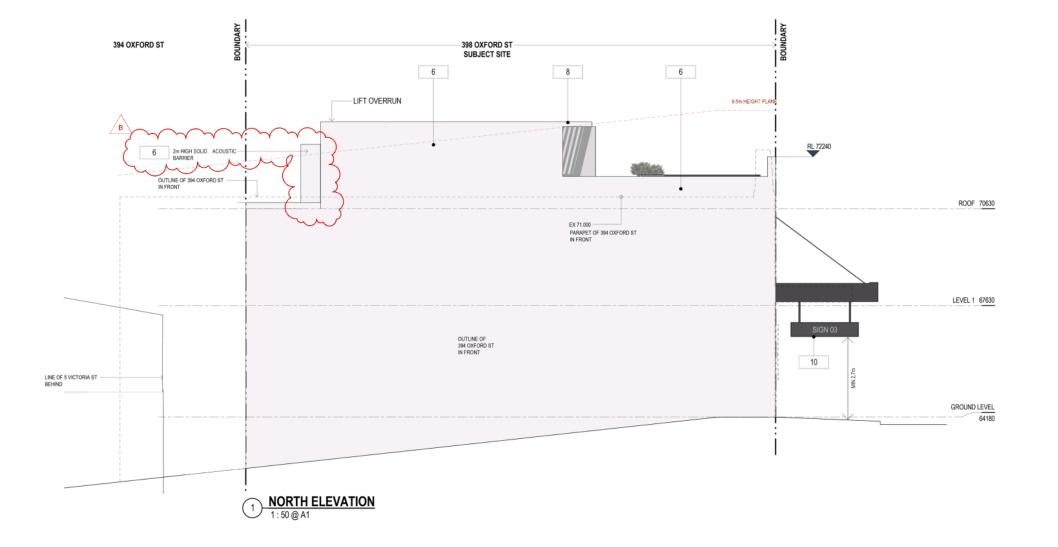
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Vince Squillace Reg No. 6468 INSWI, 17219 (VICL 3677) OLD

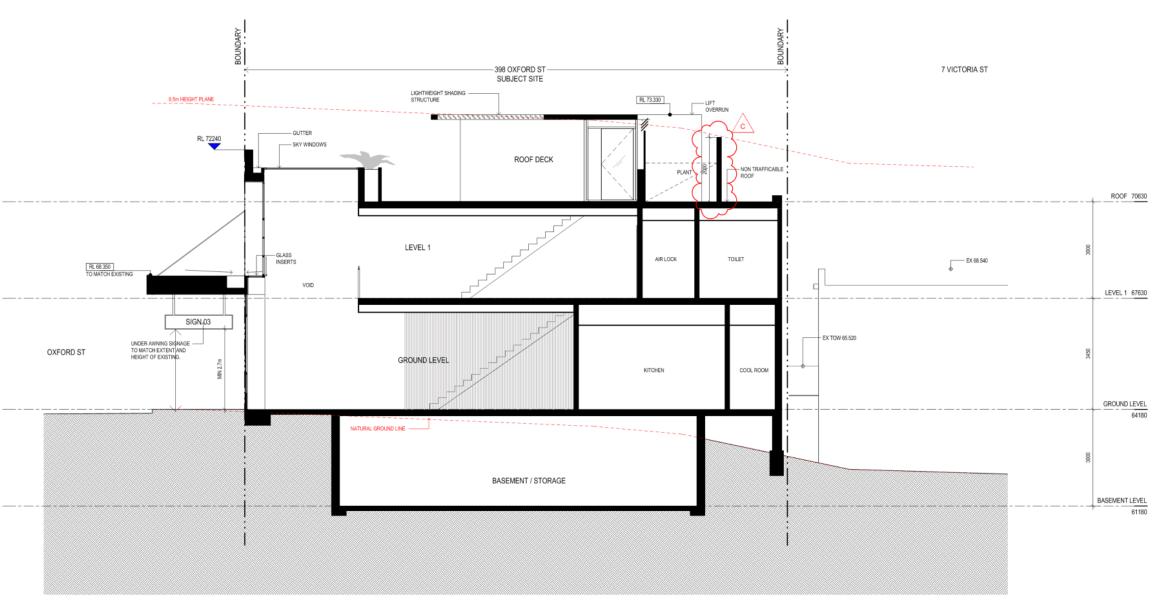
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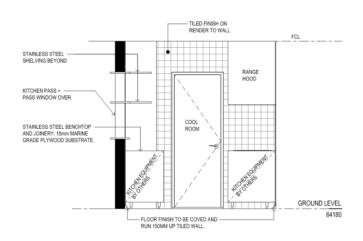
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DOCUMENTATION FOR DETAILS.
- EXTENT OF ROOF REVISED. MARS PROPERTY PTY LTD squillace ARCHITECTS INTERIOR DESIGNERS

398 OXFORD ST PADDINGTON

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SECTION SHEET 1

Page 461 Annexure 1 Architectural Drawings





NATIONAL CODE FOR CONSTRUCTION AND FITOUT OF FOOD PREMISES

- Infoor tiles to be but jointed or open joints epoxy grouted
 floor tiles to be but jointed or open joints epoxy grouted
 floorwall intersections are to be creed. Performed materials to be continued min. 75mm up wall
 the intersection of walls and ceiling to be stight jointed, sealed and dustproof
 ceiling light fillings to be installed ush or with approved dustvermin proof diffuser
 exposed pipes fixed by trackets to space 25mm off wall and 100mm of horizontal surfaces
 at openings made for service pipes to be made verning proof
 all legs are to be of non-corrosive solid or thotal ar metal or moulded plastic
 open ends of bublast setel legs must be capped
 legs designed so that fillings are mised 15mm off floor, min 25mm from wall, or alternatively, rear legs can be omitted and brackets used
 brackets are to be non-corrosive, tubular metal (with capped ends), sold metal or filst steel
 any corricate between fillings, waths, equipment etc., to be provided with cover flasting or sealed.
 safamanders and similar equipment shall not be located directly above other cooking appliances where verifiation is decreased
 shelving to be kept irm. 25mm dear of walls, or joint sealed appropriately,
 doos to bathrooms to be filted with self-clasting devices
 all floor to wall junctions in tickber and bat areas to be coved to a minimum radius of 30m
 kitchen and bar equipment to be instalted to manufacturer's details.

RL 68.350 LINE OF METAL REVEAL BEYOND. LEVEL 1 67630 SIGN 03 INTERIOR EXTERIOR COUNCIL FOOTPATH OXFORD ST SOLID METAL STALLBOARD TO ALI SHOPFRONT GLAZING. REFER TO ELEVATIONS FOR DETAILS. NEW ACCESSIBLE RAMP TO COMPLY WITH BCA ACCESSIBILITY CODES. GROUND LEVEL

2 AWNING AND ENTRY SECTION 1:25 @ A1

DEVELOPMENT APPLICATION

ROOF 70630

NOTES 1:50 @ A3 0 500 1:25 @ A1

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SECTION SHEET 2

Page 462 Annexure 1 Architectural Drawings





OXFORD ST STREETSCAPE
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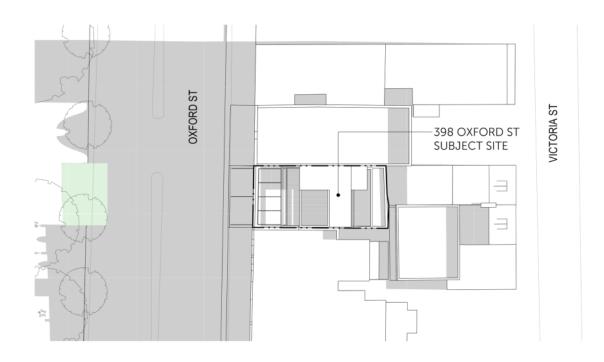
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DRAWING TITLE STREETSCAPE

STREETSCAPE



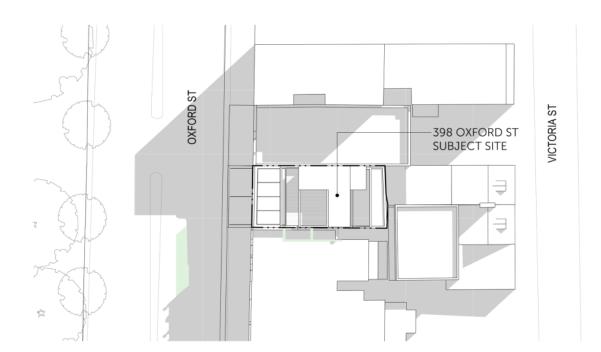
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SHADOW DIAGRAMS

EXISTING SHADO

ADDITIONAL SHADOWS CAS

2 SHADOW STUDY PLAN - WINTER SOLSTICE 21 JUNE - 9AM 1:200@A1



OXFORD ST SIDBJECT SITE

 $\underbrace{ \text{SHADOW STUDY PLAN - WINTER SOLSTICE 21 JUNE - 12 PM}}_{1:200 \ @ \ \text{A1}}$

 $\underbrace{ \text{6} \quad \text{SHADOW STUDY PLAN - WINTER SOLSTICE 21 JUNE - 3PM}}_{\text{1:200 @ A1}}$

A 261119 ISSUE FOR DA
PI 093019 ISSUE FOR CONSULTANT
COORDINATION
ISS DATE

CUENT
MARS PROPERTY PTY LTD

CLIENT
MARS PROPERTY PTY LTD

ACCUPATION
SQUILLAR

ARCHITECTS
INTERIOR DESIGNERS

SYDNEY
1/80 Abbins Street, Surry 1415 NSW 2010
Ph. 462 48554 1300 Fax. 461 2 8554 1311
ABN 24 132 554 755

MELEOUINE
Level 2, 335 Finders Lane, Melbourne VIC 3000
Ph. 463 6969 4889 Fax. 461 3 9649 7444
ARN 34 137 620 538

MONINTATION ACCUPATION
1723 (NCL 5677 IOLO)

WWW. Squillace Reg No. 6468 NSW),
1723 (NCL 5677 IOLO)

PROJECT
398 OXFORD ST

PADDINGTON

DRAWING NO.

DRAWING NO.

DRAWING NO.

DRAWING TITLE A1
SHADOW DIAGRAMS WINTER
SOLSTICE

SOLSTICE

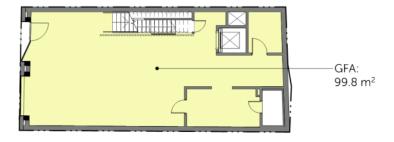
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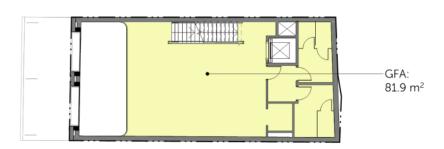
SOLSTICE

SCREET

AND SCALE
MAR1904 AS 26.11.19
indicateda

DRAWING TITLE A1
SHADOW DIAGRAMS WINTER
SOLSTICE





2 LEVEL 1 - GROSS FLOOR AREA 1:100@A1

398 Oxford St, Paddington (LOT 3/224449)

FLOOR SPACE RATIO CALCULATIONS:

Site area: approx. 128.5 m²

GROUND FLOOR: 99.8 m²

LEVEL 1:

 $82.7 \, m^2$

TOTAL:

182.5 m²

FSR: GFA / SITE AREA = 1.4:1



GROSS FLOOR AREA



DEVELOPMENT **APPLICATION**

NOTES

squillace

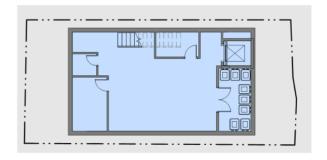
ARCHITECTS INTERIOR DESIGNERS

398 OXFORD ST PADDINGTON

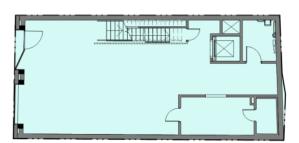
DA-510 A

JOB NO. SCALE DATE
MAR1904 As 26.11.19
indicated@
DRAWNG TITLE A1
FSR + GFA CALCULATIONS

Page 465 Annexure 1 Architectural Drawings



BASEMENT LEVEL - EXCAVATION PLAN



2 GROUND LEVEL - SITE COVERAGE

398 Oxford St, Paddington (LOT 3/224449)

EXCAVATION:

Site area: approx. 128.5 m²

BASEMENT EXCAVATION: 77 m²

SITE COVERAGE:

GROUND FLOOR: 128 m²

THE PROPOSED SITE COVERAGE IS COMPLEMENTARY TO THE EXISTING STREETSCAPE CHARACTER.

EXCAVATED AREA



SITE COVERAGE



DEVELOPMENT APPLICATION

NOTES

squillace

ARCHITECTS INTERIOR DESIGNERS

398 OXFORD ST PADDINGTON

DA-520 A

JOB NO. SCALE DATE
MAR1904 As 26.11.19
indicated@
DRAWING TITLE A1
SITE COVERAGE AND EXCAVATION
PLAN

Page 466 Annexure 1 Architectural Drawings



PHOTOMONTAGE



EXISTING BUILDING

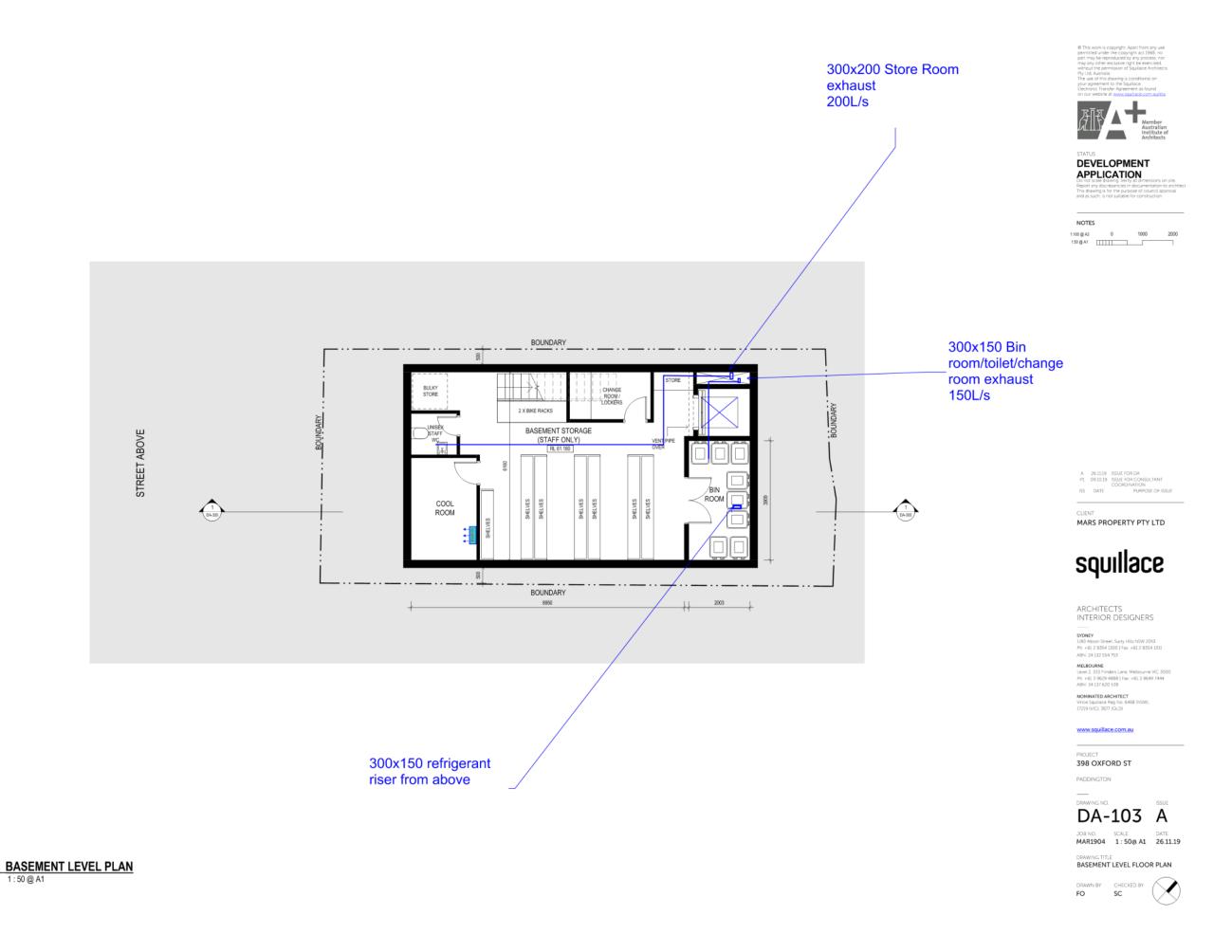


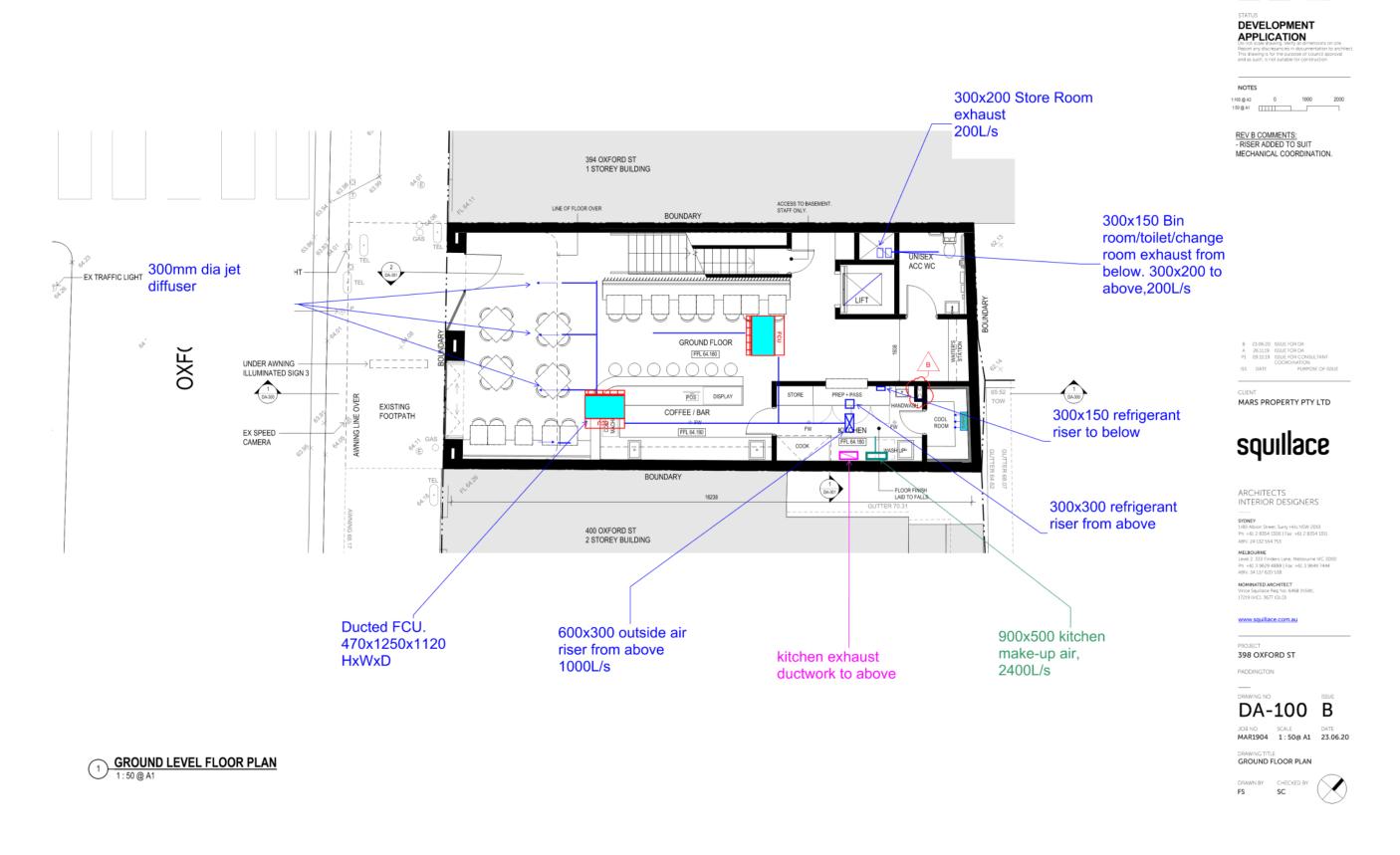


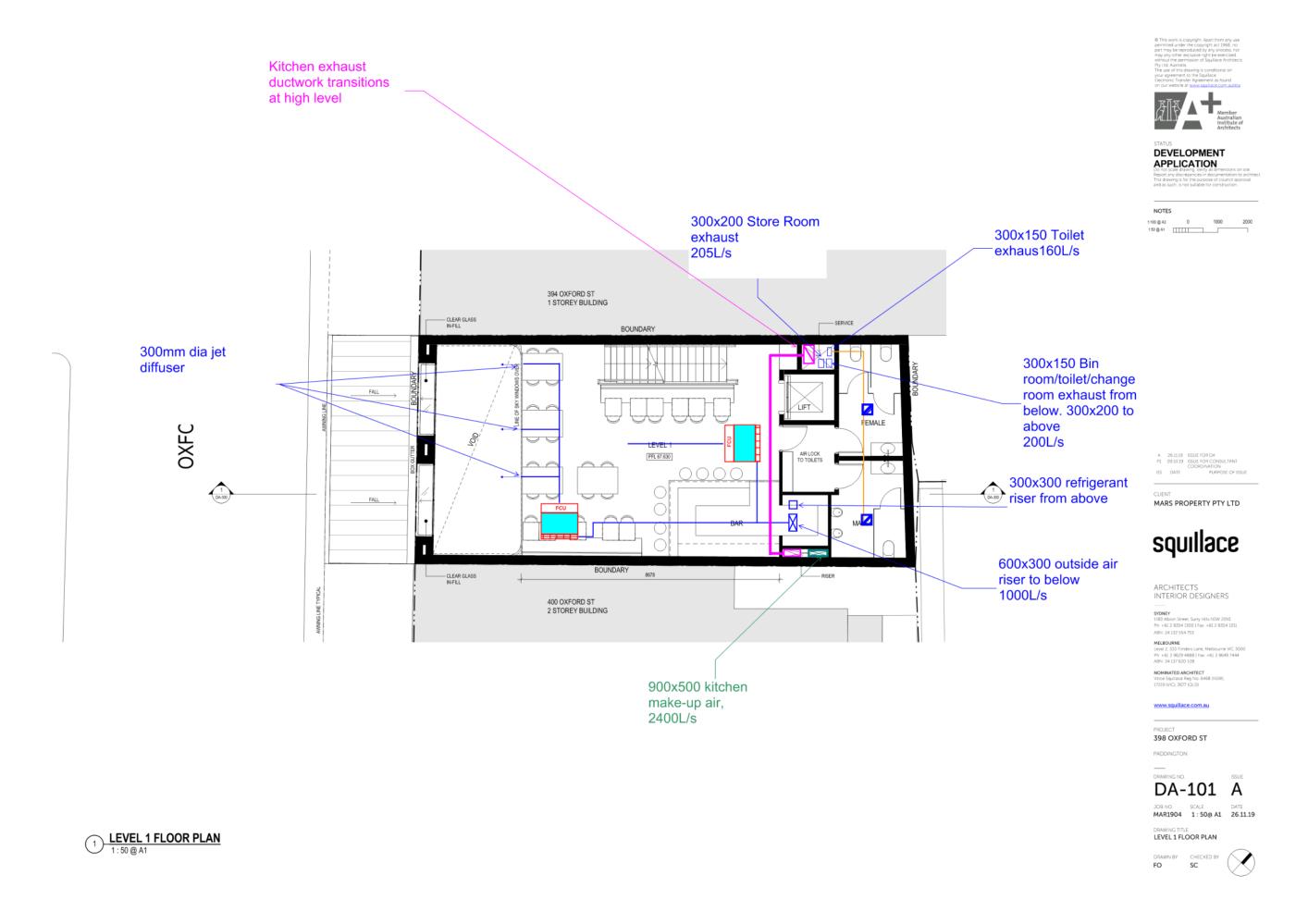
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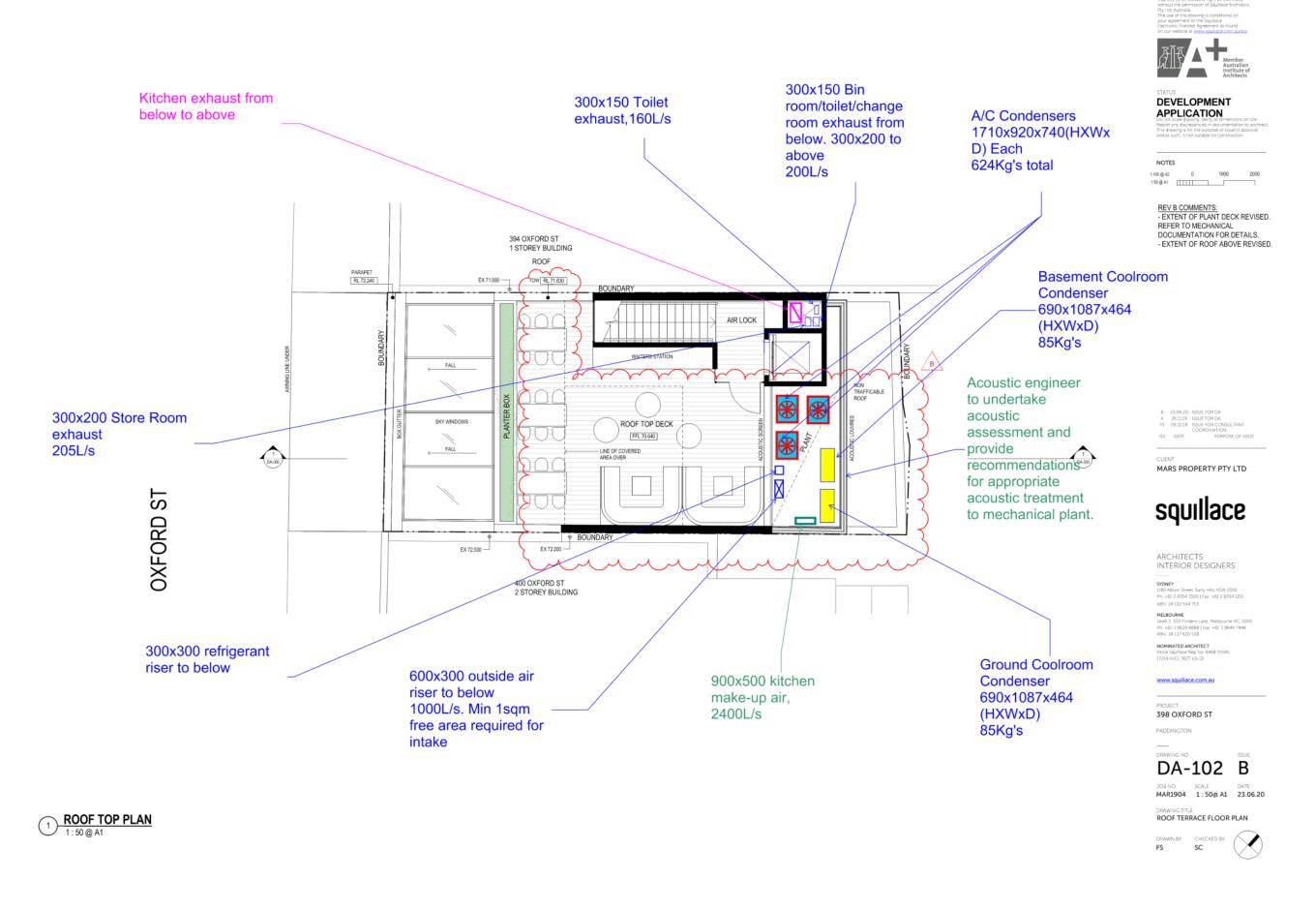


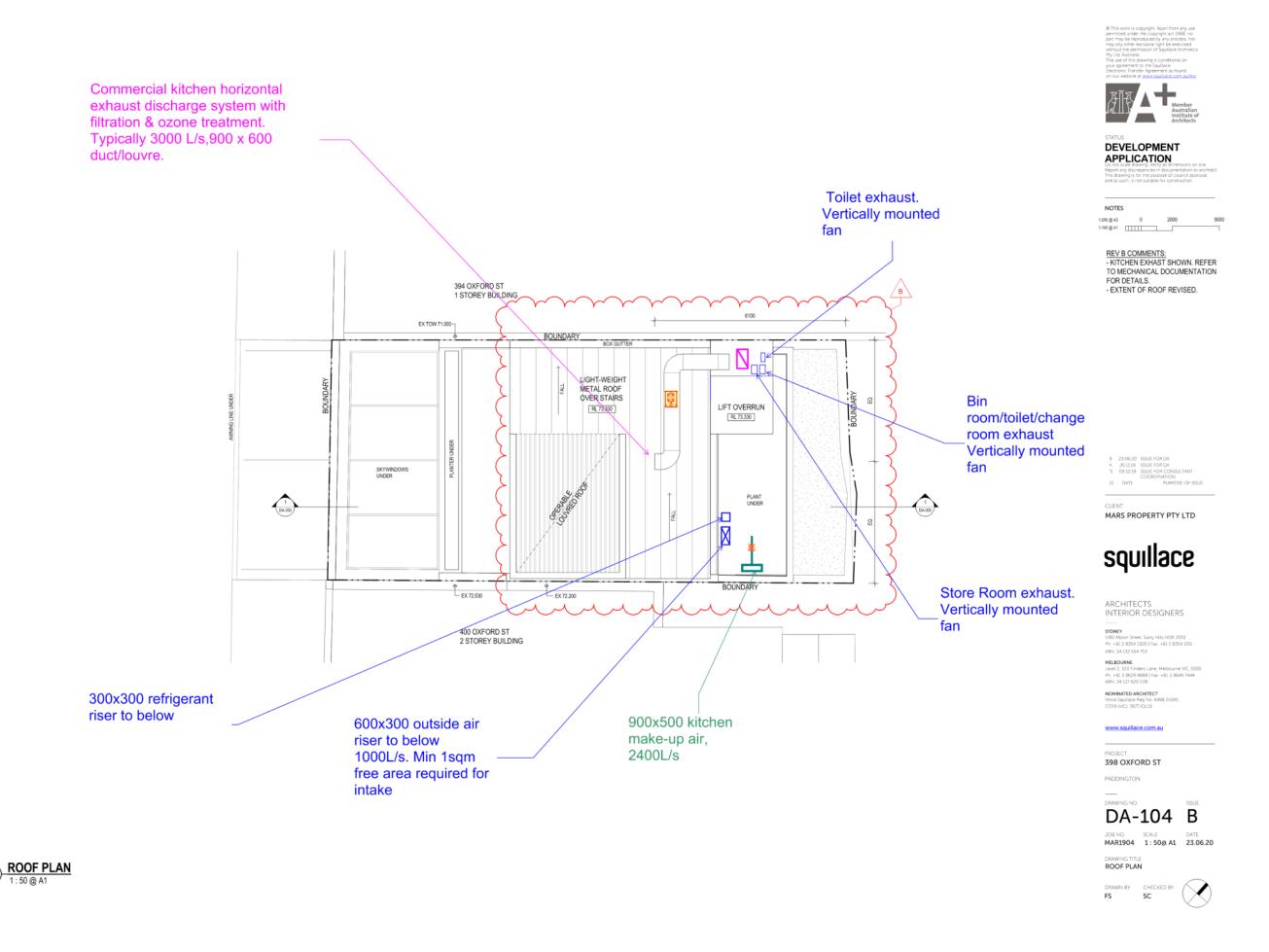
Page 467 Annexure 1 Architectural Drawings











Completion Date: 29 August 2020

REFERRAL RESPONSE – DEVELOPMENT ENGINEERING

FILE NO: Development Applications/ 496/2019/1
ADDRESS: 398 Oxford Street PADDINGTON 2021

PROPOSAL: Demolition of the existing building and replaced with a new two

storey building (infill development) with a basement level and roof top terrace to be used as a restaurant with trading hours of 8am to12am Mon-Sat & 8am -10pm Sunday with the roof terrace to close

at 10pm

FROM: Mr R Lam
TO: Mr M Moratelli

1. ISSUES

None

2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environment Effects, unreferenced, prepared by Planning Lab, dated 9 December 2019.
- Revised Architectural Plans, referenced Mar1904-Issue B, prepared by Squillace, dated 23 June 2020.
- Survey, referenced 190704, prepared by Benchmark Surveys, dated 09/07/2019.
- Stormwater Management Plan, referenced 19868-Issue 0, prepared by CK Engineering Services, dated October 2019.
- Geotechnical Report, referenced E24344.G03, prepared by EI Australia, dated 18 October 2019.
- Traffic Report, referenced 19.440r01v01, prepared by Traffix, dated 12 December 2019.
- RMS Referral Response, dated 28 January 2020.
- Structural Report, referenced 200442.R0, prepared by Australian Consulting Engineers. dated 30 June 2020.
- Structural Drawings, referenced 200442-Rev A, prepared by Australian Consulting Engineers. dated 30 June 2020.

3. ASSESSMENT

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

a. Site Drainage comments

The submitted concept stormwater plans are considered satisfactory in principle except that the underground structure must be tanked and no subsoil drainage shall be discharged into the Council's kerb and gutter. It is advised that this requirement will be conditioned accordingly.

Conditions will also be imposed for the installation of stormwater treatment system to satisfy the water quality targets that are stipulated in Chapter E2.2.3 of Council's DCP.

Council's Technical Services Division is satisfied that adequate provision could be made for the disposal of stormwater from the land it is proposed to develop and complies with the objectives of Chapter E2 "Stormwater and Flood Risk Management" DCP subject to the imposition of suitable conditions.

b. Flooding & Overland Flow comments

Council's Drainage Engineer has determined that the development proposal is generally satisfactory, subject to the following condition:

Flood Protection

The Construction Certificate plans and specifications, required by clause 139 of the Regulation, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL) detailing:

a. A permanent flood risk management plan shall be installed in the kitchen or other area frequented by the occupants.

c. Impacts on Council Infrastructure comments

As part of this application, the applicant is required to carry out the reconstruction of the existing paver tiles footpath for the full frontage of the site in Oxford Street to Council's Specification which will be conditioned accordingly.

Besides, the applicant is required to create a Positive Covenant for the proposed awning over the Council's property which will be conditioned accordingly.

d. Traffic comments

Council's Traffic Engineer has determined that the development proposal is generally satisfactory, subject to conditions. A copy of the Traffic referral response is contained in HPE Content Manager. (Trim # 20/59157).

Attachment to report 20231070 (Title Technical Services Referral)

2 of 10

e. Vehicle Access & Accommodation comments

Not relevant

f. Geotechnical, Hydrogeological and/or Structural comments

A Geotechnical Report by EI Australia, Ref: 24344.G03, dated 18 October 2019, has been submitted in support of the application. The proposal involves excavation with a maximum depth of about 3.2 metres below the existing ground levels. Locally deeper excavations may be required for footings, lift shaft and services trenches.

The report identified that the subsurface conditions as:

- a) Fill comprising silty sand to a depth of 1.8m
- b) Depth of natural sand with various density from a depth beneath the fill to 4.84m.
- c) Sandstone bedrock was encountered beneath the natural sand.
- d) Groundwater was not encountered during the field.

The report made comments and recommendations on the following:

- Shoring and support,
- Vibration Monitoring,
- Excavation method,
- Further Geotechnical input.

In addition, the applicant has submitted construction methodology report. The consulting engineer has provided design strategy to safeguard the neighbouring properties from damages as a result of excavation. It is further noted that the engineer has concluded that all construction/excavation works can be safely executed without any adverse impacts caused to adjoining properties.

In light of the above, Council's Technical Services has no objections to the proposed excavation on technical grounds. Notwithstanding this, Council's Planning Officer is also to undertake an assessment of the proposed excavation against the relevant excavation objectives and controls prescribed under the LEP and DCP.

4. RECOMMENDATION

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

A. General Conditions

A.5 Approved Plans & Supporting documents

Reference	Description	Author/Drawn	Date(s)
200442.R0	Structural Report	Australian Consulting Engineers	18 Nov 2019
200442	Structural Drawings	Australian Consulting Engineers	
S0000-Rev A			30 June 2020
S0100-Rev A			30 June 2020
S0101-Rev A			30 June 2020

Attachment to report 20231070 (Title Technical Services Referral)

3 of 10

E24344.G03	Geotechnical Report	EI Australia	18 Oct 2019
19868	Stormwater	C.K Engineering Services	Oct 2019
Sheet 1 to 8-Issue 0	Management Plans		
19.440r01v02	Traffic & Parking	Traffix	12 Dec 2019
	Impact Assessment		

A.8 Ancillary Aspect of the Development (S80A(2) of the Act)

A.30 No Underpinning works

This development consent does <u>NOT</u> give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties.

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

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

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

C.5 Security Deposits

Property Damage Security Deposit (S138)	\$49,847	No	T115
Infrastructure Works bond (S138)	\$12,700	No	T113
Public Road and Footpath Infrastructure Inspection Fee (S138 Fee)	\$480	No	T45

C.13 Road and Public Domain Works

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

1. Road & Footpath Works

- a) The reconstruction of the existing full width footpath with Oxford Street pavers (PPX49-60 - 300x300 pavers by Pebblecrete P/L - pattern to match existing) for the full frontage of the site in Oxford Street to Council's Specification for Roadworks, Drainage and Miscellaneous Works. A design longitudinal surface profile (scale 1:100) and three cross sections (scale 1:50) across the frontage of the site must be submitted for assessment.
- b) The submission of detailed structural drawings and design certification prepared by a Chartered Structural Engineer for the construction of "New Awning" over the Council's property in accordance with the relevant Australian Standards as denoted in the revised architectural drawings, job no. DA-100-B, dated 23/06/20 and DA-201-A dated 26/11/19.

Attachment to report 20231070 (Title Technical Services Referral)

- c) Observe condition for the creation of positive covenant requirements.
- Reinstatement of damaged kerb and gutter and road pavement to match existing.
- e) The developer shall be responsible for carrying out all service investigations to allow a gravity connection.

2. Bonds

- a) A bond of \$12,700 will be used as security to ensure the satisfactory completion of the infrastructure works. The security or bank guarantee must be the original unconditional bank guarantee with no expiry date.
- b) Council may use all or part of the Infrastructure Bond as well as the Property Damage Security Deposit to meet the cost of removing or completing the works if they do not meet Council's requirements.
- c) The Deposit/Bond will not be released until Council has inspected the site and is satisfied that the Works have been completed in accordance with Council approved drawings and to Council requirements

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

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

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

Note: See condition K24 in *Section K. Advisings* of this Consent titled *Roads Act Application*. Standard Condition: C13 (Autotext CC13)

C.25 Soil and Water Management Plan – Submissions & Approval C.36 Professional Engineering Details

C.37 Engineer Certification

This development consent does <u>NOT</u> give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties.

Any structural design is not to incorporate any underpinning works which encroaches outside the boundaries of the subject property. Engineer certification to this effect shall be submitted to the Certifying Authority prior to issue of any Construction Certificate.

C.40 Geotechnical and Hydrogeological Design, Certification & Monitoring

C.45 Car and Commercial Parking Details

The *Construction Certificate* plans and specifications required by clause 139 of the Regulation, must include detailed plans and specifications for all bicycle and motorcycle parking in compliance with AS2890.3:1993 *Parking Facilities - Bicycle*

Attachment to report 20231070 (Title Technical Services Referral)

Parking Facilities, AS/NZS 2890.1:2004: Parking Facilities - Off-Street Car Parking respectively.

The plans must satisfy the following requirement:

 a) Three (3) bicycles and one (1) motorcycle parking space be provided on-site for non-residential customers, as per Council's DCP 2015.

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

Standard Condition: C45 (Autotext: CC45)

C.51 Stormwater Management Plan

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

- a) General design in accordance with stormwater plans prepared by C.K Engineering Services, referenced 19868-Issue 0, dated October 2019 except with the following amendments:
 - All below ground structures must be fully tanked and no subsoil drainage/seepage water to be discharged to the Council's kerb and gutter;
 - 2) Stormwater treatment is required for this development. In this regard, the installation of proprietary treatment system such as gross pollution trap is to be provided. The applicant must carry out a pollution modelling such as "MUSIC" and demonstrate that stormwater treatment system provided will achieve the water quality targets stipulated in Chapter E2.2.3 of Council's DCP;
 - 3) Provision of a below ground pump out system to collect surface runoff from the proposed driveway. The storage capacity and the pumpout system shall be designed to comply with Section 8.5.6 of AS3500.3 and in any case it shall be not less than 3m³. Full supporting calculations and details of the proposed pumpout system shall be clearly depicted on the revised stormwater plans.
- b) Compliance the objectives and performance requirements of the BCA;
- General compliance with the Council's Woollahra DCP 2015 Chapter E2 Stormwater and Flood Risk Management.

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

Layout plan

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

- a) All pipe layouts, dimensions, grades, lengths and material specification,
- b) Location of proposed rainwater tanks,
- c) All invert levels reduced to Australian Height Datum (AHD),
- d) Location and dimensions of all drainage pits,

Attachment to report 20231070 (Title Technical Services Referral)

- e) Point and method of connection to Councils drainage infrastructure, and
- f) Overland flow paths over impervious areas.

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

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

C.54 Flood Protection

The Construction Certificate plans and specifications, required by clause 139 of the *Regulation*, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL) detailing:

a) A permanent flood risk management plan shall be installed in the kitchen or other area frequented by the occupants.

Flood protection is to comply with Woollahra DCP 2015, Part E General Controls for All Development, Chapter E2 –Stormwater and Flood Risk Management.

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

Standard Condition C.54 (autotext CC54)

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

D.4 Dilapidation Reports for existing buildings

Dilapidation surveys and dilapidation reports shall be conducted and prepared by a *professional engineer* (structural) for all buildings and/or structures that are located within the likely "zone of influence" of any excavation, dewatering and/or construction induced vibration as determined applicable by a Structural Engineer.

These properties to be assessed by the Structural Engineer must include (but is not limited to):

No. 394-396 Oxford Street No. 400 Oxford Street

All required dilapidation reports must be completed and submitted to the *Certifying Authority* with a copy submitted to Council with the *Notice of Commencement* prior to the commencement of any *development work*.

Where excavation of the site will extend below the level of any immediately adjoining building the *principal contractor* or *owner builder* must give the adjoining building owner(s) a copy of the dilapidation report for their building(s) and a copy of the *notice*

Attachment to report 20231070 (Title Technical Services Referral)

of commencement required by S81A(2) of the Act not less than two (2) days prior to the commencement of any work.

Note: The reasons for this condition are:

- . To provide a record of the condition of buildings prior to development being carried out
- To encourage developers and its contractors to use construction techniques that will minimise the risk of damage to buildings on neighbouring land
 Also refer to the Dilapidation Report Advising for more information regarding this condition

 Standard Condition: D4 (Autotext DD4)
- D.6 Adjoining buildings founded on loose foundation materials
- D.9 Construction Management Plan
- D.10 Works (Construction) Zone Approval & Implementation
- D.14 Erosion and Sediment Controls Installation
- E. Conditions which must be satisfied during any development work
- E.3 Compliance with Construction Management Plan
- E.7 Maintenance of Vehicular and Pedestrian Safety and Access
- E.11 Maintenance of Environmental Controls
- E.12 Compliance with Geotechnical/Hydrogeological Monitoring Program
- E.13 Support of Adjoining Land Owners
- E.15 Erosion and Sediment Controls Maintenance
- E.17 Disposal of Site Water during Construction
- E.20 Check Surveys boundary location, building location, building height, stormwater drainage system and flood protection measures relative to AHD
- E.24 Compliance with Council's Specification for Roadworks, Drainage and Miscellaneous Works, Road Works and, Work within the Road and Footway
- F. Conditions which must be satisfied prior to any occupation or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)
- F.7 Commissioning and Certification of Systems and Works
- F.9 Commissioning and Certification of Public Infrastructure Works
- F.23 Covenant for Private Works on Council Property

Prior to issue of any Occupation Certificate and to ensure the encroaching structures on Council public road reserve accord with Council's "Policy for Managing Encroachments on Council Road Reserves", the person with the benefit of this consent, being the owner of No. 398 Oxford Street, Paddington, must do the following:

- a) lodge an "Application to Formalise the Encroachment on Council land" with the Council in consultation with Council's Property & Projects Department AND;
- b) enter into a legal agreement with the Council for the "Proposed Awning" as depicted in the revised architectural drawings, job no. DA-100-B, dated 23/06/20 and DA-201-A dated 26/11/19.

The owner must enter into a legal agreement as follows:

Attachment to report 20231070 (Title Technical Services Referral)

- The registration on the title to the subject property to which this consent relates of a Public Positive Covenant pursuant to S88E of the Conveyancing Act 1919 burdening the subject property and benefiting the Council providing for the indemnification of Council from any claims or actions, and the ongoing maintenance of any private structures encroaching on the public road reserve for which consent has been given, such as steps, retaining walls, access ways, overhang, balconies, awnings, signs and the like. This process has an estimated timeframe of 2 months.
- The wording of the Public Positive Covenant must be in accordance with Council's standard format and the Instrument must be registered at the Land Property Information Office prior to issue of any Occupation Certificate.
- The property owner must pay Council monetary compensation for the Public Positive Covenant, as determined by the Council, and must also pay all of Council's associated costs.

Note: The required wording of the Instrument can be downloaded from Council's web site www.woollahra.nsw.gov.au. The PCA must supply a copy of the WAE Plans to Council together with the *Occupation Certificate*.

Note: No *Occupation Certificate* must be issued until this condition has been satisfied. Standard Condition: H19 (Autotext HH19)

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

Nil

H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (S109C (1) (c))

H.13 Road Works (including footpaths)

H.20 Works-As-Executed Certification of Stormwater Systems

On completion of construction work, stormwater drainage works are to be certified by a professional engineer with works-as-executed drawings supplied to the Principal Certifying Authority detailing:

- a) compliance with conditions of development consent relating to stormwater,
- b) the structural adequacy of the stormwater system,
- c) that the works have been constructed in accordance with the approved design,
- d) pipe invert levels and surface levels to Australian Height Datum, and
- e) contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

Note: The Final Occupation Certificate must not be issued until this condition has been satisfied. Standard Condition: H20 (Autotext HH20)

Attachment to report 20231070 (Title Technical Services Referral)

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

I.21 Provision of Off-Street Parking

The owner and occupier, in compliance with AS2890.3:1993 Parking Facilities - Bicycle Parking Facilities, and AS/NZS 2890.1:2004: Parking Facilities - Off-Street Car Parking, must maintain unimpeded public access to off-street parking as follows:

Use	Number of spaces
Bicycle parking (customers)	3
Motorcycle parking	1
(customers)	1

This condition has been imposed to ensure adequate on-site parking is maintained. Standard Condition: 121

J. Miscellaneous Conditions

Nil

K. Advisings

K.23 Dilapidation report

Memorandum - Traffic

Date 3 April, 2020

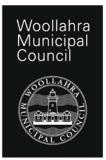
File No. Development Applications: 496/2019/1

To Mr M Moratelli

CC

From Ms E Fang

Address 398 OXFORD STREET PADDINGTON 2021



ABN 32 218 483 245

Redleaf Council Chambers
536 New South Head Road
Double Bay NSW 2028
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Telephone (02) 9391 7000 Facsimile (02) 9391 7044

I refer to the memo from the Planning Department dated 18 December 2019 requesting comments in relation to the above.

Traffic Engineering has reviewed:

- 1. Statement of Environmental Effects (SEE) by Planning Lab dated 9 December 2019;
- Traffic and Parking Impact Assessment by Traffix, reference 19.440r01v02, dated 12 December 2019:
- 3. Plan of management by Planning Lab dated 4 December 2019;
- 4. Architectural Plans by Squillace Architects, reference MAR1904, dated 26 November 2019.

DA DRAWING LIST

		CURRENT			
NUMBER	NAME	REVISION	DRAWN	CHECKED	ISSUED
DA-001	COVER SHEET, DRAWING LIST, SITE LOCATION PLAN	Α	FO	SC	26.11.19
DA-010	SITE PLAN + SITE ANALYSIS PLAN	Α	FO	SC	26.11.19
DA-020	EXISTING + DEMOLITION PLAN	A	FO	SC	26.11.19
DA-100	GROUND FLOOR PLAN	Α	FO	SC	26.11.19
DA-101	LEVEL 1 FLOOR PLAN	A	FO	SC	26.11.19
DA-102	ROOF TERRACE FLOOR PLAN	A	FO	SC	26.11.19
DA-103	BASEMENT LEVEL FLOOR PLAN	Α	FO	SC	26.11.19
DA-104	ROOF PLAN	A	FO	SC	26.11.19
DA-200	MATERIAL / FINISHES ELEVATIONS - SHEET 1	Α	FO	SC	26.11.19
DA-201	MATERIAL / FINISHES ELEVATIONS - SHEET 2	A	FO	SC	26.11.19
DA-202	MATERIAL / FINISHES ELEVATIONS - SHEET 3	A	FO	SC	26.11.19
DA-203	MATERIAL / FINISHES ELEVATIONS - SHEET 4	A	FO	SC	26.11.19
DA-300	SECTION SHEET 1	Α	FO	SC	26.11.19
DA-301	SECTION SHEET 2	A	FO	SC	26.11.19
DA-310	STREETSCAPE	A	FO	SC	26.11.19
DA-400	SHADOW DIAGRAMS WINTER SOLSTICE	A	FO	SC	26.11.19
DA-510	FSR + GFA CALCULATIONS	A	FO	SC	26.11.19
DA-520	SITE COVERAGE AND EXCAVATION PLAN	A	FO	SC	26.11.19
DA-530	MECHANICAL VENTILATION AND SERVICES PLAN	A	FO	SC	26.11.19
DA-700	PHOTOMONTAGE	A	FO	SC	26.11.19

Proposal

Demolition of the existing building and replaced with a new two storey building (infill development) with a basement level and roof top terrace to be used as a restaurant with trading hours of 8am to12am Mon-Sat & 8am -10pm Sunday with the roof terrace to close at 10pm

COMMENTS

Parking Provision

The parking provision for the proposed development has been assessed in accordance with Council's DCP 2015 Chapter C1 Paddington Heritage Conservation Area and Chapter E1 Parking and Access:

Table 1: Car Parking Provision

Non-residential Uses	Quantity	DCP Minimum Requirement per 100m ²	DCP Minimum Required Parking
Food and drink premises	182.5 m ²	Minimum 7 spaces with 0.7 multiplier for Oxford Street B4 Zone	8.9 (9)
Proposed			0
Shortfall			9

It is evident from Table 1 that non-provision of on-site parking would result in a shortfall of nine (9) car parking spaces, which does not comply with Council's DCP minimum parking requirement for non-residential uses. However, the subject site is located in Paddington Heritage Conservation Area (HCA), where onsite parking areas are not a mandatory requirement and will only be permitted or may only be required subject to certain circumstances, as per DCP control strategy for Paddington HCA.

It is understood that the provision of an on-site parking area may not be feasible for the following reasons:

- 1) The only access of the subject site to a public road is through the frontage on Oxford Street, where no further vehicle crossings are permitted as the street frontages form part of the street front zone:
- 2) The Oxford Street frontage accommodates a bus lane operating from 4pm to 7pm, as well as a pedestrian crossing on the edge of the subject site, therefore the provision of vehicle entries and exits may have a detrimental impact on both pedestrian and vehicle traffic safety and movements;
- The provision of a driveway that complies with AS/NZS 2890.1:2004 may have an adverse impact on the character of the streetscape.

It is also understood that the subject site is in close proximity to public transport services, as well as timed parking with resident parking schemes covering the majority of local streets, which could provide support and convenience for customers and staff.

As such, considering the physical constraints to provide on-site parking that conforms to Council's DCP and AS/NZS 2890.1:2004, the non-provision of off-street car parking spaces is deemed acceptable.

Table 2: Bicycle and Motorbike Parking Provision

BICYCLE			
	Quantity	DCP Minimum Requirement	DCP Minimum Required Parking
Restaurant employees	182.5m ²	1 per 250m ² GFA	0.73 (1)
Restaurant customers	182.5m ²	2+1 per 100m ² GFA over 100m ² GFA	2.8 (3)
Total			4
MOTORBIKE			
	Quantity	DCP Minimum	DCP
	Quantity	Requirement	Minimum Required Parking
Car Spaces	9	1 per 10 car spaces	0.9 (1)
Total			1

The development proposes two (2) bicycle parking spaces in the basement, which are only accessible to employees, resulting in a shortfall of three (3) spaces than the minimum required bicycle parking for customers. Furthermore, there is no provision of motorcycle pakring spaces, which does not comply with Council's DCP requirement.

Traffic Generation

Traffic generation from the proposed development has been calculated in accordance with RMS Guide to Traffic Generating Developments 2002, and RMS Guide to Traffic Generating Developments Updated traffic surveys TDT 2013/04a.

Existing Development

Retail (Specialty Shops)

- Weekday peak hour vehicle trips: $129\text{m}^2 \times 0.75 \times 4.6\text{-}10.7 \text{ per } 100\text{m}^2\text{GLFA} = 4.5\text{-}10.4 \text{ trips}$
- Daily vehicle trips: $129\text{m}^2 \times 0.75 \times 55.5 \text{ per } 100\text{m}^2 \text{ GLFA} = 53.7 \text{ trips}$

Proposed Development

Restaurant

- Weekday peak hour vehicle trips: $182.5 \text{m}^2 \text{ x 5 per } 100 \text{m}^2 \text{ GFA} = 9.1 \text{ trips}$
- Daily vehicle trips: $182.5 \text{m}^2 \times 60 \text{ per } 100 \text{m}^2 \text{ GFA} = 109.5 \text{ trips}$

Net Increase

- Weekday peak hour vehicle trips = -1.3-4.6 trips
- Daily vehicle trips = 55.8 trips

Based on the above calculation, the proposed development will not generate unacceptable adverse impacts on the surrounding road network in terms of traffic flow efficiency and road safety considerations.

Loading Bay

For the proposed development, a minimum of one (1) loading bay is generally required. However, it is understood that the subject site is located in Paddington HCA, where loading facilities are not a mandatory requirement.

Furthermore, Section E1.14.1 of Council's DCP specifies that less loading bays may be required depending on the availability of existing on-street loading zone located directly in front of, or at the side of, the premises. Considering there are two loading zones in proximity to the subject site, respectively 40 metres and 80 metres away, both operating 7 days between 8am to 10.30am, the proposal to provide no loading bays and utilise the existing on-street loading zones is deemed acceptable.

RECOMMENDATION

Should this development be approved, it is recommended that the following matters be addressed by the conditions of consent:

A. General Conditions

A.1 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)
19.440r01v02	Traffic and Parking Impact Assessment	Traffix	12 December 2019

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*.)

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

C. 45 Car and Commercial Parking Details

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

The plans must satisfy the following requirement(s):

a) Three (3) bicycle and one (1) motorcycle parking space be provided on-site for non-residential customers, as per Council's DCP 2015.

The *Certifying Authority* has no discretion to reduce or increase the number or area of car parking or commercial parking spaces required to be provided and maintained by this consent. Standard Condition: C45 (Autotext: CC45)

- D. Conditions which must be satisfied prior to the commencement of any development work
- **D.9 Construction Management Plan**
- D.10 Works (Construction) Zone Approval & Implementation
- E. Conditions which must be satisfied during any development work
- E.3 Compliance with Construction Management Plan
- I. Conditions which must be satisfied during the ongoing use of the development
- I.21 Provision of Off-Street Parking

The owner and occupier, in compliance with AS2890.3:1993 Parking Facilities - Bicycle Parking Facilities, and AS/NZS 2890.1:2004: Parking Facilities - Off-Street Car Parking, must maintain unimpeded public access to off-street parking as follows:

Use	Number of spaces
Bicycle parking (customers)	3
Motorcycle parking	1
(customers)	1

This condition has been imposed to ensure adequate on-site parking is maintained. ${\tt Standard\ Condition:\ 121}$



7 January 2020

REFERRAL RESPONSE - HERITAGE

FILE NO: Development Applications/ 496/2019/1

ADDRESS: 398 Oxford Street PADDINGTON 2021

PROPOSAL: Demolition of the existing building and replaced with a new two

storey building (infill development) with a basement level and roof top terrace to be used as a restaurant with trading hours of 8am to12am Mon-Sat & 8am -10pm Sunday with the roof terrace to close

at 10pm

FROM: Shona Lindsay - Heritage Officer

TO: Mr M Moratelli

DOCUMENTATION

The following documentation provided by the applicant has been examined for this referral response:

- Drawing set by Squillace, dated 26 November 2019, and numbered DA 001-700
- Heritage Impact Statement by Archnex Designs, dated November 2019
- Statement of Environmental Effects by Planning Lab, dated 9 December 2019
- Survey plan by Benchmark Surveys, ref 190704, dated 9 July 2019

RESEARCH

The following research was undertaken in the preparation of this assessment:

Review of the following documents and photographic evidence:

- Council's property system, to establish dates of earlier building and development applications for the subject and surrounding properties.
- Pre-DA minutes (Pre DA 32/2019/1)
- Council's photography files relevant to the immediate area
- Council's heritage inventory sheets
- Council's aerial photography and mapping database
- Google Maps street view

STATUTORY AND POLICY DOCUMENTS

The following statutory and policy documents are relevant to the application:

- Woollahra LEP 2014
- Woollahra DCP 2015

ASSESSMENT OF HERITAGE IMPACT

Compliance with the relevant legislative framework and planning controls

SIGNIFICANCE OF SUBJECT PROPERTY TO THE CONSERVATION AREA



The existing building is located within the Paddington Heritage Conservation Area, and is considered a neutral building.

The existing building is a single storey shop. Historical research has found that the building was constructed in c.1940s-1970s. The original DA could not be located but the current shop is evident in a 1970s photo. The current shop replaced an Inter War shop with art deco influences that was originally constructed in 1934. The rear wall is the only evidence of original fabric which appears to date to the early twentieth century. Therefore, the current building does not contribute to the Paddington HCA and is considered a neutral building.



1970s photo of Oxford Street. (Source: Woollahra Libraries Local History Digital Archive)

Woollahra LEP 2014 Part 5.10 Heritage Conservation

The subject site is not a heritage item in Woollahra Local Environment Plan 2014 'the LEP' and is within a heritage conservation area.

Significance of items in the vicinity

There are no listed heritage items in close proximity that would be adversely affected by the proposal.

Woollahra DCP 2015

The subject site is within the Paddington Heritage Conservation Area, and is considered a neutral building.

Paddington HCA DCP



Clause 1.2.3 Character elements

- The proposal retains the property as a commercial site and establishes a cohesive relationship between the new development and the neighbouring contributory shops.
- The contemporary design responds appropriately to the relevant aspects of Oxford Street. It
 takes ques from the arched fenestration along Oxford Street and uses materials that offer a
 contemporary approach to traditional designs which is supported.
- The proposal responds to the variable building heights between buildings.

Clause 1.2.4 Desired future character

 The proposal is consistent with Paddington's low scale development and the desired future character to retain the diversity of building types, including commercial buildings.

Clause 1.2.5 Contemporary design in Paddington

The proposed design takes ques from the arched fenestration along Oxford Street and uses
materials that offer a contemporary approach to traditional designs which is supported.

Clause 1.3.1 Single storey buildings

Objective O1

Control C1

The proposal seeks to demolish the single storey shop and replace it with new 2 storey
commercial/retail building. This is supported on merit in this instance as the current shop is
a neutral building along Oxford Street and the new building is sympathetic to the
streetscape.

Clause 1.3.8 Commercial and industrial buildings including shops Objectives O1, O3

Controls C1, C4, C9, C13

- The proposed design takes ques from the arched fenestration along Oxford Street and uses materials that offer a contemporary approach to traditional designs which is supported.
- The proposed awning height and shape is complementary to the existing streetscape character.
- The proposed use of a stallboard and horizontal lines for the glazing on the ground floor of the Oxford Street elevation provides a contemporary interpretation of a traditional shopfront, which is supported.

Commercial development in Oxford Street Objectives O1, O2, O4, O5, O6, O9, O10, O13 Controls C1, C3, C4, C5, C8, C10, C11, C12, C15, C21

- The proposal retains and enhances the desired future character of Oxford Street including the established urban character and responds to the existing built form.
- The proposed design takes ques from the arched fenestration along Oxford Street and uses materials that offer a contemporary approach to traditional designs which is supported.
- The proposed awning height and shape is complementary to the existing streetscape character.
- The proposed use of a stallboard and horizontal lines for the glazing on the ground floor of the Oxford Street elevation provides a contemporary interpretation of a traditional shopfront, which is supported.
- The proposal responds to the variable building heights between buildings.
- · The use of painted brick is supported.
- The use of dark framed, vertically proportioned windows offer a contemporary interpretation and are supported.



• A light coloured painted brick of the front façade is supported.

Clause 1.4.4 Roofs and roof forms

Objective O1, O3

Controls C6, C8

The proposed use of a flat roof over a roof terrace is supported in this instance as it will not
be visible from the public domain. The use of sky windows on the front section also
provides a separation between the roof terrace and the front elevation and allows light to the
lower levels.

Clause 1.4.5 Building height, bulk, form and scale

Objectives O1, O3, O4,

Controls C1, C3

• The proposal responds to the variable building heights between buildings along Oxford Street and offers an appropriate height between the neighbouring contributory buildings.

Clause 1.5.3 Windows, doors, shutters and security

Objective O3

Control C4

- The use of dark framed, vertically proportioned windows offer a contemporary interpretation and are supported.
- The proposed use of a stallboard and horizontal lines for the glazing on the ground floor of the Oxford Street elevation provides a contemporary interpretation of a traditional shopfront, which is supported.

Clause 1.5.8 Materials, finishes and details

Objectives O2

Controls C4

- The use of painted brick is supported.
- The use of dark framed, vertically proportioned windows offer a contemporary interpretation and are supported.

Clause 1.5.9 Exterior colours

Objective O1

Controls C1, C3, C4

The proposed colour scheme complies.

CONCLUSION

Woollahra LEP, 2014 Part 5.10 Clauses 1(a), 1(b), 4

- Clause 1(a) The development does conserve the heritage of Woollahra.
- Clause 1(b) The impact upon the heritage significance of the conservation area will be neutral.
- Clause 4 This referral constitutes an assessment under this clause.

RECOMMENDATION

The proposal is generally acceptable as it complies with the relevant statutory and policy documents and would have a satisfactory impact.



Consent, no heritage conditions are required.

Shona Lindsay - Heritage Officer

Completion Date: 24/11/2020

REFERRAL RESPONSE - ENVIRONMENTAL HEALTH

FILE NO: Development Applications/ 496/2019/1
ADDRESS: 398 Oxford Street PADDINGTON 2021

PROPOSAL: Demolition of the existing building, site remediation and replacement

with a new two storey building (infill development) with a basement level and roof top terrace to be used as a restaurant with trading hours of 8am to12am Mon-Sat & 8am -10pm Sunday with the roof terrace

to close at 10pm

FROM: Louie Salvatore TO: Mr M Moratelli

1. ISSUES

• Discharge of Kitchen Effluent Exhaust Air

2. DOCUMENTATION

I refer to the following documents received for this report:

- Architectural Plans: prepared by Squillace Architects, Project No. MAR1904, Revision C dated 11 November 2020.
- Acoustic Report: prepared by The Acoustic Group, Document Reference No. 50.5387.R1B:MCC dated 13 November 2020.
- Acoustic Report: Response to Council's Comments prepared by The Acoustic Group. Document Reference No. 50.5387.L2:MCC dated 18 March 2020.
- Email by Ari Mirvis, Arim Services Consulting P/L (Mechanical Services Design) dated 18 March 2020.
- Additional Information (The Acoustic Group) Mechanical Plant Email from Federica Stano, Project Coordinator, Squillace dated 11 August 2020.

3. RESEARCH

The following research was undertaken in the preparation of this assessment:

• A site inspection was carried out on the following date:

4. SUMMARY OF PROPOSAL

The proposal is for the demolition of the existing building on site and the construction of a two-storey building with roof terrace and basement to operate as a restaurant with an on-premises (PSA) liquor licence. The primary purpose of the premises is to be as

a restaurant; however, the liquor licence will allow for the consumption of alcohol without food. The restaurant is proposed to operate in accordance with Council's extended trading hours. The restaurant's proposed hours of operation are:

- Monday to Saturday 8am to 12am (Midnight)
- Sundays 8am to 10pm
- Roof terrace 8am to 10pm, 7 days.

The proposed development includes:

- The construction of a two-storey building with 182.5m2 total gross floor area, equal to an FSR of 1.4:1.
- Basement level to be for the purposes of storage and staff amenities.
- Ground Level to contain the kitchen and a coffee bar along with seating for 49 patrons.
- Level 1 to contain a bar and seating for 46 patrons.
- Roof top deck to have the capacity for up to 47 patrons which will include standing patrons.
- Total maximum patron capacity of 142.
- 2 non-illuminated awning fascia signs, 1 non-illuminated wall sign and 1 internally illuminated under awning sign with the sign text to be the eventual tenants trading name.

5. ASSESSMENT

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

a) Acoustics

- A. Reference is made to **Environmental Health Response of 26 August 2020** in relation to the following documents:
- 1. Acoustic Report: Response to Council's Comments prepared by The Acoustic Group. Document Reference No. 50.5387.L2:MCC dated 18 March 2020.
- 2. Additional Information (The Acoustic Group) Mechanical Plant Email from Federica Stano, Project Coordinator, Squillace dated 11 August 2020.

In summary Environmental Health commented that, "Environmental Health Section acknowledges that in order to carry out a quantitative assessment of mechanical equipment, a complete specification of equipment is required. At this stage of the development, appropriate detail for mechanical plant is not typically available. Environmental Health is supportive of the proposed noise attenuation strategies by The Acoustic Group (Christopher Chan) detailed in the email from Federica Stano, Project Coordinator, Squillace dated 11 August 2020. However the question remains as to whether an alternate kitchen exhaust system is possible to meet the requirements of AS1668.2-2012".

B. Environmental Health Review of Acoustic Report: prepared by The Acoustic Group, Document Reference No. 50.5387.R1B:MCC dated 13 November 2020.

Having reviewed the latest acoustic report (13 November 2020) by The Acoustic Group, Environmental Health is supportive of the proposed noise attenuation strategies to satisfy the LA10 Noise objective for Licensed Premises (LAB) of background + 5dB for music/patron noise & Council's noise objective for mechanical plant of background + 0dBA during the evening and night-time periods. All noise mitigation strategies shall be fully implemented prior to occupation and for the ongoing use of the premises.

Music & Patron Noise Controls

- The north-eastern side and a portion of the south-eastern side of the roof deck is to have a solid balustrade to a height of 1.8 metres above the deck level.
- ii. The provision of background music to the roof deck is not exceed a spatial average L10 level of 70 dB(A).
- iii. A tamper proof noise limiter shall be installed to amplified music equipment (background music) to ensure that the spatial average of L10 of 70 dB(A) is not exceeded to the roof deck area.
- iv. The internal area of the roof deck shall strictly only operate from 8AM to 10PM Mondays to Sundays.

Mechanical Plant Noise Controls

- i. The north-eastern, south-eastern and north-western sides of the plant deck are to have a 2 metre high acoustic barrier to provide shielding of mechanical plant noise to the nearest residential receivers. The barrier is to have a solid construction of a metal frame sheeted in 9.8mm thick Compressed Sheet II.
- ii. The ducts from the storeroom exhaust fan, bin/change exhaust fan and toilet exhaust fan to the discharges on the roof of the building are to be lined with an acoustic absorptive material with a minimum thickness of 25mm and an NRC of not less than 0.85.
- iii. The air conditioning condenser units are to have an enclosure such that the effective sound power level of each air conditioning unit does not exceed 78 dB(A).

C. Environmental Health Concerns – Discharge of Kitchen Effluent Exhaust Air

The question remains as to whether an alternate kitchen exhaust system is possible to meet the requirements of AS1668.2-2012. Environmental Health has not reviewed any additional information provided by the proponent that addresses the issue of the mechanical plant (kitchen & other exhaust air) compliance with AS1668.2-2012. This is not a question about noise, but the effects of effluent air discharges adversely impacting upon nearby residential receivers.

Attachment to report 20231070 (Title Health Referral)

3

Environmental Health Section acknowledges that complete specification & design of mechanical plant equipment (kitchen exhaust system) is not available at this stage of the development. Council's Planning section should strongly consider if an alternate kitchen exhaust system is at all possible prior to the granting of development consent. Council's Planning section is reminded of the email by *Ari Mirvis, Arim Services Consulting P/L (Mechanical Services Design)* dated 18 March 2020 which stated: "Due to spacial constraints of existing building footprint - it is unlikely that AS1668.2-2012 ventilation standard requirements can be met in a deemed to satisfy manner)".

Recommendation

On the information provided, Environmental Health Section cannot determine where the point of discharge for any kitchen exhaust ventilation system(s) can be accommodated on the roof top deck area to be in compliance with section 3.10.3 of AS1668.2 – 2012. It should also be noted that for the purposes of determination of flow rates, multiple discharges located within a single 6m radius shall be treated as a single discharge under the standard. Therefore, Environmental Health once again recommends that:

Prior to consideration of any approvals, Council's Planning Section should confirm if an alternate kitchen exhaust system is at all possible (refer to email by Ari Mirvis, Arim Services Consulting P/L (Mechanical Services Design) dated 18 March 2020.

6. RECOMMENDATION

Council's Environmental Health Officer has determined that insufficient information has been submitted to enable an assessment of the proposal. The following information is required before any further assessment of the application can be undertaken:

Kitchen Exhaust Ventilation Requirements – Compliance with AS1668.2-2012.

The question remains as to whether an alternate kitchen exhaust system is possible to meet the requirements of AS1668.2-2012. Environmental Health has not reviewed any additional information provided by the proponent that addresses the issue of the mechanical plant (kitchen & other exhaust air) compliance with AS1668.2-2012. **This is not a question about noise**, but the effects of effluent air discharges adversely impacting upon nearby residential receivers.

Prior to consideration of any approvals, Council's Planning Section should confirm if an alternate kitchen exhaust system is at all possible (refer to email by Ari Mirvis, Arim Services Consulting P/L (Mechanical Services Design) dated 18 March 2020.

A. General Conditions

A.1 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)
50.5387.R1B:MC	Acoustic Report	The Acoustic Group	13 November
C			2020

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
- C. Conditions which must be satisfied prior to the issue of any construction certificate
- D. Conditions which must be satisfied prior to the commencement of any development work
- E. Conditions which must be satisfied during any development work
- 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)
- G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate

Nil.

Date: 24/11/2020

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

Nil.

- Conditions which must be satisfied during the ongoing use of the development
- J. Miscellaneous Conditions

Nil.

K. Advisings

Nil

Louie Salvatore Environmental Health Officer

Completion Date: 19 February 2020

REFERRAL RESPONSE – FIRE SAFETY

FILE NO: DA 496/2019/1

ADDRESS: 398 Oxford Street PADDINGTON 2021

PROPOSAL: Demolition of the existing building and replaced with a new two

storey building (infill development) with a basement level and roof top terrace to be used as a restaurant with trading hours of 8am to12am Mon-Sat & 8am -10pm Sunday with the roof terrace to close

at 10pm

FROM: Richard Smith - Fire Safety Officer

TO: Mr M Moratelli

1. ISSUES

• The proposal is for a new building so a section 94 upgrade for an existing building is not applicable in this situation. The building will need to comply with the BCA prior to the issuance of a construction certificate.

2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced construction of a 2 storey restaurant with roof terrace prepared by Giovanni Cirillo, dated 9 December 2019.
- Architectural Plans, referenced DA-001, DA-010, DA-020, DA-100, DA-101, DA-102, DA-103, DA-104, DA-200, DA-201, DA0202, DA-203, DA-300, DA-301, prepared by squillace, dated 26 November 2019,

3. RESEARCH

The following research was undertaken in the preparation of this assessment:

• A site inspection was carried out on the following date: 18 February 2020

4. LEGISLATION

A Building Code of Australia (BCA) assessment of this development application is required to satisfy the following statutory provisions of the *Environmental Planning & Assessment Regulation 2000*.

- ☐ Clause 94 'Consent authority may require buildings to be upgraded'
 - Compliance with the BCA if more than 50% of the volume has been changed in the last 3
 years
 - Fire safety to protect persons using the building and facilitate their egress from the building as well as restricting the spread of fire from the building to other buildings

5. BUILDING DESCRIPTION

Type of Construction: A

Class: 6 & 7b

Number of Storeys: 4

Rise in Storeys: 4

6. ASSESSMENT

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

7. RECOMMENDATION

Council's Fire Safety Officer has determined that the proposal is satisfactory, subject to the following conditions:

A. General Conditions

- B. Conditions which must be satisfied prior to the demolition of any building or construction
- C. Conditions which must be satisfied prior to the issue of any construction certificate
- D. Conditions which must be satisfied prior to the commencement of any development work

Attachment to report 20231070 (Title Fire Safety Referral)

Page 2 of 4

- E. Conditions which must be satisfied during any development work
- 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 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
- H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (s109C(1)(c))
- Conditions which must be satisfied during the ongoing use of the development
- I.1 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.

Attachment to report 20231070 (Title Fire Safety Referral)

Date: 19 February 2020

Standard Condition: I22

- J. Miscellaneous Conditions
- K. Advisings

Richard Smith
Fire Safety Officer

Max Moratelli

From: Dallas Kelly <kell1dal@police.nsw.gov.au>
Sent: Thursday, 25 June 2020 2:30 PM

To: Max Moratelli
Cc: Kim Preminger

Subject: DA2019/496/1 [DLM=For-Official-Use-Only]

Good afternoon,

Police have no objection DA 2019/496/1 – 398 Oxford Street Paddington.

Regards, Dallas Kelly



Sergeant Dallas Kelly | Licensing Supervisor | Licensing Unit |
Surry Hills Police Area Command | 151 – 241 Goulburn Street, Surry Hills
2010 | KELL1DAL@police.nsw.gov.au | 9265 4137

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Our Reference: SYD20/00043 Council Ref: DA496/2019/1

28 January 2020

Mr Gary James General Manager Woollahra Municipal Council PO Box 61 Double Bay NSW 1360

Attention: Max Moratelli

Dear Mr James.

CONSTRUCTION OF A BUILDING FOR USE AS A RESTAURANT 398 OXFORD STREET, PADDINGTON

Reference is made to Council's correspondence dated 18 December 2019, regarding the abovementioned application which was referred to Roads and Maritime Services (Roads and Maritime), now Transport for NSW (TfNSW), for concurrence in accordance with Section 138 of the *Roads Act, 1993*. On 1 December 2019, legislation came into effect to bring Roads and Maritime and TfNSW together as one organisation.

TfNSW has reviewed the submitted application and provides concurrence under Section 138 of the *Roads Act 1993* subject to the following conditions being included in any consent issued by Council:

- 1. All buildings and structures (other than pedestrian footpath awnings), together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited in height or depth), along the Oxford Street boundary.
- 2. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@rms.nsw.gov.au

A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.

The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2012/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Please send all documentation to development.sydney@rms.nsw.gov.au

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

4. The development kerbside frontage on Oxford Street is in close proximity to the eastbound bus lane enforcement camera. This camera must not be impacted or obstructed during construction.

Transport for NSW | 20-44 Ennis Road Milsons Point NSW 2061 Tel: 131 782 | Fax: 02 8588 4105 | rms.nsw.gov.au | ABN 18 804 239 602

- A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours
 of operation, access arrangements and traffic control should be submitted to Council for approval prior
 to the issue of a Construction Certificate.
- A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any
 works that may impact on traffic flows on Oxford Street during construction activities. A ROL can be
 obtained through https://myrta.com/oplinc2/pages/security/oplincLogin.jsf
- All construction and demolition vehicles are to access the site via Victoria Street as no works zone will be permitted on Oxford Street.

In addition to the above, TfNSW has the following comments for Council's consideration in the determination of the application:

- Council should ensure the design and construction of signage structures is in accordance with relevant Australian Standards.
- 2. Council should ensure that the proposed illumination levels are in accordance with relevant guidelines and standards
- 3. Signage displays shall not contain/use:
 - a. Flashing lights.
 - b. Animated display, moving parts or simulated movement.
 - c. A method of illumination that unreasonably distracts or dazzles.
 - d. Images that may imitate a prescribed traffic control device, for example red, amber or green circles, octagons or other shapes or patterns that may result in the advertisement being mistaken for a prescribed traffic control device.
 - e. Text providing driving instructions to drivers

If you have any further inquiries in relation to the subject application, please contact Kerry Ryan, Development Assessment Officer, on 8849 2008 or by email at Development.Sydney@rms.nsw.gov.au.

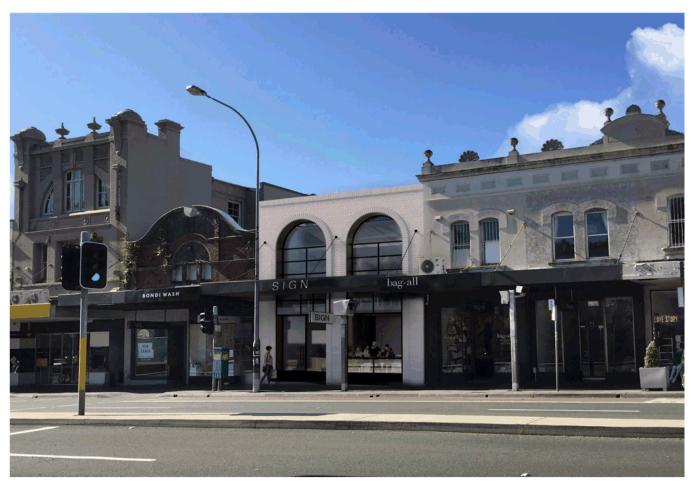
Yours sincerely

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Brendan Pegg A/Senior Manager Land Use Assessment South East Precinct, Greater Sydney Division

planning lab

CL 4.6 VARIATION OF DEVELOPMENT STANDARDS JUSTIFICATION 398 OXFORD STREET, PADDINGTON DA FOR CONSTRUCTION OF A TWO STOREY RESTAURANT WITH ROOF TERRACE



Photomontage: Squillace Architects

Report Prepared by: Giovanni Cirillo

Issue Date: 11 December 2019

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Clause 4.6 Variation Request Summary

Site

Lot 3 in DP22449 - 398 Oxford Street, Paddington

Variations sought

Clause 4.3 Height of Buildings

Clause 4.4 Floor Space Ratio

Extent of height variation

Maximum height of buildings permissible under Clause 4.3: 9.5m

Maximum height of building proposed: up to 10.5m (from RL 62.83 to RL 73.33)

Extent of FSR variation

Maximum FSR permissible under Clause 4.4: 1:1

FSR of building proposed: 1.4:1

Summary of non-compliance

The proposal exceeds the 9.5m height limit under Clause 4.3 of the Woollahra LEP 2014 by up to 1m at the highest point of exceedance.

The proposed building is two storeys and built to the site boundaries which is consistent with the surrounding character of development. As a result, the proposal exceeds the 1:1 floor space ratio (FSR) limit under Clause 4.4 of the Woollahra LEP 2014 by 0.4:1.

Introduction

This Clause 4.6 Variation of Development Standards Justification has been prepared by Planning Lab to accompany an application for the development of a 2-storey restaurant with a single Basement level and trafficable Roof Terrace at 398 Oxford Street, Paddington ('the site'). The Architectural drawings have been prepared by Squillace Architects and are included within this application. A description of the proposal is included within the attached Statement of Environmental Effects by Planning Lab.

The site has a steep downward slope south-west to north-east with the site's Oxford Street boundary being approximately 1.5m higher than the rear boundary. As a result of the slope, the maximum building height line of 9.5m above ground level varies considerably across the site. The proposed design includes a Roof Terrace in which part of the roof structure; a louvred roof pergola; the lift overrun; and, roof top plant equipment screening structure all partially exceed the 9.5m height limit to varying extents (figures 1 & 2). At its highest point, the proposed building reaches 10.5m above ground level at RL 73.33. Due to the site's location within the block, the existing surrounding patterns of development and the steep slope of the site, the proposed roof structure will not be visible from Oxford Street and will only be visible along a small portion of Victoria Street.

The site also exceeds the maximum FSR which is 1:1. The character of existing development along the Paddington section of Oxford Street generally that of commercial buildings between 2-3 storeys with the majority being 2 storeys. Buildings with a single frontage to Oxford Street are typically constructed boundary to boundary and likely have FSRs in excess of 1:1 as demonstrated in the attached Broad Context Study by Squillace Architects (small extract at figure 5). The proposal is consistent with this pattern of development and accordingly provides a 2-storey infill building. The proposal has minimised its gross floor area (GFA) through the use of voids but in providing an appropriate infill form has reached an FSR of 1.4:1.

To the extent that the proposed building height and bulk exceed the applicable controls under the Woollahra LEP 2014, the proposal creates a better planning outcome through an improved presentation to Oxford Street. When viewed from Oxford Street, the proposed design will be an outstanding contemporary infill building that complements the character of the streetscape and provides a height transition between the neighbouring sites (figure 3). Due to the design and location within the block, the additional height and bulk do not give rise to any shadow or privacy impacts nor do they result in view loss.

This Clause 4.6 Variation Request demonstrates that the proposed design will result in an improved planning outcome for the site and has no significant associated negative environmental impacts. In addition, the proposed height and FSR are consistent with the relevant objectives of the Woollahra LEP 2014.

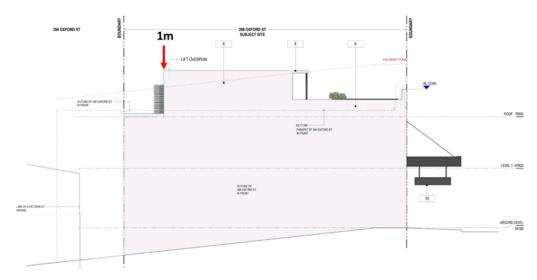


Figure 1 - Largest point of height exceedance on the Northern Elevation

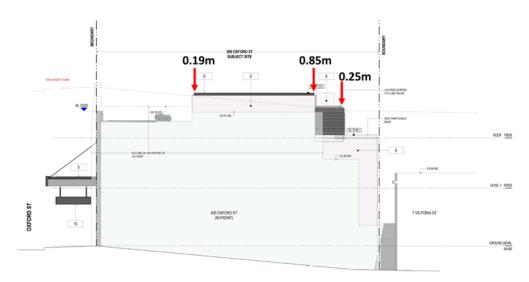


Figure 2 - Secondary points of height exceedance on the Southern Elevation

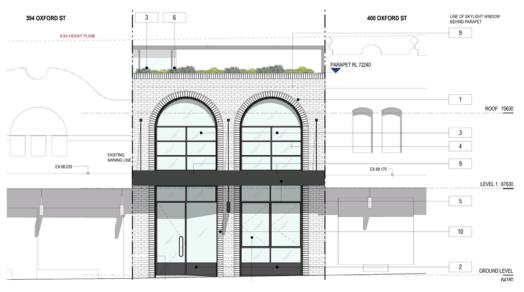


Figure 3 - Oxford Street Elevation demonstrating height transition

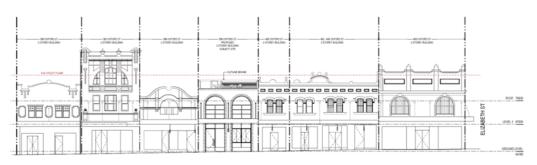


Figure 4 – The proposal within the streetscape of Oxford Street

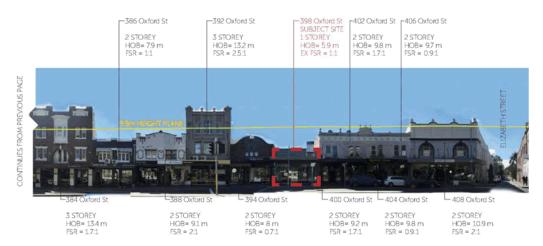


Figure 5 – Extract from the Broad Context Study

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Relevant Clause Extracts

The relevant clauses of the Woollahra LEP 2014 are Cl 4.3 - Height of Buildings, Cl 4.4 - Floor Space Ratio and Cl 4.6 - Exceptions to Development Standards. They are reproduced in full in the following pages.

4.3 Height of buildings

- (1) The objectives of this clause are as follows:
 - (a) to establish building heights that are consistent with the desired future character of the neighbourhood,
 - (b) to establish a transition in scale between zones to protect local amenity,
 - (c) to minimise the loss of solar access to existing buildings and open space,
 - (d) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,
 - (e) to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.
- (2A) Despite subclause (2) and clause 4.3A, the maximum height of a dwelling house, dual occupancy or semi-detached dwelling on land in Zone R3 Medium Density Residential is 9.5 metres.
- (2B) Despite subclause (2) and clause 4.3A, the maximum height of a building on a battle-axe lot on land in Zone R3 Medium Density Residential is 9.5 metres.

4.4 Floor space ratio

- (1) The objectives of this clause are as follows:
 - (a) for development in Zone R3 Medium Density Residential:
 - (i) to ensure the bulk and scale of new development is compatible with the desired future character of the area, and
 - (ii) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain, and
 - (iii) to ensure that development allows adequate provision on the land for deep soil planting and areas of private open space,
 - (b) for buildings in Zone B1 Neighbourhood Centre, Zone B2 Local Centre, and Zone B4 Mixed Use—to ensure that buildings are compatible with the desired future character of the area in terms of bulk and scale.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio

shown for the land on the Floor Space Ratio Map.

(2A) Despite subclause (2), the floor space ratio for a building on land shown on the Floor Space Ratio Map does not apply to a building that is a dwelling-house, dual occupancy or semi-detached dwelling.

4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include all of these zones.

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4.

Background

The subject site for the Development Application is 398 Oxford Street, Paddington which is described by NSW Land and Property Information as Lot 3 in DP22449 comprising a site area of 128.5m2. The existing structure on site is a single storey attached commercial building that dates back to the early 20th century. It has been substantially altered internally after being occupied by being a range of different tenants.

The site is located on the northern side of Oxford Street where the neighbouring buildings are between 2-3 storeys in height and have active street frontages (figure 5). Those with only a frontage to Oxford Street are typically built to the site boundaries while those with access from Victoria Street typically provide vehicle access to the site from that frontage which in some instances is enclosed and in others is hardstand parking. The neighbouring site at 394 Oxford Street has hardstand parking accessible from Victoria Street. The subject site does not have a frontage to Victoria Street and is located immediately in between two 2-storey buildings with extended parapets. To the rear of the site are a pair of attached residential dwellings known as 5 and 7 Victoria Street.

The proposal is for the demolition of the existing building on site and for the construction of a 2-storey restaurant building with a single basement level and a roof terrace. It reaches a maximum height of 10.5m above ground level at RL 73.33 and has a GFA of 182.5m2 which equates to an FSR of 1.4:1. The tallest areas of the building form are located within the roof plane which is setback from the parapet. The roof terrace structures are set back approximately 5.7m from the parapet which itself is well within the height limit reaching RL 72.24. As a result, the roof structures will not be visible to pedestrians on either side of Oxford Street. The structures will not be readily perceptible from Victoria Street due to its narrow width and the location of the dwellings at 5 and 7 Victoria Street. To the extent that the roof structures may be seen, it would be across the rear hardstand of 394 Oxford Street and only from a small section of Victoria Street. The structures which would be seen are lightweight and at a lower height than other nearby buildings.

Argument

The proposal has been designed as an infill response to the street wall of Oxford Street and to respect the character of the Paddington Heritage Conservation Area. The street wall height is 8.06m from Oxford Street which creates a height transition between 394 and 400 Oxford Street, resulting in a more consistent street frontage height along that portion of Oxford Street (figures 4-5). The proposed roof structures are setback from the parapet and will not be seen from Oxford Street, however, if they were, they would appear to be well under the 9.5m height limit due to the slope of the site and would still appear to be a similar or smaller scale than some nearby buildings.

The proposed building will be built to all boundaries which is consistent with the general pattern of development along Oxford Street (figure 6). As established above, a two-storey building is the most contextually appropriate form for the site. A two-storey building built to the boundaries will necessarily exceed an FSR of 1:1. The design includes a void on the upper level to minimise the extent of the exceedance and enhance the building's amenity but still reaches an FSR of 1.4:1. The building bulk and scale is appropriate to its location on Oxford Street.



Figure 6 - Existing block pattern indicating that typical FSR exceeds 1:1

Both the height and FSR variations are well founded and result in a building with a more appropriate appearance to Oxford Street. There is no overshadowing of the public domain or any private windows or open space as a result of the proposal due to its location within the block. The design of the roof terrace ensures that there will be no privacy impacts upon residential neighbours to the north-east. There is no potential for significant view loss as a result of the proposal. The proposed building height and bulk contribute to a superior planning outcome and is without any negative environmental impacts.

Justification

In response to the proposed height and FSR non-compliances, this Clause 4.6 application is provided to seek exemption from the development standards.

It is submitted that the variation is well-founded and is worthy of Council's approval. The following is an assessment of the proposed variation against the requirements of Cl 4.3 Maximum Building Heights, Cl 4.4 Floor Space Ratio and Clause 4.6 Exceptions to Development Standards.

The proposal seeks to provide sufficient building height and bulk so as to provide a suitable contemporary infill building with the street wall of Oxford Street. In doing so, it seeks to create floor space for the use of a restaurant which is a complementary land use to the precinct's primary use as a boutique shopping area and commercial high street as identified in C1.3.8 of the Woollahra DCP 2015. The proposed development will reflect the desired character of Paddington, contributes positively to the streetscape and will have no adverse impacts on the amenity of the area. In particular:

• The height variation is relatively minor being at most 1m.

- The height variation relates to an area within the roof plane which will not be seen from Oxford Street and will be visible only from a very small section of Victoria Street.
- The total building height remains less than that of many of the existing surrounding buildings.
- The FSR variation is relatively minor with the site exceeding its permitted maximum GFA by only 54m2. The additional FSR is to enable a land use that is complementary to the areas desired character.
- The building bulk is distributed so that it presents as two storeys to Oxford Street which is consistent with surrounding development.
- The FSR will be similar to, or in some cases less than, that of existing surrounding development.
- The variations support a positive built form and scale relationship with the neighbouring surrounding buildings.
- The increased height and bulk do not result in any adverse overshadowing of neighbouring developments or the public domain.
- The increased height and bulk do not result in any adverse privacy impacts.
- The contravention of the height and FSR controls by the proposal does not give rise to any environmental effect of sufficient significance that would cause concern, and it is considered that the environmental benefits of the proposal result in a better planning outcome and a building which is on balance an appropriate environmental outcome, to justify the contravention of the development standard.

Justification for Variation to Clause 4.3

Clause 4.3 dictates the height limit for the subject site providing a limit of 9.5m. The proposal exceeds this height limit by a variable amount across different areas of the roof, up to 1m at the highest fixed point. The proposed exceedance allows for the use of a roof terrace by a restaurant which is a land use complementary to the desired character of that portion of Oxford Street. The elements of the proposal that are above 9.5m in height do not violate the objectives of Clause 4.3.

This application will address each aspect of Clause 4.3 for completeness.

- (1) The objectives of this clause are as follows:
 - (a) to establish building heights that are consistent with the desired future character of the neighbourhood,
 - (b) to establish a transition in scale between zones to protect local amenity,
 - (c) to minimise the loss of solar access to existing buildings and open space,
 - (d) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,

(e) to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.

<u>Objective 1a.</u> The site is located along Oxford Street and within the Paddington Heritage Conservation Area. The desired future character of the neighbourhood is discussed at length in the Chapter C1 of the Woollahra DCP 2015 where C1.2.5 states:

"Council does not advocate replication of previous architectural styles in cases of infill development. However, <u>infill development</u> should be based on a <u>contemporary design</u> approach which respects the context, <u>especially the predominant scale, form and articulation of buildings that characterise an area</u>. New contemporary design should respect the historic built form of the Paddington HCA."

The proposal is respectful of Council's vision for contemporary development within the Paddington Heritage Conservation area by providing a height to Oxford Street that is compatible with the predominant scale, form and articulation of nearby buildings without replicating historical architectural styles.

<u>Objective 1b.</u> The height of the proposal is significantly less than that of other nearby buildings with frontages to Oxford Street. The proposal is an appropriate scale transition from the north-eastern residential area and will have no negative impacts upon the amenity of those areas.

<u>Objective 1c.</u> As demonstrated in the shadow diagrams which accompany the application, the proposal has minimal overshadowing impacts. The shadow impacts that do arise to the public domain are caused by the height compliant parapet rather than the taller roof structures.

<u>Objective 1d.</u> The proposal does not result in any negative impact on surrounding development by way of view loss, privacy, overshadowing or visual intrusion.

Objective 1e. Not relevant to this proposal.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The building exceeds the height shown on the Height of Buildings map which is the impetus for this application.

(2A) Despite subclause (2) and clause 4.3A, the maximum height of a dwelling house, dual occupancy or semi-detached dwelling on land in Zone R3 Medium Density Residential is 9.5 metres.

The site is not located within an R3 zone.

(2B) Despite subclause (2) and clause 4.3A, the maximum height of a building on a battle-axe lot on land in Zone R3 Medium Density Residential is 9.5 metres.

The site is not located within an R3 zone.

Justification for Variation to Clause 4.4

Clause 4.4 dictates the FSR limit for the subject site providing a limit of 1:1. The proposal has a site area of 128.5m2 and is proposed to have a GFA of 182.5 which equals and FSR of 1.4:1. The proposed exceedance results from the design of the building being 2 storeys built to the site boundaries which is an appropriate urban design response to Oxford Street within the Paddington Heritage Conservation Area.

This application will address each aspect of Clause 4.4 for completeness.

- (1) The objectives of this clause are as follows:
 - (a) for development in Zone R3 Medium Density Residential:
 - (i) to ensure the bulk and scale of new development is compatible with the desired future character of the area, and
 - (ii) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain, and
 - (iii) to ensure that development allows adequate provision on the land for deep soil planting and areas of private open space,
 - (b) for buildings in Zone B1 Neighbourhood Centre, Zone B2 Local Centre, and Zone B4 Mixed Use—to ensure that buildings are compatible with the desired future character of the area in terms of bulk and scale.

Objective a(i). The site is not located within an R3 Medium Density Residential Zone.

Objective a(ii). The site is not located within an R3 Medium Density Residential Zone.

Objective a(iii). The site is not located within an R3 Medium Density Residential Zone.

Objective b. As discussed under the 'Argument' and 'Justification' headings in this Variation Justification, the proposed built form is entirely compatible with the desired future character of the area as defined by Council in Chapter 1 – Paddington Heritage Conservation Area of the Woollahra DCP 2015. The proposed building will not appear inconsistent with the existing bulk and scale of surrounding buildings.

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The building exceeds the FSR of 1:1 shown on the Floor Space Ratio map which is the impetus for this application.

(2A) Despite subclause (2), the floor space ratio for a building on land shown on the Floor Space Ratio Map does not apply to a building that is a dwelling-house, dual occupancy or semi-detached dwelling.

The proposal does not relate to a dwelling.

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Justification for Variation under Clause 4.6

This application will address each aspect of Clause 4.6 for completeness.

- 1) The objectives of this clause are:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

<u>Objective 1(a)</u> provides the impetus for the clause in confirming its intention for flexibility in the application of development standards. Here the flexibility relates to the proposal which relates to several roof top items to facilitate the use of the restaurant's roof terrace and exceedance of the prescribed maximum FSR.

Objective 1(b) introduces the desired outcome from objective 1(a) in providing a better outcome from applying the flexible approach.

This proposal provides an opportunity for a better outcome by varying the relevant height standard as follows:

- The proposal is consistent with the objectives of Clause 4.3.
- The building elements above 9.5m will not be seen from Oxford Street and will only be visible along a small section of Victoria Street.
- The building elements above 9.5m will not overshadow the public domain.
- The building elements above 9.5m will not create any privacy impacts on surrounding development.
- The building elements above 9.5m will not result in any view loss for surrounding developments.
- The total building height of 10.5m is significantly less than the heights of several nearby buildings on the same block and with the same height limit applied under the Woollahra LEP 2014.
- The use of the roof terrace will not be apparent from Oxford Street due to the sizeable setback from the parapet.

This proposal provides an opportunity for a better outcome by varying the relevant FSR standard as follows:

- The proposal is consistent with the objectives of Clause 4.4.
- · The proposed bulk and scale are consistent with those of the surrounding buildings and

streetscape.

- The proposed building will not appear incongruous with neighbouring buildings when viewed from the public domain.
- The proposal provides additional GFA for the use of a restaurant which provides a complementary service to the role of Oxford Street as a boutique shopping destination and commercial high street.
- The proposal has provided a 2-storey built form which is appropriate to the site but has minimised FSR through the use of a void.
- 2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

The development standards proposed to be contravened are Clauses 4.3 and 4.4 which not expressly excluded from the operation of this clause.

- 3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Subclauses 3 (a) and (b) are discussed separately.

(a) Compliance with the development standard is considered unnecessary and unreasonable.

Compliance with Clauses 4.3 and 4.4 is considered unnecessary and unreasonable in the circumstances of the case for the following reasons:

- The height variation is relatively minor being at most 1m.
- The height variation relates to an area within the roof plane which will not be seen from Oxford Street and will be visible only from a very small section of Victoria Street.
- The total building height remains less than that of many of some existing surrounding buildings.
- The FSR variation is relatively minor with the site exceeding its permitted maximum GFA by only 54m2 and is to enable a land use that is complementary to the area's desired character.
- The building bulk is distributed so that it presents as two storeys to Oxford Street which

is consistent with surrounding development.

- The FSR will be similar to, or in some cases less than, that of existing surrounding development.
- The variations support a positive built form and scale relationship with the neighbouring surrounding buildings.
- The increased height and bulk do not result in any adverse overshadowing of neighbouring developments or the public domain.
- The increased height and bulk do not result in any adverse privacy impacts.
- The contravention of the height and FSR controls by the proposal does not give rise to
 any environmental effect of sufficient significance that would cause concern. The
 environmental benefits of the proposal result in a better planning outcome and a
 building which is on balance an appropriate environmental outcome, to justify the
 contravention of the development standard.

The outcome of the proposal is a building that fits within its surroundings and achieves the objectives of the zone while staying generally within the built form outcome and scale anticipated for the area.

In this context and in consideration of the nature of the variation sought, it cannot be argued that the proposal is seeking to effect general planning change. Essentially, the development remains compliant with the principles and general parameters of the built form controls and expectations within the planning framework. If approved, the built form outcome of the proposal will not be out of keeping with, nor detrimental to the amenity of its surroundings.

In view of all the above, compliance with Clauses 4.3 and 4.4 is unreasonable and unnecessary in the circumstances.

(b) There are sufficient environmental planning grounds to justify contravening the development standard

The proposed non-compliant building height results in a positive outcome for the site by allowing for the use of a roof terrace and facilitating a lift overrun and building plant. The lift overrun and building plant are both necessary for the function of the site. The roof terrace will allow the restaurant on site to service a greater number of patrons and thereby contribute to the dining scene along Oxford Street and complement its use a boutique shopping destination.

The proposed building's FSR being 1.4:1 is a function of it being a two-storey building. A compliant building bulk would be largely limited to a single storey which would be an inferior outcome for the site in comparison with the two-storey proposal from heritage and urban design points of view. The presentation of the building as two-storeys to Oxford Street is consistent with neighbouring building heights and presents greater opportunity to respond to the dominant window forms and articulation of the nearby buildings. Matching a 2-storey street wall height allows the proposal to better correspond to the Paddington Heritage Conservation Area creates a more responsive infill building.

With regard to environmental amenity matters of consideration which are; overshadowing, privacy/overlooking, view loss and visual domination. These matters provide an indication of a

proposal's suitability and reflect the matters of consideration under Section 4.15 of the Act.

As indicated previously, the proposed variation in height and bulk will not adversely impact on any of those criteria. As reflected in the shadow diagrams submitted with the DA, there is no adverse overshadowing effect to neighbouring developments and there is no significant additional overshadowing to the public domain. To the extent that the proposal has a minor overshadowing effect on the southern side of Oxford Street, the effect is minor and is caused by the height compliant parapet.

Visual domination is usually associated with the perceptions from the public domain and from multistorey buildings. In this case, the building responds to existing heights of the neighbouring buildings which are of similar or greater scale. From Oxford Street, the height exceedance will not be visible and the FSR exceedance facilitates a more appropriate two-storey form. The building has been designed to be sympathetic to neighbouring buildings and the Paddington Heritage Conservation Area and will not visually dominate the street. From Victoria Street, the tallest elements of the building may be visible from a small section of the street. However, the tallest elements are smaller than other surrounding building elements and will be largely obscured from view by 5 and 7 Victoria Street.

In determining the 'aesthetic character of the area' it is reasonable to review the type and form of development in the site vicinity as well as the future character of the area. The existing form is a mix of terraced retail buildings of between 2-3 storeys tall with a large school building to the south. The proposal for a new commercial terrace of two-storeys is an appropriate response to the character of the area.

The proposed use as a restaurant is consistent with the surrounding land uses, the desired future character of the area and the objectives of the B4 Mixed Use Zone.

Therefore, it would appear that the proposal does result in any significant negative environmental impact and that there are sufficient positive impacts justified on environmental planning grounds to justify the proposed contraventions.

- 4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.

These matters were considered and are positively demonstrated by the proposal. The Director General has formally delegated his function to Council.

4(a)(i)

The matters required to be demonstrated have been addressed under discussion of Clauses 4.3 and 4.4.

4(a)(ii) consistency with the objectives for development within land use zone.

The land use table in the LEP specifies the zone objectives and permissible uses. The objectives of the B4 Mixed Use Zone are:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- · To ensure uses support the viability of centres.

The proposal recognises these objectives for the B4 Mixed Use Zone by:

- Providing a restaurant within a commercial centre specialising in boutique shopping.
- Being located along Oxford Street which has a high availability of transport options in the form of buses, taxis and ride share.
- · Being located within walking distance of a large catchment of residential dwellings
- 5) In deciding whether to grant concurrence, the Secretary must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

The Secretary of Department of Planning and Environment can be assumed to have concurred to the variation. This is because of Department of Planning Circular PS 08–003 'Variations to development standards', dated 9 May 2008. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*. Under Clause 64(2), a consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

In any event, the contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such

lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include all of these zones.

The proposal is not for the contravention of a subdivision control, nor is it located within one of the specified zones.

7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

The consent authority will keep a record of the determination.

- 8) This clause does not allow development consent to be granted for development that would contravene any of the following:
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4.

Not applicable.