

<b>JRPP No:</b>	2009SYE005
<b>DA No:</b>	441/2009/1
<b>PROPOSED DEVELOPMENT:</b>	Cruising Yacht Club of Australia marina redevelopment
<b>APPLICANT:</b>	Mark Woolf
<b>REPORT BY:</b>	Peter Kauter, Executive Planner, Woollahra Municipal Council

## Assessment Report and Recommendation

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## DEVELOPMENT APPLICATION ASSESSMENT REPORT

FILE No.	DA 441/2009/1	
PROPERTY DETAILS	1 New Beach Road DARLING POINT Cruising Yacht Club of Australia	
	<b>Lot &amp; DP No.:</b>	LOTS: 1133, 1134, 1135, 1136 & 1137 DP: 752011 – land based component RP5339 & RP5477 – water based component
	<b>Side of Street:</b>	West
	<b>Site Area (m<sup>2</sup>):</b>	3,250m <sup>2</sup> (land based component) 2.9223ha (existing water based component)
	<b>Zoning:</b>	Open Space 6 - General Recreation (WLEP) W5 - Water Recreation (SHREP)
PROPOSAL:	Marina redevelopment	
TYPE OF CONSENT:	Designated Integrated	
APPLICANT:	Cruising Yacht Club Of Aust	
OWNER:	Department of Lands NSW Maritime	
DATE LODGED:	26/08/2009 (original DA) 27/04/2010 (amended DA)	
AUTHOR:	Mr P Kauter	
CONSENT AUTHORITY	Joint Regional Planning Panel (Regional Panel)	

**DOES THE APPLICATION INVOLVE A SEPP 1 OBJECTION? NO**

## 1. RECOMMENDATION PRECIS

The recommendation is that the Regional Panel grant conditional development consent to the DA, in accordance with the amended DA. The amended DA is considered to address an issue of the development as originally proposed having been, in part, prohibited development under *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* (deemed State Environmental Planning Policy (SEPP)).

The recommended conditions of consent include a 'deferred commencement' condition relating to proposed remediation works. Conditions are also recommended to:

- reduce the impact on views from residential units in New Beach Road in the vicinity of the marina
- manage the external impacts of the development during construction and operational phases

The recommended conditions include the general terms of approval of approval bodies under integrated development provisions of the *Environmental Planning and Assessment Act, 1979*.

## 2. PROPOSAL PRECIS

The proposal is to redevelop the CYCA's marina in Darling Point/Rushcutters Bay. The redevelopment relates to both land and water based components of the existing facility.

The land based works are, physically, the major part of the proposal. They involve demolition of all existing buildings and structures to the north of the CYCA club building and construction of a basement level car park, hardstand areas and a part 2 storey building to relocate and expand existing facilities. The proposal will provide a total of 90 on-site car parking spaces and 2,330m<sup>2</sup> of floor space.

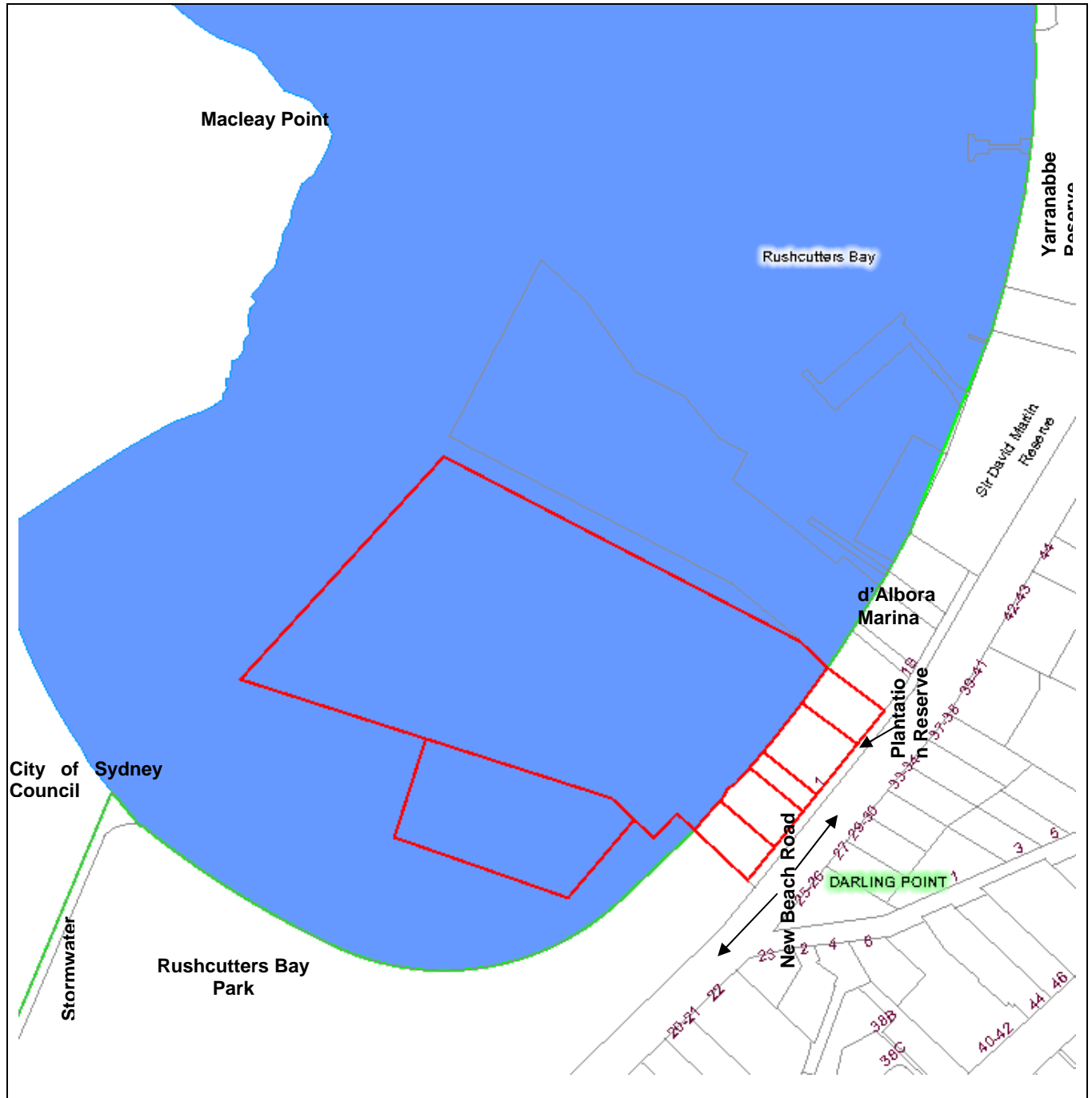
The water based component will increase the boat storage capacity of the marina by 6. This involves extending marina arm C, the southern most marina arm, to accommodate 9 additional yachts and relinquishment of 3 swing moorings. Changes are also proposed to accesses to the other marina arms. Part of the hardstand area is to be supported on piers over the water.

The Regional Panel is the consent authority for this development application as the application is for:

development that has a capital investment value of more than \$10 million
wharf or boating facilities and has a capital investment value of more than \$5 million
designated development

### 3. LOCALITY PLAN/AERIAL PHOTOGRAPH

#### Locality plan



## Aerial Photograph



## 4. DESCRIPTION OF PROPOSAL

### Original DA

The proposal is to redevelop the Cruising Yacht Club of Australia's marina located in Rushcutters Bay.

The redevelopment involves demolishing buildings (but not the CYCA club building) and the construction of land based and water based buildings and facilities.



The demolition involves the removal of all buildings and structures to the north of the CYCA club building. These include:

- the 2 storey shipwrights building which presently accommodates the shipwrights, chandlery, kiosk, Youth Sailing Association (YSA) facilities, Pacific Sailing School, marine office and shower/amenities
- the slipway and associated workshop, outdoor maintenance area, shipping containers, demountable storage structures and winch stores
- the timber deck and wharf
- the seawall
- the concrete hardstand for the dry berths
- the 2 bitumen car parks

The existing gangway and floating pontoon walkway (which accommodates 10 berths) providing access to arm C (the northern most arm) from the existing hardstand is to be removed. The existing floating pontoon walkway connecting the eastern ends of arms A and B is also to be removed.

Three commercial swing moorings are to be removed from the waterway to the west of arm D, being the arm closest to the Ruscutters Bay Park sea wall.

Four trees are to be removed, 1 from within the site and 3 from the Plantation Reserve adjacent to New Beach Road.

### **Original DA**

The land based construction works proposed by the original DA include the construction of a carparking level occupying nearly the whole of the area to the north of the clubhouse and extending from New Beach Road to 6.856m beyond (to the west of) the existing sea wall. The floor of the carpark will be RL0.890AHD (i.e. approximately 3.29m below the level of New Beach Road) while the concrete roof slab will be RL2.400AHD (i.e. approximately the same as the level of the section of footpath adjacent to the site frontage). The basement car park will have dimensions of approximately 69m x 39m and accommodate 77 parking spaces (including 1 disabled parking space), bike storage, lockers, switch room and storage/plant room. Vehicular access will be off New Beach Road via a ramp at the northern end of the site. Two stairs and a passenger lift will provide pedestrian access.

The carpark roof slab will be extended a further 24m beyond the line of the carpark to the west where it will form a hardstand supported on piles over the water. The level of the hardstand will vary from RL2.110AHD to RL1.800AHD.

A single and part 2 storey building is proposed above part of the carpark roof slab. The building will be setback 1.195m from the eastern (New Beach Road/Plantation Reserve) boundary, abut the northern boundary (d'Albora Marina) and be separated by approx. 13m from the existing CYCA club building to the south. The 2 storey section of the building will be on the northern part of the site, abutting an existing 2 storey building on the adjoining land (i.e. the d'Albora Marina) and occupying 15.6m of the New Beach Road frontage. External finishes will include stone cladding and glazing on the New Beach Road elevation of the single storey section of the building and a soft landscaped roof. The 2 storey section of the building will have metal louvers and gates and glazing on the New Beach Road elevation and low pitched metal roofs. Roof terraces with access from the upper floor are proposed on the southern elevation and north west corner of the 2 storey section of the building.

The single storey section of the building will contain a sailing/marina office, kiosk, chandlery, sailing school, office, change rooms and shipwright. The 2 storey section of the building will

accommodate under cover parking for 9 vehicles on the lower level with vehicular accesses including access to the lower level carpark. The upper level will accommodate the Youth Sailing Academy (YSA) facilities including classrooms (x3), administration, store and plant areas and a kitchenette/staff lunch room. A passenger lift and stairs will provide access the 1<sup>st</sup> floor.

The hardstand area immediately to the rear of the single storey section of the building will accommodate 11 hardstand parking spaces. The remainder of the hardstand will provide an area for dry boat storage (the plan indicates 22 x 9m yachts and 12 dinghies), access to marina berths and a public, pedestrian access way. The public access way will provide a direct link between the existing foreshore access from Rushcutters Bay Park on the southern side of the marina to the d'Albora marina on the northern side.

The proposal does not relate to the existing CYCA club building or the deck/outdoor dining area located on the southern part of the site other than for the relocation of the sailing office from the entry foyer to the proposed single storey building.

Proposed changes to the marina berths comprise:

- extending arm D in a south westerly direction to accommodate 9 additional 18m berths
  - a new walkway, 3.28m wide, will extend 17.110m in a southerly direction from the end of the existing walkway
  - a new section of berthing arm, 3.28m wide, will be installed having a length of 65.240m and setback 52m (approx.) from the Rushcutters Bay sea wall
  - the new section of berthing arm will have berthing pens on its northern side (i.e. on the side furthest away from the sea wall) to accommodate 9 x 18m yacht berths
  - the new pontoons will be held in position with piles
- a new gangway and floating pontoon walkway will be provided between the hardstand and arm B, roughly along the same alignment as arm B
- a new section of floating pontoon walkway is to connect the eastern ends of arms B and C – it will include berthing pens on its eastern side to compensate for the 10 berths on the section of walkway that currently provides access to arm C and which is to be removed
- a new floating pontoon 1.5m wide is to be provided to the perimeter of the new hardstand

The reconfiguration of the marina will provide for all access to be from the hardstand and provide interconnection between the four (4) arms of the marina.

The proposed redeveloped marina will accommodate 213 marina berths (204 existing), 24 swing moorings (27 existing) and 97 car parking spaces (42 existing).

### **Amended DA**

The DA was amended on 27/4/10. The amendments relate to a reduction in size of the basement level carpark. The carpark is now proposed to be entirely within the western boundary of the property. The western boundary approximately follows the line of an existing stone sea wall. The basement level as originally proposed partly projected beyond the western boundary and into the waters of Rushcutters Bay. The projection was 6.856m for a length of 67m. The construction of the basement level partly beyond the sea wall, as proposed by the original DA, raised the issue of whether or not the proposal involved reclamation work. Reclamation work is prohibited development under the *Sydney Harbour*

*Regional Environmental Plan* (SHREP) and therefore if that part of the proposal constituted reclamation works it would also have been prohibited development.

The amended DA is considered to have resolved the issue of the proposal, in part, involving prohibited development under the SHREP.

The reduction in size of the basement results in the number of parking spaces on that level being reduced by 12 spaces, from 77 to 65. The amended DA also provides for the number of parking spaces on the hardstand to be increased from 11 spaces to 16 spaces. Therefore, the overall number of on-site parking spaces now proposed will be 7 spaces fewer than the original proposal, i.e. 90 spaces compared to the originally proposed 97. One of the parking spaces on the hardstand is now designed for use by people with a disability while there is now no such space in the basement. A section of the public, pedestrian access way, adjacent to the additional parking spaces on the hardstand, will be reduced in width from approximately 2.7m to 1.5m.

A letter dated 15/4/10 from the applicant's traffic consultant, Traffix, was submitted with the amended DA.

## 5. SUMMARY

Reasons for report	Issues	Submissions
<ol style="list-style-type: none"><li>1. To assist the Regional Panel in determining the development application, and</li><li>2. To permit the DCC to decide if the council will make a submission to the Regional Panel. This is because under our current delegations the development application would have otherwise been referred to the DCC for determination as:<ul style="list-style-type: none"><li>▪ It does not satisfy the criteria for determination under staff delegation</li><li>▪ It is for designated development</li></ul></li></ol>	<ul style="list-style-type: none"><li>• Visual impact</li><li>• Parking</li><li>• Environmental manaagaement</li></ul>	86 submissions were received: <ul style="list-style-type: none"><li>• 50 objections to the original DA, including 25 signatories to a petition</li><li>• 27 support letters for the original DA</li><li>• 8 objections to the amended DA</li><li>• 1 support letter to the amended DA</li></ul>

## 6. ESTIMATED COST OF WORKS

Council adopted (DCC 6 June 2005) administrative changes for determining DA fees based on the estimated cost of work. Where the estimated cost of work is greater than \$750,000 or where the applicant's estimate is considered to be neither genuine or accurate, the applicant has to provide a Quantity Surveyor's report.

The capital investment value of the development as estimated by the applicant of \$12,533,908.16 is based on a Quantity Surveyor's report and is considered to be genuine and accurate.

## 7. DESCRIPTION OF SITE OF LOCALITY



THE SITE AND LOCALITY	
<b>Physical features</b>	<p><b>The locality</b></p> <p>Rushcutters Bay is located on the southern foreshore of Sydney Harbour about 2.5km from the Sydney CBD and 6km from the heads of Sydney Harbour. It is situated between Darling Point to the east and Macleay Point/Elizabeth Point to the west.</p> <p>The eastern and southern foreshore is mainly reclaimed land contained by sandstone sea walls. The eastern foreshore between the sea wall and New Beach Road comprises Yarranabbe Park, Sir David Martin Reserve, d'Albora Marina, the CYCA Marina and the Plantation Reserve.</p> <p>Yarranabbe Park occupies the northern part of the foreshore area. It is a level, grassed parkland used for passive recreation. There are perimeter fig trees along New Beach Road.</p> <p>Sir David Martin Reserve is to the south of Yarranabbe Park. It includes a number of community and maritime related buildings and works.</p> <ul style="list-style-type: none"> <li>- 'The Cottage', now used by St Vincents Community Care</li> <li>- Drill Hall, currently occupied by the Performance Development Centre</li> <li>- Sayonara Slipway</li> <li>- Legacy Marina Corporation Boatshed, used by 'Sailability' and for boat storage</li> <li>- The Royal Australian Navy Sailing Association (RANSA) building.</li> </ul> <p>D'Albora Marina and the CYCA Marina are to the south of Sir David Martin Reserve. They comprise 2 and single storey buildings, hardstand areas and slipways associated with the respective marina uses.</p> <p>The Plantation Reserve is a narrow (4.6m wide) strip of land adjoining New Beach Road to the east and the d'Albora and CYCA marinas. It provides pedestrian access from Sir David Martin Reserve/Yarranabbe Park to the north and Rushcutters Bay Park to the south.</p> <p>To the east of the foreshore area is the suburb of Darling Point. Darling Point is located between Double Bay to the east and Rushcutters Bay to the west with a ridge line which mostly follows the alignment of Darling Point Road.</p> <p>Rushcutters Bay Park is to the south of the Bay. It also is a level, grassed area used for passive and active (sporting) recreational purposes. There are substantial fig trees mainly to the perimeter. The Park is divided by a stormwater canal which also delineates the boundary between the Woollahra and City of Sydney local government areas. The section of the park in the Woollahra local government area is bounded by New South Head Road to the south and New Beach Road to the east. Further to the south is the Eastern Suburbs railway viaduct, the White City tennis complex and the suburb of Paddington.</p> <p>The western foreshore of Ruscutter's Bay comprises privately owned residential properties with direct frontage to the Harbour. The land/water interface features natural rocky outcrops.</p> <p>The main use of the Rushcutters Bay waterway is for boat storage with 2 commercial marinas and commercial and private (operated by NSW Maritime) swing moorings.</p> <p><b>The site</b></p> <p>The site comprises both land based and water based components.</p> <p>The land based component immediately adjoins d'Albora Marina to the north, Ruscutter's Bay Park to the south, New Beach Road/Plantation Reserve to the east and the waters of Rushcutters Bay to the west. It is Crown Land, subject to lease from the Land and Property Management Authority and identified as lots 1133, 1134, 1135, 1136 and 1137</p>

	<p>of DP 752011. The land is rectangularly shaped having an area of 0.325ha (approx.). It has a frontage to New Beach Road/Plantation Reserve of 101.45m, a northern boundary of 32.99m, a southern boundary of 34.66m and a slightly irregular western/foreshore boundary of 99.12m.</p> <p>The water based component occupying the waters of Rushcutters Bay is subject to lease from NSW Maritime. It is an irregularly shaped area known as RP5339 &amp; RP5477, projecting a maximum 200m (approx.) from the mean high water mark (MHW) x 190m (approx.) and occupies an area of about 2.9323ha. The western boundary extends to within about 90m of the western foreshore of the Bay. The southern alignment is staggered and the distance from the Rushcutters Bay sea wall varies from about 17m at the south east corner to 80m at its south west corner.</p>
<b>Topography</b>	<p><b>The locality</b> The reclaimed foreshore areas are generally flat and +/- 0.5m are about RL2.0 (AHD).</p> <p>The Darling Point hillside rises steeply from New Beach Road to the ridge line which is about RL40.0(AHD) and some 150-200m to the east. Steep, angled streets intersect the hillside.</p> <p><b>The site</b> The ground floor of the buildings and the hardstand carparks which currently occupy the CYCA marina are on reclaimed land and roughly level with New Beach Road. This is except for the slipway area located in the centre of the site. It is about RL2.4(AHD) near New Beach Road, grading to about RL0.07(AHD) to the west.</p>
<b>Existing buildings and structures</b>	<p><b>The locality</b> The built environment of Darling Point is notable for the wide variety of architectural styles and housing types. The ridgeline of Darling Point is characterised by post war, high rise and higher density development. Streets surrounding the ridgeline are typified by 2, 3, &amp; 4 storey development and include walk up flats, semi detached and detached houses.</p> <p>The eastern foreshore area is characterised by maritime related, low rise buildings. They contrast with both the form and use of the residential development which characterises the Darling Point hillside.</p> <p><b>The site</b> The CYCA occupies reclaimed land. The main buildings are the clubhouse, which abuts the southern boundary with Rushcutters Bay Park, and shipwrights building. These are 2 storey buildings separated by a hardstand carpark. The northern part of the land accommodates a hardstand carpark separated from the shipwrights building by a disused slipway. There is a total of 52 onsite carparking spaces and 2 motor cycle spaces.</p> <p>There are timber decks and a concrete hardstand suspended on piers over the waterway. The timber deck to the west of the clubhouse is used as a dining area. It also provides access to the berths on marina arms A, B &amp; D. The concrete hardstand is to the west of the carpark between the clubhouse and shipwrights buildings. It is used for dry boat storage (the EIS states that this section of hardstand accommodates 20 boats (etchells and J24s)) and contains cranes for lifting boats out of the water. The deck to the west of the northern carpark accommodates lockers, storage shed and dinghy storage (27 according to the EIS). It also provides access to the berths on marina arm C.</p> <p>There is a public walkway through part of the site. It is accessible from Rushcutters Bay Park via a gate at the south west corner of the CYCA club building and from New Beach Road at the northern side of the CYCA club building.</p> <p>On the slipway there are a number of shipping containers and at New Beach Road end there are structures accommodating a winch store and workshop.</p> <p>The marina berths are located on 4 arms of floating, concrete pontoons. The arms are</p>

	<p>roughly perpendicular to the foreshore and parallel to one another. The arms are referenced as A, B, C &amp; D, arm C being the northern most arm and arm D being the southern most arm. There are 204 single hull yacht berths. The EIS refers to 15 berths capable of accommodating yachts upto 18m in length, 12 of which are long term and 3 of which are casual berths.</p> <p>Arm D is to the south of the clubhouse, setback from 25m to 60m from the curved sea wall to Rushcutters Bay Park. It is 78m long with a total of 27 berths configured on both sides and 1 on the T head.</p>
<b>Environment</b>	<p><b>The locality</b> Rushcutters Bay is an urbanised bay within a predominantly residential area. The form of its southern and eastern foreshore is characterised by reclamations and formal sea walls. These foreshore areas feature parklands and maritime related structures and uses. This contrasts with the more natural land water interface and residential properties on the western side of the bay.</p> <p><b>The site</b> The site occupied by the CYCA is reclaimed land and waterway on the eastern side of Rushcutters Bay. The land is low lying and occupied by marina related buildings. There are various fixed and floating structures associated with boating which extend into the waterway. The use of the CYCA site is similar to the use of adjacent foreshore land to the north but is in contrast to the residential development on the opposite side of New Beach Road and the adjoining suburb of Darling Point.</p>

## 8. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	Commercial marina
Previous relevant applications	<p>There have been multiple previous applications for the CYCA. Of most relevance are:</p> <ul style="list-style-type: none"> <li>DA98/140 - this was to remove fixed timber walkways, berthing structures and supporting piles and replace them with floating concrete pontoons</li> <li>DA98/117 - this application followed a lengthy dispute between the Council and the CYCA over the construction of a timber deck to the west of the clubhouse without prior approval. Through this DA the existing deck was allowed to remain, various terms of the lease between NSW Maritime and the CYCA were reinforced (including providing public foreshore access over land occupied by the CYCA) and extensive rebuilding of the clubhouse was approved. The report on this application lists 11 other applications that were considered between 1974 and 1998.</li> <li>DA182/75 – this was for demolition of existing buildings, erection of a 2 storey structure to contain facilities relating to the club, a 1 &amp; part 2 storey Ship Chandlers building and a 3 storey building proposed to be used for car parking for 60 vehicles.</li> </ul> <p>Numerous applications are also referred to in the EIS.</p>
Pre-DA	A pre-DA meeting took place on 24/3/09. The key issues which were identified and some of the comments were as follows:

	<p><b>Statutory controls</b></p> <p><i>The legal advice produced by Mallesons Stephen Jaques on behalf of the Cruising Yacht Club of Australia, regarding permissibility of the proposed basement car park under planning laws has been received by Council.</i></p> <p><i>At this stage, Council is not aware of any contrary advice but the applicant will need to decide if they wish to rely on this advice as part of any DA submitted. Council may need to evaluate the legal advice submitted with any DA and may seek their own legal advice at that stage as to the permissibility of the basement car park.</i></p> <p><b>(SHREP)</b> the following are identified as matters of particular significance to Council:</p> <ul style="list-style-type: none"><li>• <i>public access to and along the foreshore should be maintained and improved.</i></li><li>• <i>The development achieve a visual outcome that harmonises with the character of the area</i></li><li>• <i>The size and scale of development should improve the value of the natural assets as viewed from the public domain.</i></li></ul> <p><i>It is noted that the proposed scheme includes a public footpath through the site and would ensure public access is secured along the foreshore. This would be supported.</i></p> <p><b>Policy controls</b></p> <p><b>(Off-Street Car Parking DCP)</b> <i>The Traffic Report required to be submitted with any application must assesses the implications of the proposal on existing traffic, parking and transport conditions surrounding the site.</i></p> <p><i>The initial traffic report states that there is sufficient parking for the development. Council's Traffic Engineer has requested that in order to not exacerbate existing on-street parking problems, the Traffic Report must detail how the on-site parking would be made attractive to members and not result in additional on-street parking pressures.</i></p> <p><b>Referral Officers Comments</b></p> <p><b>Heritage</b></p> <p><b>Conclusion</b></p> <p><i>The application appears acceptable as it would comply with the relevant statutory and policy documents and would have a satisfactory heritage impact.</i></p> <p><b>Urban Design</b></p> <p><b>Urban Design Considerations</b></p> <p><i>The design is appropriate and well considered. The defining of the extent of the club facilities with an identifiable stone wall is considered to be appropriate and contributes to the location's sense of place.</i></p> <p><i>There is an amount of additional height associated with the two storey component at the northern end of the development. This height is not considered to have a significant detrimental impact on the adjacent public domain, although it may impact on view paths from particular properties on New Beach Road.</i></p> <p><i>The site presently accommodates a number of cars at ground level. The proposal greatly reduces this number but still accommodates parking in</i></p>
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	<p><i>the central space in the development which would be better free of parked cars.</i></p> <p><i>The visual impact of additional boat moorings located at the south end of the present berths appears to have only a minor visual impact which is acceptable within the existing context.</i></p> <p><i>The occupying of the harbour by a part of the car parking structure is considered questionable, but does not appear to have a visual impact. If the intrusion affects the ability of the bay to flush itself however, it could be highly detrimental to the amenity of the location.</i></p> <p><b>Open Space, Landscaping and Trees</b> <b>Comments</b> <i>The standard of landscape information supplied with this proposal is of high quality. Tree &amp; Landscape section has no objection to this proposal.</i></p> <p><b>Building Issues including Car Parking and Traffic</b> <b><u>Parks and Open Space</u></b> <i>Council's Public Open Space department has reviewed the pre DA documents and has no objections to landscaping and beautifying Plantation Reserve outside the CYC along New Beach Road.</i></p> <p><b><u>Traffic</u></b> <i>The increased parking capacity created by the proposal may result in a significant amount of traffic generation to and from the site. The proposal may also alter the existing parking and traffic conditions in the adjacent access roadway and surrounding roads.</i></p> <p><i>The applicant must submit a traffic report that assess the implication of the proposal on existing traffic, parking and transport conditions surrounding the site. ....</i></p> <ul style="list-style-type: none"> <li>• <i>"The applicant must demonstrate how it is intended to make the carpark attractive to members for their usage so that they will use the internal carpark in preference to parking in the street, e.g. an electronic sign at the entrance which advises how many spaces are available in the carpark".</i></li> </ul> <p><b>Health</b> <b><u>Soil contamination assessment</u></b> <b><u>Recommendation</u></b> <i>Soil investigation and sampling has determined that the site is contaminated. Clause 7(1)(b) and (c) of the SEPP 55 requires that where the land is contaminated, Council must be satisfied that the land will be made suitable after remediation. In accordance with the conclusion detailed in Section 4.13 of the Acid Sulfate Soil and Stage 1 / 2 Contamination Assessment: CYCA New Beach Road, Darling Point (Reference: P0802189JR02_v4 March 2009) prepared by Martens Consulting Engineers, it is recommended that a Remedial Action Plan (RAP) be prepared for the site and required to be submitted to Council detailing the remediation strategy.</i></p> <p><i>The above are extracts from the pre-DA minutes. The development proposed by the current DA is not significantly different to the development the subject of the pre-DA.</i></p>
Requests for additional information	<p>Council wrote to the applicant on 15/10/09 requesting that the application be amended so that it does not include reclamation works. This followed legal advice from our solicitors, Deacons, that part of the proposed works relating to the construction of the basement carpark constituted</p>

	<p>reclamation works and were prohibited under the SHREP.</p> <p>The applicant advised by letter dated 7/12/09 that it would be making a class 4 application to the Land &amp; Environment Court (LEC) seeking a declaration on the question of permissibility.</p> <p>The applicant subsequently amended the DA on 27/4/10 by reducing the size of the basement carpark so that it does not encroach beyond the line of the existing sea wall. This amendment has been made to overcome the issue of the proposal involving reclamation works. The amendment has reduced the number of parking spaces in the basement from 77 to 65 and provides for an additional 5 spaces on the proposed hardstand. The nett reduction in the proposed number of carparking spaces is therefore 7 spaces, i.e. from 97 to 90 spaces.</p> <p>We also wrote to the applicant on 9/11/09 advising that issues relating to drainage and flood protection, parking demand and access, the construction management plan and site remediation required further attention. The letter acknowledged that permissibility, associated with possible 'reclamation works', was more fundamental and that we would not require the applicant to address these other issues until the question of permissibility had been resolved.</p> <p>The information submitted with the amended DA includes responses by the applicant to the issues raised in our letter of 9/11/09.</p>
Amended plans/ Replacement Application	27/4/10 an amended DA was submitted reducing the size of the basement carpark.
Land & Environment Court appeal	Nil

## REFERRALS

### 9.1 Internal referrals.

INTERNAL REFERRALS		
Referral Officer	Comment	Annexure
Development Engineer	<p>See the following referral comments from our Drainage Engineer and Traffic Engineer.</p> <p>Referral response 4/11/09, see annexure 1, recommends <i>that the proposal is not satisfactory in its current state as additional information is required for:</i></p> <ul style="list-style-type: none"> <li>• Drainage and flood protection</li> <li>• Parking demand and access</li> <li>• Construction Management Plan</li> </ul> <p>A further referral response was provided dated 29/9/10, see annexure 1A. It includes additional comments on site drainage; flooding and overland flow; construction management; impacts on Council infrastructure; traffic , vehicle access and</p>	1, 1A, 2 , 2A & 2B



	<p>accommodation; geotechnical, hydrogeological and/or structural; and, other.</p> <p>The referral response includes recommended conditions of approval.</p>	
<b>Drainage Engineer</b>	<p>Referral response 4/11/09, see annexure 1, requests that revised details be submitted regarding the below ground carpark, gross pollution traps and pipes or culverts crossing the park.</p> <p>[Note: Council's letter 9/11/09 identified these issues as requiring attention by the applicant. The applicant subsequently requested that these matters be made conditions of consent.]</p> <p>Referral response 29/11/10, see annexure 1A, includes additional comments/recommended conditions following the amended DA.</p>	1 & 1A
<b>Traffic and Parking Engineer</b>	<p>Initial comments were in a memo dated 27/10/09, see annexure 2, which raised concern over the applicant's proposal to place restrictions on several public parking spaces fronting the site</p> <p><i>These restrictions include the provision of a disabled parking space fronting the site and allocating a section of time restricted parking with intention to provide a pickup/dropoff area – essentially these are only to serve the site and therefore should be located within the site boundaries as per the objective of the Council DCP.</i></p> <p>.....</p> <p><i>It would appear this could be achieved in the northern, ground level car park which has provision for 11 spaces. It is recommended that a portion of this parking area be designated as a pickup/dropoff area serving the marina.</i></p> <p>The following recommendation was made about the construction management plan:</p> <p><i>The construction management plan is acceptable and a condition of consent requiring compliance with the plan subject to deleting the alternative route back to New South Head Road via Thornton Street and Darling Point Road is recommended.</i></p> <p>[Note: Council's letter 9/11/09 identified these as issues requiring attention by the applicant]</p> <p>A further memo dated 22/6/10, see annexure 2A, was received following the submission of the amended DA (the amended DA reduced the number of on site parking spaces by 7, from 97 to 90). This referral response recommends as follows:</p> <p><i>The proposal has reduced the capacity of the proposed basement carpark by an additional 7 spaces thereby increasing the parking shortfall.</i></p>	2, 2A & 2B

	<p><i>Whilst the proposal improves upon the current parking capacity of the site, increased floor areas and additional wet berths will have a corresponding increase in parking demand which maintains a significant parking shortfall. The Planning Department are advised to note this when undertaking a merits based approach to assessment of the development application.</i></p> <p><i>In the event that the development is to be approved, the following matters must be addressed;</i></p> <ul style="list-style-type: none"> <li><i>The site will maintain reliance upon the surrounding onstreet parking to satisfy the parking demands of its patrons. The provision of a pickup-dropoff area within the site that is accessible by the public is therefore required. As noted above, Councils Traffic Section will accept the dedication of such an area on site during periods of high demand to enable full utilisation of parking on the site during other periods.</i></li> <li><i>A security system and gates are noted across entries to off street parking areas. The developer should clarify how this system is to operate to ensure full utilisation of the parking areas.</i></li> </ul> <p>A revised Construction Management Plan (CMP) was submitted as part of the amended DA. The referral response includes the following comment:</p> <p><i>The revised CMP has validated that heavy vehicles will exit the site and proceed directly to New South Head Road as requested in the initial referral response.</i></p> <p>Another memo dated 1/10/10 includes recommended conditions, see annexure 2B.</p>	
<b>Landscaping Officer</b>	<p>Referral response 21/10/09, see annexure 3, includes the following comments <i>Please note my referral response relates only to landscape issues within the site. ....</i></p> <p>It recommends as follows:</p> <p><i>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.</i></p> <p>A further referral response dated 29/9/10 was provided, see annexure 3A. It recommends conditions relating to approved documentation, establishment of tree protection zones, tree preservation &amp; landscaping works &amp; replacement</p>	3 & 3A

	trees.	
<b>Team Leader – Open Space and Recreation Planning</b>	Provides that the proposal satisfies Public Open Space concerns, subject to comments and recommended conditions. The recommended conditions relate to maintaining public access to Plantation Reserve and to the CYCA site, making good damage to Plantation Reserve and Rushcutters Bay Park, access through public open space, storage of building material and protection of parkland.	4
<b>Environmental Health Officer</b>	<p>Provided comments on acoustic reports, acid sulfate soils, soil contamination, light &amp; ventilation and erosion and sediment controls.</p> <p><b><u>Acoustic logic Consultancy – Noise Emission Assessment (Amended)</u></b></p> <p><b>Background Noise Measurements</b></p> <p>..... the Background Noise Levels provided in Table 1-Background Noise Levels of the acoustic report prepared by Acoustic Logic Consultancy (Reference: 2008593.1/3009A/R7TA of 8 July, 2009) are accepted.</p> <p><b>Noise Breakout from the Shipwright</b></p> <p>It has been demonstrated in Table 3-Noise Emission Assessment of the acoustic report that for the New Beach Road Residences compliance is achieved with the DECC Intrusiveness Criteria for the Daytime period when the Shipwright is operating between 7am to 6pm and that compliance for the D'Albora marina is also achieved with the DECC Amenity (Commercial When In Use) Criteria for the hours of 7am to 6pm.</p> <p><b>Vehicle Noise</b></p> <p>..... Table 4-Vehicle Emission Assessment-New Beach Road Residences shows that noise levels from vehicular movements complies with the Day, Evening and Night time "Intrusiveness Noise Criterion".</p> <p>Further to the question regarding increased traffic movements and acceleration of vehicles on New Beach Road ..... Table 7-Noise Associated with Traffic Generation contained within the amended report demonstrates compliance with the Night time Noise Criterion (being the strictest criteria) at the property boundary of the residents on New Beach Road.</p> <p><b>Noise from increased number of Marina Berths and existing Operational Noise</b></p> <p>The amended report states that the proposed new</p>	5

	<p><i>number of berths will not be perceptible to any increase in noise. Site visits also revealed that noise from moored boats and manoeuvring boats into and out of the marina were barely audible. In this regard compliance is achieved with the DECC noise emission guidelines for the New Beach Road residences.</i></p> <p><i>In addition Acoustic Logic Consultancy has also provided an assessment of boat engine noise when manoeuvring to and from the marina where the average noise level generated is typically 85-90 dB(A)Leq and assessed against the 'Sleep Disturbance Criteria'. .... Given that the proposed new berths are located further away from the New Beach Road residences, Table 5-Average Noise Emission of the amended report shows compliance with the 'Sleep Disturbance Noise Criterion.'</i></p> <p><b><u>Mechanical Plant Noise Emissions</u></b></p> <p><i>It is recommended that plant and equipment be selected on acoustic performance and installed to achieve Council's Noise Criterion for Mechanical Plant &amp; Equipment. All proposed acoustic treatments that may be required to achieve compliance with the criteria shall also be included at the Construction Certificate stage.</i></p> <p><b><u>Acoustic Logic Consultancy-Construction Noise and Vibration Management Plan</u></b></p> <p><i>.....it is recommended that;</i></p> <ul style="list-style-type: none"> <li><i>a) The proponent shall prepare and implement a Noise Control Program during the Construction Phase of the proposed development for evaluating compliance or otherwise with the noise goal objectives set out in the Construction Noise and Vibration Management Plan .....</i></li> <li><i>b) All mitigation and noise control methods, including the assessment of vibration and complaints handling detailed in the Construction Noise and Vibration Management Plan (Report No. 2008593.4/0526A/R1/TT dated 23 June 2009) shall be fully implemented.</i></li> </ul> <p><b><u>Acid Sulfate Soils</u></b></p> <p><i>Based on the findings contained within the Stage 1 Land Contamination Assessment ..... prepared by Martens Consulting Engineers it is recommended that the Acid Sulfate Soils Management Plan as detailed in Section 3.7 of the report be fully implemented.</i></p> <p><b><u>Soil Contamination Assessment</u></b></p> <p><i>Soil investigation and sampling has determined that the site is contaminated. .... Council must be</i></p>	
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	<p><i>satisfied that the land will be made suitable after remediation. It is recommended that a Remedial Action Plan (RAP) be prepared for the site and required to be submitted to Council detailing the remediation strategy.</i></p> <p>[Note: Council's letter 9/11/09 advised the applicant to either submit the RAP as part of this DA or as part of a separate DA for remediation work. The applicant subsequently advised that a separate DA would be submitted for remediation work. Any consent should be granted subject to a 'deferred commencement' condition regarding remediation work.]</p> <p>The comment also recommends conditions be imposed regarding <b>light &amp; ventilation, erosion and sediment controls – installation, and dust mitigation.</b></p>	
Heritage Officer	<p><b>Woollahra LEP 1995 Part 1 clauses 2(1)(g) and 2(2)(g); Part 4 clauses 26; 27</b></p> <p><b>Comments:</b> <i>The proposal includes reclamation of a portion of Sydney Harbour and construction of a new sea wall.</i></p> <p><i>Notwithstanding that the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 prohibits reclamation works, the proposed reclamation will not result in an adverse heritage impact in this instance as:</i></p> <ol style="list-style-type: none"> <li><i>1. The line of the 1890s sea wall has been broken and altered by the construction by various successive jetties, pontoons and slipway structures associated with the sites continual maritime use.</i></li> <li><i>2. The proposed realignment of the sea wall includes improved public access walkway.</i></li> </ol> <p><b>Woollahra Residential DCP 2003</b></p> <p><b>Comment:</b> <i>The proposed works will have no adverse impacts to the in-vicinity heritage items and conservation areas. The proposal accords with objective O4.1.11 in relation to heritage conservation.</i></p> <p><b>Conclusion</b></p> <p><i>The application is generally acceptable as it complies with the provisions of the relevant statutory and policy documents with the exception of those outlined in the above assessment. The non-compliance is acceptable, in this case, and no changes are considered necessary because the proposed reclamation will not result in an adverse heritage impact.</i></p>	6

	The non-compliance relates to the issue of reclamation works which has subsequently been resolved by the submission of the amended DA.	
<b>Urban Design Planner</b>	<p><b>RECOMMENDATION</b></p> <p><i>The proposal is considered to be contributory from an Urban Design perspective. The crossover point to the underground parking will need to prioritise pedestrian movement so as to reinforce the improved pedestrian link between the two public parks and ensure pedestrian safety.</i></p>	7
<b>Fire Safety Officer</b>	Recommends conditions to upgrade fire safety in the existing building and for annual fire safety statements.	8

## 9.2 External referrals.

EXTERNAL REFERRALS		
External Referral Body	Reason for referral	Comment
NSW Industry & Investment (Integrated approval body)	s.205 of the <i>Fisheries Management Act 1994</i>	<p>I&amp;I NSW has reviewed this amendment in light of the policies and provisions under the Fisheries Management Act 1994 and has no objections providing the following general terms of approval are included in any development consent issued for this proposal:</p> <p>.....</p> <p>(see annexure 9 for detailed comments and condition A.5)</p>
Department of Environment Climate Change and Water (Integrated approval body)	s.43 of the <i>Protection of the Environment Operations Act 1997</i>	<p>.....</p> <p>The Cruising Yacht Club of Australia (CYCA) currently hold an environment protection licence (EPL), number 10822, under the Protection of the Environment Operations Act 1997 (the POEO Act) to conduct scheduled activities on the site, being marinas and boat repairs.</p> <p>A review of the documentation submitted with the application indicates that the proposed development will not result in changes to the current scheduled activities. DECCW notes, however, that the redevelopment proposes construction works including</p>



EXTERNAL REFERRALS		
External Referral Body	Reason for referral	Comment
		<p><i>the removal of the slipway on the site. The existing EPL does not authorise scheduled development works such as this. The proponent will need to apply to DECCW for an EPL variation that authorises the carrying out of scheduled development works prior to any works commencing on site.</i></p> <p><i>In regards to construction activities, the following comments are made:</i></p> <p>a) <i>A condition should be imposed on the proponent requiring construction noise impacts being assessed and managed in accordance with the DECCW publication "Interim Construction Noise Guideline" (July 2009). The Construction Noise and Vibration Management Plan should be amended to reflect the guideline requirements.</i></p> <p>b) <i>A condition should be imposed requiring sediment and erosion control measures to be developed and implemented in accordance with Landcom Soils and Construction, volume 1, 4<sup>th</sup> Edition, March 2004. The Sediment and Erosion Control Plan should be amended to reflect these requirements.</i></p>
NSW Office of Water (Integrated approval body)	s.91 Water Management Act 2000	<p>.....</p> <p><i>Please note Council's statutory obligations under section 91A(3) of the Environmental Planning and Assessment Act, 1979 (EPAA) which requires a consent, granted by a consent authority, to be consistent with the GTA (General Terms of Approval) proposed to be granted by the approval body.</i></p> <p><i>If the proposed development is approved by Council, the NSW</i></p>

EXTERNAL REFERRALS		
External Referral Body	Reason for referral	Comment
		<p>Office of Water requests that these GTA be included (in their entirety) in Council's development consent. ....</p> <p>(see annexure 10 for specific GTA and condition A.6)</p>
NSW Planning	25D(3)(c) of Woollahra Local Environmental Plan 1995	<p>The Department's Major Hazards Unit has reviewed the Acid Sulfate Soils Management Plan and provided some general comments. In this regard, the procedures in the management plan for monitoring the pH and salinity of the extracted soils and water and the application of lime to neutralise them are considered consistent with the 1998 Acid Sulfate Soils Management Guidelines. Consideration has also been given to the procedures in the plan for the stockpiling of untreated soil and the off-site disposal of neutral soil and the proposed contingency plan should any of the management strategies fail.</p> <p>The Department will not be making any specific comments on the management plan.</p> <p><b>Development in the W5 – Water Recreation Zone under the Harbour REP</b></p> <p>It is noted the proposed refurbishment and expansion of facilities at the CYCA site includes basement car parking which extends beyond the boundaries of the club and beyond the existing seawall into the Harbour.</p> <p>.....</p> <p>In determining the application, it will therefore be necessary for the consent authority to satisfy itself that the proposed works do not involve any reclamation and that the works are consistent with all relevant legislation.</p> <p>Note: In relation to the comments on reclamation, the</p>

EXTERNAL REFERRALS		
External Referral Body	Reason for referral	Comment
		response from NSW Planning related to the original DA. The amended DA has reduced the size of the basement level so that, as now proposed, it does not extend beyond the boundaries of the Club or the existing sea wall. (see annexure 11)
NSW Industry & Investment	25D(3)(d) of Woollahra Local Environmental Plan 1995	The Department's letter 20/5/10, see annexure 9, also relates to acid sulfate soils and includes the following specific GTA:  <b>3. <i>The Acid Sulphate Soil Management Plan submitted with this application is to be implemented. These works must not result in any subsequent Acid Sulphate Soil related impacts on the adjoining aquatic environment. Any leachate that is discharged from the worksite must be tested before discharge and treated so that the required pH levels are achieved.</i></b>
Roads and Traffic Authority	cl.77 of the Regulations	..... <i>Following a review of the traffic report and information submitted, the RTA will not object to the subject development application provided that the following requirements are incorporated into the development consent (if the development application were to be approved):</i>  <b>1. <i>Council's Local Traffic Committee should consider reviewing the existing parking restrictions around the subject site to cater for any expected overflow parking as a result of the proposed development.</i></b>

EXTERNAL REFERRALS		
External Referral Body	Reason for referral	Comment
		<p>2. <i>car parking requirements are to be to Council's satisfaction.</i></p> <p>3. <i>the layout of the proposed car parking areas associated with the subject development (including grades, turn paths, sight distance requirements, aisle widths and parking bay dimensions) should be in accordance with AS2890.1 – 2890.2 – 2002.</i></p> <p>4. <i>All regulatory signposting/road works shall be at no cost to the RTA and Council.</i></p>
NSW Maritime	cl.77 of the Regulations	<p>NSW Maritime has reviewed the plans provided and has no objection to the proposed amendments. (letter 11/6/10)</p> <p>NSW Maritime's initial response dated 22/9/09 to the original DA raised the issue of reclamation work associated with part of the carpark. The amended DA has addressed that issue by reducing the size of the carpark, eliminating that part which may have constituted reclamation works.</p> <p>NSW Maritime's letter 22/9/09 also includes comments on navigational matters, the relocation of swing mooring and requests that certain conditions be included in any development consent, (see annexure 12)</p>
Land and Property Management Authority	cl.77 of the Regulations	<p>.....</p> <p><i>Perusal of the DA form will verify that the former Department (i.e. Department of Lands) granted owner's consent to submission of the DA by the Club. Accordingly, we are not merely "a public authority who may have an interest....", the CYCA being a significant commercial holder of Crown land.</i></p> <p><i>Your letter notifies receipt of</i></p>

EXTERNAL REFERRALS		
External Referral Body	Reason for referral	Comment
		<p>DA441/2009/1 but references in the first sentence Council's receipt of "development applications". If there is more than one under consideration please provide details as soon as possible.</p> <p>There is not more than 1 DA under consideration.</p>
Heritage Council of NSW	cl.77 of the Regulations	No response received
Sydney Ferries	cl.77 of the Regulations	No response received
Energy Australia	cl.77 of the Regulations	No response received
NSW Fire Brigades	cl.77 of the Regulations	No response received
Royal Australian Navy	cl.77 of the Regulations	No response received
Council of the City of Sydney	cl.77 of the Regulations	No response received
Foreshores and Waterways Planning and Development Advisory Committee	cl.29 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	<p><i>The Committee recommends that:</i></p> <p>a) <i>That the consent authority satisfies itself whether or not part of the proposed car park extension is permissible noting that reclamations are prohibited in any zone under the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.</i></p> <p>Note: This comment related to the original DA. The amended DA has reduced the size of the carpark, thereby eliminating that part of the proposal which may have constituted reclamation works.</p>
New South Wales Police	For comment under the Memorandum of Understanding – Crime Prevention Through Environmental Design	A number of recommendations are made with regard to safety associated with demolition, car park and building design.

EXTERNAL REFERRALS		
External Referral Body	Reason for referral	Comment
	(CPTED)	(see annexure 13 for detailed comments and condition A.7)

## PLANNING FRAMEWORK

### 10.1 Designated development

Section 77A of the EPA Act provides that development is designated development if it is declared to be designated development under an environmental planning instrument or the *Environmental Planning and Assessment Regulation 2000* (EPA Reg). Schedule 3 of the EPA Reg includes certain categories of marinas as being designated development. Alterations and additions are not designated development if, in the opinion of the consent authority, they do not significantly increase the environmental impacts of the total development.

The DA has been submitted on the basis that the development is designated development and it is being processed accordingly.

An application for designated development is required to be:

- Publicly exhibited in accordance with s.79 of the EPA Act which provides for a notice to be placed on the land in addition to notification of adjoining land owners and advertising in the local newspaper
- Exhibited for 30 days (cl.78(2) of the EPA Reg)
- Notified to public authorities, other than approval and concurrence authorities who, in the opinion of the consent authority, may have an interest in the determination of the DA (cl.77 of the EPA Reg)
- Accompanied by an environmental impact statement (EIS) (schedule 1, part 1, 2(1)(e) of the EPA Reg)

The EPA Reg contains provisions for the form and content of an EIS (cl.71 & 72) and for the applicant to consult with the Director General and have regard to the Director General's requirements (cl.73).

A copy of submissions received during the public exhibition must be forwarded to the Director General (cl.81).

The DA has been publicly exhibited as required. The form and contents of the EIS are satisfactory with regard to the EPA Reg. A letter dated 1/10/08 was received from the Director General with a copy of his requirements for the preparation of the EIS. The letter also advised that the Council should forward 3 copies of the DA & EIS to the Department for concurrent exhibition. Also, at the end of the exhibition we should send a copy of all submissions received to the Department (as required by cl.81 of the EPA Reg) and noted that *...the Department will only respond during the 21 day statutory period if there is an issue of major significance involved.*

The EIS has regard to the Director General's requirements. Copies of submissions were sent to the Department on 3/11/09. No response was received.



In addition to the approval and concurrence authorities, notification of the DA was given to the following public authorities under cl.77:

- Roads and Traffic Authority
- NSW Maritime
- Energy Australia
- NSW Fire Brigades
- NSW Police (under Memorandum of Understanding)
- Royal Australian Navy
- Sydney Ferries Corporation
- Council of the City of Sydney
- NSW Heritage Office

See the part 9.2, External Referrals table, of this report for responses from these public authorities.

## ***10.2 Integrated development***

Section 91 of the EPA Act provides that development is integrated development if it requires consent and it also requires approval under certain other Acts. The proposed development is integrated as it requires approval under the following Acts which are listed in s.91:

- *Water Management Act 2000* (WMA) as approval is required under s.91 to carry out a controlled activity, i.e. excavation of protected land (being the Harbour sea bed). The approval body under the WMA is the Office of Water.
- *Fisheries Management Act 1974* (FMA) as a permit is required to harm marine vegetation in a protected area. NSW Industry & Investment (I&I) is the approval body under the FMA.
- *Protection of the Environment Operations Act 1997* (POEO Act) as approval is required under s.43 for a 'scheduled activity'. The Department of Environment Climate Change and Water (DECCW) is the approval body.

Section 91A(3) provides that a consent must be consistent with the general terms of approval of an approval body. Section 91A(4) provides that if an approval body informs a consent authority that it will not grant a required approval the consent authority must refuse consent to the application. Section 91A(5) provides that if an approval body fails to inform a consent authority the consent authority may determine the DA. Under cl.70 of the EPA Reg an approval body is required to advise its decision in relation to the general terms of approval within 21 days after receiving the last of the submissions received during the submission period.

Submissions were forwarded to the approval bodies on 30/10/09. NSW I & I and NSW Office of Water have furnished their general terms of approval, see part 9.2 of this report. DECCW have advised that the CYCA currently holds an environmental license and did not furnish GTAs or advise that it would not grant an approval.

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

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

## 11.1 RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

### 11.1.1 SEPPs

#### **State Environmental Planning Policy (Major Development) 2005 (Major Development SEPP)**

The aims of the Major Development SEPP include identifying development to which the assessment and approval process under part 3A of the Act apply and identifying development for which regional panels are to exercise specified consent authority functions.

Marina facilities in Sydney Harbour with a boat storage capacity of more than 30 boats are included in schedule 1 of the Major Development SEPP as part 3A development. In relation to an existing facility, development is part 3A if the additional number of boats which can be accommodated is more than 30. The CYCA is an existing facility with 204 marina berths. The proposal will result in accommodation for 6 additional boats. Therefore, the proposal does not meet the threshold to be classed as a part 3A development.

Part 3 of the Major Development SEPP identifies the types/categories of development which is regional development and what consent authority functions a Regional Panel may exercise in relation to such regional development.

Development which is Regional Development includes all development with a capital investment value of more than \$10 million, *wharf and boating facilities* with an estimated capital investment value of more than \$5 million and designated development. As the capital investment value of the CYCA's proposed redevelopment is \$12.5 million and because it is also designated development it is development to which part 3 of the Major Development SEPP applies.

Clause 13F of the Major Development SEPP provides that a Regional Panel may exercise the determination of development application functions of a council under part 4 of the Act. Therefore, the Regional Panel is the consent authority for this development application.

Parts 4.6 and 4.7 of *Procedures for the operation of joint regional planning panels*, prepared by the Department of Planning provides:

#### **4.6 Council representation to the Regional Panel**

*A council may make a submission on a development application that is to be determined by a Regional Panel during and up to seven (7) days before the Panel Meeting. The applicant may consider it appropriate to provide a briefing to council prior to the council framing its submission to the Panel.*

*The council submission should be forwarded to the Panel Secretariat. A Regional Panel will give consideration to a council submission in its determination of the application. A council submission, however, is not a matter that must be specifically addressed in the assessment report or recommendations prepared by the council staff.*

#### **4.7 Submission of Assessment Report to Panel Secretariat**

*The completed assessment report and recommendation, signed by the officer responsible for the report, is to be forwarded electronically to the Panel Secretariat immediately upon completion.*

*The assessment report is not required to be endorsed or presented to the Council before being forwarded to the Panel Secretariat.*

## State Environmental Planning Policy No. 55 – Remediation of land (SEPP 55)

Clause 7(1)(b) and (c) of SEPP 55 require that where 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 *Managing Land Contamination planning guidelines SEPP55-remediation of land* 1998 (the Guidelines), published by the Department of Urban Affairs and Planning and the Environment Protection Authority, assist in applying SEPP 55.

Documentation provided with the application relating to SEPP 55 includes the EIS, part 7.1.7 and appendix P which comprises:

- *Stage 1 land contamination assessment proposed additions to D marina Cruising Yacht Club Australia, New Beach Road, Darling Point, NSW* by Martens consulting engineers dated June 2009 (Martens stage 1 report)
- *Acid sulfate soil and stage 1/2 contamination assessment: CYCA New Beach Road, Darling Point NSW* by Martens consulting engineers dated March 2009 (Martens stage 1/2 report)

Comments on this documentation have been provided by our Senior Environmental Health Officer, see annexure 5.

Our Contaminated Land Map shows the land based site area and portion of the water based site area to be potentially contaminated. The areas of waterway presently occupied by marina arm D and proposed to be occupied by the additional berths is not shown as potentially contaminated. Under the Guidelines marinas and associated activities are not specifically identified in table 1 as activities that may cause contamination although they are listed as an industry under schedule A.

Martens stage 1 report is considered to constitute a stage 1- preliminary investigation as referred to in the Guidelines and a report for the purposes of SEPP 55, cl.7(2). The main purpose of such a report is to determine whether detailed investigation is needed. The report relates to proposed additions to D marina (arm D). It concludes:

*From an assessment of the available information it is considered that there is a minimal likelihood of contamination of the seabed sediments beneath the proposed marina extension as a result of past activities on the site and adjacent land.*

*Proposed alterations to the marina include the installation of mooring piles which will be driven into the seabed and are not expected to require any excavation. It is considered that there would be minimal disturbance of sea bed sediments. .... it is considered that disturbance of sediment poses a negligible risk to human health. .... works shall be designed to ensure any sediments disturbed are retained immediately adjacent to the works area to ensure no significant adverse environmental impacts.*

*Given that the proposed marina alterations are minor, and based on the minimal risk of site specific contaminant exposure, further site assessment (soil sampling and testing) is not considered necessary. The site is considered suitable for the proposed development. (p.11)*

Considering the findings of the Martens stage 1 report it is considered that the land to be occupied by the additions to marina D (i.e. the area of waterway and seabed) is suitable for the proposed use.

Martens stage 1/2 report relates to the land based component of the proposal and to the immediately adjacent waterway area, i.e. the area to be occupied by the carpark, suspended hardstands and changes to the walkway links to arms A, B & C. The report includes the findings of laboratory testing of soil samples from 14 sampling locations. It is considered to constitute a stage 2 - detailed investigation under the Guidelines and a report referred to in SEPP 55, cl.7(3).

The report's conclusions include:

*Site investigation works and sampling indicates a range of contaminants on the site including heavy metals (lead and mercury), hydrocarbons (TRH and PAH) and tributyltin (TBT). The heavy metals and PAH may have been imported to the site in fill material or may be a result of historic site uses. The presence of lead and TRH indicates past contamination of the site with leaded fuel and the presence of TBT is consistent with long term use of the sites as a marina and slipway.*

*Contaminants identified are within soil material which, as a part of the proposed site redevelopment, shall be excavated and removed from the site. Therefore, the matter of site remediation is most appropriately addressed through the excavation of all site fill material and its removal and disposal in accordance with relevant NSW guidelines. Verification of the removal and all contaminated material should be undertaken prior to the commencement of site reconstruction.*

*A site remediation action plan is recommended to be prepared for the site as a condition of consent. ....*

*Given the need for the removal of contaminated material to allow for the development to progress (particularly for the construction of the site basement carpark) it is concluded that a remediation action plan may be readily developed and implemented on the site to ensure that, following redevelopment, the site shall be fit for the intended use. (p.28)*

Our Environmental Health Officer, in consideration of this report, recommended that a remedial action plan be prepared for the site and be submitted to Council detailing the remediation strategy. Under cl.9 the remediation works are considered to be category 1 remediation works as the area in which they are to be carried out is in the harbour foreshore scenic protection area under the WLEP. Under cl.8(2) development consent is required for the carrying out of category 1 remediation works.

Council advised the applicant by letter dated 9/11/09 that development consent is required for the carrying out of remediation works. Also, that if it wished the remediation work to be considered as part of the current application it will be necessary to amend the DA accordingly and submit a remedial action plan. Alternatively, the applicant may submit a separate DA.

The CYCA's letter 23/4/10 advises that it proposes to submit a separate DA with the requisite remedial action plan following determination of the current DA. Based on the Martens stage 1/2 report, excavation works proposed as part of the development, including off site disposal of excavated material, will also result in the removal of contaminants and remediation of the land. In those circumstances it is considered that remediation of the land is both practicable and will necessarily occur as part of the proposed redevelopment. Therefore it would not be inappropriate to grant consent to this DA subject to a 'deferred commencement' condition requiring evidence to be provided that the land can be made suitable for use for marina purposes. The applicant will need to satisfy Council that the land can be made suitable before the consent commences to operate, see condition A.3. Also, see comments in part 18 of this report.

### ***Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SHREP) (deemed SEPP)***

The SHREP was gazetted on 28/9/05. It consolidated and replaced *Sydney Regional Environmental Plan No.22 – Parramatta River* and *Sydney Regional Environmental Plan No.23 – Sydney and Middle Harbours*. It aims to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment and promoting recreational access to the foreshore and waterways.

The SHREP contains 6 parts as follows:

1. Part 1 – Preliminary, which contains the aims and the principles which enable those aims to be achieved in relation to the foreshore and waterway area.
2. Part 2 – Planning principles, which relate to the plan making process
3. Part 3 – Foreshores and waterways area, which includes zonings and their objectives, matters for consideration in relation to DAs, the Advisory Committee's constitution and role and special provisions
4. Part 4 – Strategic sites, which contains matters for consideration in relation to sites identified as strategic foreshore sites in the SHREP
5. Part 5 – Heritage provisions, which contains provisions for the assessment of DAs relating to heritage items and places of potential heritage significance as identified in the SHREP
6. Part 6 – Wetlands protection, which contains provisions for the assessment of DAs relating to wetlands protection areas as identified in the SHREP.

The provisions relevant to the assessment of this DA are in Parts 1, 3, 5 & 6 and are discussed below.

Clause 2 sets out the aims of the plan as follows:

#### *2 Aims of plan*

##### *(1) This plan has the following aims with respect to the Sydney Harbour Catchment:*

- (a) to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained:*
  - (i) as an outstanding natural asset, and*
  - (ii) as a public asset of national and heritage significance, for existing and future generations,*
- (b) to ensure a healthy, sustainable environment on land and water,*
- (c) to achieve a high quality and ecologically sustainable urban environment,*

- (d) *to ensure a prosperous working harbour and an effective transport corridor,*
  - (e) *to encourage a culturally rich and vibrant place for people,*
  - (f) *to ensure accessibility to and along Sydney Harbour and its foreshores,*
  - (g) *to ensure the protection, maintenance and rehabilitation of watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity,*
  - (h) *to provide a consolidated, simplified and updated legislative framework for future planning.*
- (2) *For the purpose of enabling these aims to be achieved in relation to the Foreshores and Waterways Area, this plan adopts the following principles:*
- (a) *Sydney Harbour is to be recognised as a public resource, owned by the public, to be protected for the public good,*
  - (b) *the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores,*
  - (c) *protection of the natural assets of Sydney Harbour has precedence over all other interests.*

Under cl.17(2) a consent authority must not grant consent to any development unless it is satisfied that it is consistent with the aims of the plan. The principles which enable the aims to be achieved are relevant to the assessment of this DA as the development is proposed to be carried out in the foreshores and waterways area. They are fundamental to properly understanding the weight which needs to be given to competing interests in respect to development and use of the waterway and foreshore area.

The principles clearly state that protection of the Harbour's natural assets is paramount. Therefore, to properly assess a DA under the SHREP a proper understanding of the impacts of the proposed development on the Harbour's natural assets is fundamental. The principles also stress the strong public affinity with the Harbour expressed in terms of its public ownership. There is an obligation for a consent authority to uphold the public good over private interests if and whatever changes to the Harbour may be proposed. Consequently the public is entitled to have high expectations that its rights as owner of the Harbour will not be compromised by inappropriate developments.

The proposed development, being for a commercial marina, is defined as *land/water interface development*. Clause 5 provides that the local council is the consent authority for land/water interface development. As discussed earlier in relation to the Major Developments SEPP a Regional Panel may exercise the approval functions of a council under part 4 of the Act for regional development. The development proposed by this DA is regional development as the capital investment value is more than \$10 million, the proposed development is for *wharf and boating facilities* with a capital investment value more than \$5 million and the development proposed by the DA is designated development. Therefore, the Regional Panel, rather than the council, is the consent authority.

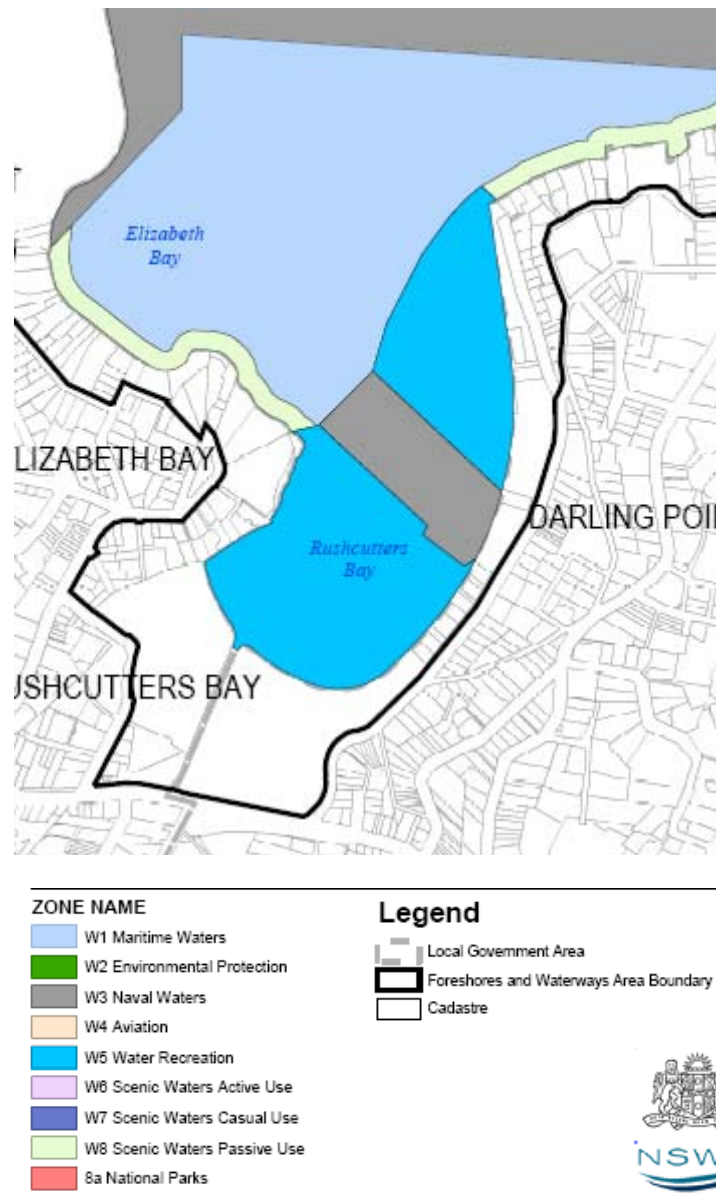
Clause 7 provides that the SHREP supplements and does not derogate from any other environmental planning instrument. Also, in the event of any inconsistency it applies to the extent of the inconsistency. It is considered that the SHREP zonings apply to all land below the mean high water mark.

Under cl.16 of SHREP the area of waterway that the proposed marina would occupy is zoned W5-Water Recreation.



The following map shows the zonings for Rushcutters Bay under the SHREP. As can be seen the waterway area occupied by the existing/proposed marina is zoned W5-Water Recreation. The area to the north is zoned W3-Naval Waters [Note: commercial marinas are not permissible in the W3 zone]. The adjacent area around Elizabeth Bay is zoned W1 Maritime Waters and W6 Scenic Waters Passive Use [Note: commercial marinas are permissible with development consent in both the W1 and W6 zones]. Also, the land based area occupied by the existing/proposed marina is within the boundary of the foreshore and waterways area, as indicated on the map by the heavy black line.

**SYDNEY REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT)  
2005  
ZONING MAP**



Clause 17 includes tables which contain objectives for each of the zones. Under cl.17(2) a consent authority must not grant consent to any development unless it is satisfied that it is consistent with the aims of the objectives of the zone.

The following table shows the W5 zone objectives as set out in cl.17.

Zone Objectives	
W5 – Water Recreation	
(a)	to give preference to and increase public water-dependent development so that people can enjoy and freely access the waters of Sydney Harbour and its tributaries,
(b)	to allow development only where it is demonstrated that the public use of waters in this zone is enhanced and will not be compromised now or in the future,
(c)	to minimise the number, scale and extent of artificial structures consistent with their function,
(d)	to allow commercial water-dependent development, but only where it is demonstrated that it meets a justified demand, provides benefits to the general and boating public and results in a visual outcome that

harmonises with the planned character of the locality,
(e) to minimise congestion of and conflict between people using waters in this zone and the foreshore,
(f) to protect and preserve beach environments and ensure they are free from artificial structures,
(g) to ensure that the scale and size of development are appropriate to the locality, and protect and improve the natural assets and natural and cultural scenic quality of the surrounding area, particularly when viewed from waters in this zone or from areas of public access.

Clause 18 provides that certain developments are either permissible without consent, are permissible only with consent or are prohibited, depending on the zoning. Commercial marinas are development permissible only with development consent in the W5 zone.

### **Matters requiring consideration**

Matters to be considered in the assessment of a DA are in Part 3, Division 2 under the following headings:

- cl.21 – biodiversity, ecology and environment protection
- cl.22 – public access to and use of, foreshores and waterways
- cl.23 – maintenance of a working harbour
- cl.24 – interrelationship of waterway and foreshore uses
- cl.25 – foreshore and waterways scenic quality
- cl.26 – maintenance, protection and enhancement of views
- cl.27 – boat storage facilities

### **Foreshores and waterways planning and development advisory committee (Advisory Committee)**

Clause 29 provides that consent can not be granted to development referred to in schedule 2 on land that is within the foreshore and waterway area unless the DA has been referred to the Advisory Committee. Commercial marinas are referred to in schedule 2 and the land is within the foreshores and waterways area. The DA was considered by the Advisory Committee on 18/9/09. It recommended as follows:

- a) That the consent authority satisfies itself whether or not part of the proposed car park extension is permissible noting that reclamations are prohibited in any zone under the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

We raised this matter with the applicant by way of letter dated 15/10/09. The applicant amended the DA on 27/4/10 by deleting the part of the proposed carpark which may have constituted reclamation works.

### **Other relevant SHREP provisions**

Other provisions of the SHREP relevant to this proposal are:

- part 5 – Heritage provisions
- part 6 – Wetlands protection

A SHREP Assessment Table is annexed to this report, see Annexure 14. The provisions of the SHREP which are relevant to the assessment of this DA are discussed in detail elsewhere in this report and/or are commented upon in the Assessment Table.

## 12. SECTION 94 CONTRIBUTION

The levy payable under our s.94A Development Contributions Plan 2005 is:

\$12,533,908.00 (estimated cost) x 1% (levy rate) = \$125,339.00

## 13. OTHER RELEVANT LEGISLATION

### 13.1 *Environmental Protection & Biodiversity Protection Act 1999 (EPBC Act)*

The EPBC Act is Commonwealth legislation. It requires the Federal Minister to approve of certain activities. Approval is required for actions that are likely to have a significant impact on:

- a matter of national environmental significance;
- the environment of Commonwealth land (even if taken outside Commonwealth land); and
- the environment anywhere in the world (if the action is undertaken by the Commonwealth).

An action includes a project, development, undertaking, activity, or series of activities.

The EIS includes an *Aquatic Ecological Assessment* by Cardno Ecology Lab, June 2009 (Ecology report). The following comments are included in the report in relation to the EPBC Act:

*For the ..... EPBC Act to have relevance there must be likelihood that one or more threatened species occur in or encroach upon the study site which could then be impacted upon by the proposed works. (2.2.5, p.6)*

*All species of Syngnathiformes, such as seahorses, sea dragons and pipefish are protected under the EPBC Act as they are vulnerable to human impacts via degradation of their habitat. The search results indicated several species of pipefish and seahorses are known to occur in the region that includes the study site. (2.2.5, p.7)*

*No seahorses or pipefish (Syngnathiformes), protected under the EPBC Act, were observed in the study site. There was very little suitable Syngnathiformes habitat present in the study site – limited to mooring ropes. (4.4, p.11)*

*Similarly, some species listed in the EPBC Act may occur, or have been previously observed, in the region of the proposed works, but most are unlikely to be affected by it, given its location, scale and far greater existing development and vessel traffic. (5.2.3, p.13)*

The EIS includes the following statement in relation to the EPBC Act:

*The proposal would not have a significant impact on matters of national environmental significance as listed in the EBPC Act and accordingly, a referral is not required to the Commonwealth Minister for the Environment. (7.1.1, p.49)*

Based on the advice contained in the Ecology report and in the EIS referral to the Federal Minister is considered to be unnecessary. [Note: the Council has no obligation to refer the DA to the Federal Minister under the EPBC Act – the obligation for referral rests with the proponent.]

## **13.2 NSW threatened species legislation**

In accordance with the Director General's requirements for the preparation of the EIS, the Ecology report makes an assessment of the proposal in relation to s.5C – *Application of Act with respect to Threatened Species conservation – fish and marine vegetation*, of the EPA Act. For this purpose the Ecology report discusses the provisions of the *Threatened Species Conservation Act 1995* (TSC Act) and the *Fisheries Management Act 1994* (FM Act).

*..... The EPA 1979 Act sets out the factors to be considered in preliminary assessments of whether there is likely to be a significant effect on threatened species arising from a development. Seven factors are considered and the assessment process is referred to as the assessment of significance. (2.2.1, p.5)*

*For the FM Act, TSC Act ..... to have relevance there must be a likelihood that one or more threatened species occur in or encroach upon the study site which could then be impacted upon by the proposed works. ....*

*..... search results indicated four threatened and endangered species of fish – grey nurse shark (*Carcharodon taurus*), great white shark (*Carcharodon carcharias*), green sawfish (*Pristis zijsron*) and Australian grayling (*Prototroctes maraena*) – are known to occur in the region that includes the study site.*

*.....*

*Marine vegetation including seagrasses, mangroves and saltmarshes are protected under the NSW Fisheries Management Act 1994. It is illegal to damage or destroy marine vegetation except under authority of a permit supplied by NSW fisheries. (2.2.5, pp.6&7)*

*In relation to the TSC Act, most of the species are highly unlikely to occur within the area of the proposed redevelopment, or be affected by construction or operational issues. ....*

*In relation to the schedules within the FM Act ..... These four species may occur in and around Sydney Harbour, but the scale of the development is very small and these species are most unlikely to be affected by it.*

*There is no requirement that Assessments of Significance be done for species listed as Protected under the FM Act. (5.2.3, p.13)*

NSW Industry & Investment are an approval body under the integrated development provisions of the EPA Act. This is because a permit is required under s.205 of the FM Act to harm marine vegetation. The amended DA was referred to NSW Industry and Investment which provided its general terms of approval on 20/5/10, see annexure 9. The general terms of approval, which are to be included in any development consent issued for the proposal, include:

1. *A permit to harm marine vegetation under the Fisheries Management Act is to be obtained from this Department for these works. ....*

Both the Ecology report and the NSW Industry & Investment's general terms of approval include mitigation measures to protect marine flora and fauna.

Having regard to the contents of the Ecology report and the correspondence from NSW Industry & Investment the proposal is considered to be satisfactory in relation to NSW threatened species legislation.

## 14 WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995 (WLEP)

***The provisions of the WLEP are considered to apply to the area of the site located above the MHWM, i.e. generally the land based component of the site. This is because, notwithstanding cl.3(1), the specific planning regime under the SHREP applies to land below the MHWM.***

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

The **aims** of WLEP as contained in cl.2(1) include:

- (c) *to promote the management, development, conservation and economic use of property within the area of Woollahra,*
- (d) *to provide for an appropriate balance and distribution of land for commercial, retail, residential and tourist development and for recreation, entertainment and community facilities,*
- (e) *to ensure that growth within the area of Woollahra occurs in a planned and co-ordinated manner,*
- (f) *to facilitate the provision of urban infrastructure,*
- (g) *to conserve the environmental heritage of the area of Woollahra,*
- (h) *to protect the amenity and natural environment of the area of Woollahra, and*
- (i) *to provide the framework for more detailed controls to be contained within development control plans.*

The WLEP contains **objectives** in cl.2(2). The most relevant objectives to this proposal are considered to be those relating to residential development (a), traffic and transport (d), private and public open space, recreation and tourism (e), heritage conservation (g), the area's foreshores and the harbour foreshore scenic protection area (h), global warming (j) and urban design (k). These objectives are discussed in this report in relation to specific issues.

Clause 8(5) provides:

***The Council shall not grant consent to the carrying out of development on land to which this plan applies unless the Council is of the opinion that the carrying out of the***

*development is consistent with such objectives of this plan and of the zone within which the development is proposed to be carried out as apply to that development.*

The applicable objectives of the plan, as contained in cl.2(2), have been referred to earlier. The objectives of the zone are in cl.8.

The land based component of the site is in zone 6, General Recreation. The development control table under cl.8 includes:

- objectives for the zone
- the types of development which are permissible without development consent
- the types of development which are permissible only with development consent and
- the types of development which are prohibited

The **objectives** which apply to zone 6 and which are considered to be applicable to the proposed development are:

- (d) *to enable development for the purpose of public and private recreation and community facilities sympathetic to the environmental characteristics of the land and surrounding areas, and*
- (e) *to protect the visual and environmental attributes of the foreshores,*

Marinas, although not specifically defined in the WLEP, are included among the types of development which may be defined as *tourist facilities*. They are a use which could also be classified as *commercial premises*, being a building or place used for commercial purposes but which is not specifically defined. Either way, *tourist facilities* and *commercial premises* are not listed among the types of development which are permissible without development consent or which are permissible only with development consent.

As development other than those which are permissible without development consent or permissible only with development consent are prohibited the existing/proposed development is considered to be prohibited under the WLEP.

As the existing use is prohibited it is necessary to determine if the **existing use rights** provisions under the Act apply. The relevant provisions of the Act relating to existing use rights are in part 4, division 10. The following assessment to establish if existing use rights apply is based on our internal procedure, *Development assessment – existing use rights*.

Section 106 of the Act defines existing uses as follows:

**106 Definition of “existing use”**

*In this Division, existing use means:*

- (a) *the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and*

.....

The date that an environmental planning instrument first came into force with the effect of prohibiting the use of the land for an existing use is known as the *relevant date* (see the Regulations, cl.39(a)). In this case the *relevant date* is considered to be 15/12/1972 being the date that the *Woollahra Planning Scheme Ordinance* (WPO) came into force. This is

because it was the first planning instrument that prohibited marina development in the Woollahra local government area.

Under the WPO the land based component of the CYCA site was zoned *6(a) Open Space, recreation existing*. Under the zoning table marinas did not fit into development categories which could be carried out subject to conditions or only with development consent. They were therefore prohibited.

The EIS refers to 21 previous building and planning applications relating to the site. In part it states:

- *Council report as part of DA244/74 states that the “use of the land at date relevant ordinance became law” is a “yacht club”*
- *Development Application(21/78) made on 7 February 1978 required the applicant to state that the use of the land on 27 June 1951 (which was the date the County of Cumberland Scheme Ordinance was introduced) was the Cruising Yacht Club. The date of the use of the land on the 15 December 1972 (which was the date when the Woollahra Planning Scheme Ordinance was introduced) was the Cruising Yacht Club*  
(EIS 7.1.6, p.53)

Of particular relevance to the question of existing use is DA182/75 (not referred to in the EIS). It was for a major rebuilding of the CYCA's marina facilities including 1 and part 2 storey buildings to accommodate the licensed Club and ship chandlery and a 3 storey car park with 60 spaces. This application was considered under the WPO and was refused by Council. The reasons for refusal included the proposal being an overdevelopment and an intensification of the club facilities. The applicant appealed the Council's refusal to the former Local Government Appeals Tribunal which disallowed Council decision and granted development consent for the proposal. The Tribunal's Instrument of Decision of 23/8/77 includes the following in its *Reasons of Board's Decision*:

*It is our view that the Council's interpretation and application of clause 27(3) of the prescribed Ordinance (WPO) is incorrect. ....*

*..... The club has existing leases and it has existing use rights under the prescribed ordinance (WPO). ....*

Clause 27(3) of the WPO was in Part IV, *Existing buildings, existing works and existing use of land*. It effectively prevented the granting of consent which would increase by more than 10 per centum the existing floor space. (It should be noted that the Council unsuccessfully appealed the Tribunal's decision to the Supreme Court. Also, that the 3 storey car park was never built and that that part of the consent was surrendered as part of the consent granted by Council for DA98/117.)

It is therefore considered that there is a history of building and planning applications (also refer to *Property History*) which attest to the land being lawfully used for marina purposes. Documentation related to those applications is considered to sufficiently verify that the marina use lawfully existed on and before 15/12/1972.



The documentation relating to previous building and planning applications further indicates that the land comprising all of the land based component of the site was approved for use for marina purposes at the relevant date.

Having established that existing use rights apply to the land based component of the site the other relevant provisions relating to existing uses need to be considered.

Section 107 provides for the continuance of existing uses. However, it does not authorise the continuance of existing uses which have been abandoned (s.107(2)(e)). The documentation available indicates that the use of the land as a marina has not been abandoned. [NOTE: an existing use is generally considered to have been abandoned if it ceases for a period of 12 months (s.107(3))]

Section 107 also does not authorise alterations, extensions, enlargements, expansions and intensifications (s.107(2)(a) & (c)) of existing uses.

Section 108(1) provides, among other things, that the Regulations may make provisions for alterations, extensions, enlargement, expansion and intensification of existing uses. Clause 41 of the Regulations provides that existing uses may, among other things, be enlarged, expanded or intensified or altered or extended. Clauses 42 & 43 provide that development consent is required for the enlargement, expansion or intensification of an existing use and for the alteration or extension of a building or work used for an existing use.

Section 108(3) provides that the provisions of an environmental planning instrument which derogate from the Regulations which apply to existing uses (the 'incorporated provisions') have no force.

The proposal is considered to constitute both an intensification of the existing marina use and alterations and additions to buildings and works used for marina purposes. As such, notwithstanding the provisions of cl.8 of the WLEP, development consent can be granted for the development proposed by the development application under legislation relating to existing uses.

## **14.2 Other special clauses/development standards**

### **14.2.1 Clause 18 Excavation:**

Clause 18(1) and (2) provide as follows:

#### **18 Excavation of land**

- (1) When considering an application for consent for development involving the excavation of any land, the Council shall have regard to how that excavation may temporarily or permanently affect:*
  - (a) the amenity of the neighbourhood by way of noise, vibration, dust or other similar circumstances related to the excavation process, and*
  - (b) public safety, and*
  - (c) vehicle and pedestrian movements, and*
  - (d) the heritage significance of any heritage item that may be affected by the proposed excavation and its setting, and*
  - (e) natural landforms and vegetation, and*

(f) *natural water runoff patterns.*

- (2) *The Council may decline to grant such a consent unless it has considered specialist reports, including geotechnical reports, structural engineering reports, hydrology reports and dilapidation reports of properties which may be affected by the proposed excavation.*

The proposal involves excavation principally in relation to the construction of the basement carpark. The EIS Budget Statement indicates the volume of excavated material to be about 9,800m<sup>3</sup>. Elsewhere in the EIS reference is made to 5,400m<sup>3</sup> of soil to be excavated. The method of excavation will require piling and/or secant wall construction, the final method to be decided. Excavated material is to be removed from the site via New Beach Road.

The following reports submitted as part of the EIS are relevant to cl.18(1):

- *Construction management plan including erosion & sediment control plan*, by TLB Engineers, dated 28/5/09 (CMP) – Note: a revised CMP was submitted with the amended DA on 27/4/10
- *Construction noise and vibration management plan*, by Acoustic Logic Consultancy, dated 23/6/09 (CMP – noise & vibration)
- *Heritage impact statement and Demolition report*, by Urbis, dated July 2009 (heritage report)
- *Arboricultural impact assessment*, by Urban tree management, revised 17/2/09
- *Drainage assessment report*, by Eclipse Consulting Engineers, dated 7/7/09 (flood study)
- *Geotechnical and hydrogeological assessment*, by Martens Consulting Engineers, dated March 09 (Geotechnical & hydrogeological report)
- *Acid sulfate soil and stage 1/2 contamination assessment*, by Martens Consulting Engineers, dated March 2009 (contamination report)

Comments in relation to these reports were provided by Council's Development Engineer (annexures 1 & 1A), Environmental Health Officer (annexure 5) and Heritage Officer (annexure 6).

The Development Engineer commented that the CMP ..... *is generally acceptable subject to amendments as detailed in the Traffic Engineers report.* The CMP indicates the overall construction period would be 12 months with sheet piling taking 5 weeks and bored piling 8 weeks. It also provides for temporary perimeter fencing of the site, scaffolding, materials handling (i.e. excavation, craneage, standing trucks, machinery and materials hoist), site storage, tree protection and waste management (i.e. construction waste, demolition waste, excavated materials and perishable waste). Sediment and erosion control measures include floating silt curtains and fences, maintaining all weather access and driveways, shaker grids at vehicular entries/exits, filter bags for stormwater inlets, location and placement of stockpiles, measures for the treatment of contaminated material on site, dust control and ongoing monitoring.

The CMP – noise and vibration states the working hours as 7am to 6pm Monday to Friday and 8am to 2pm Saturdays, with a 1 hour exception in the event of emergencies. It includes a flow chart to assess noise and vibration resulting from construction activities.

In its *Assessment of potential noise emissions* reference is made to heavy construction works, i.e. excavation, trucks/concrete pumps, piling and boring of piers and to the methods of reducing associated noise, i.e. perimeter fencing, adopting the flow chart processes, pumping of concrete not commencing before 7.30am, trucks not being left

idling and piling not to start earlier than 8am with intermittent respite periods (15 minutes per hour). It is anticipated that excavation will be soil with no rock hammering or saw cutting necessary.

In its *Assessment of vibration* the CMP mentions highly sensitive structures (heritage houses), sensitive structures and other non-sensitive structures (commercial and modern structures) in terms of distance from vibration sources. As excavation will be in soil, not rock, there is no significant prospect of vibration inducement. As piling/boring will be undertaken more than 30m from the nearest residential property even sensitive structures will not be adversely affected.

Council's Environmental Health Officer's recommendations regarding the CMP – noise & vibration include:

*The Construction and Vibration Management Plan correctly refers to the applicable noise criterion as the NSW EPA Noise Control Manual "Construction Noise and Vibration Guideline" which nominates that for construction periods of up to 6 months a noise level of 10 dB(A) above the background noise level is recommended. In addition the report also refers to AS 2436-1981 "Guide to Noise Control on Construction Maintenance and Demolition Sites". This standard requires that a reasonable suitable noise criterion be established which in this case has been based on the NSW EPA Noise Control Manual "Construction Noise and Vibration Guideline". This standard also requires practicable measures to regulate the noise; undertaking of noise monitoring where non-compliance occurs and practical engineering controls to limit noise emissions and other techniques to control noise if exceedences continue.*

*Section 7 of the Construction Noise and Vibration Management Plan (Report No. 2008593.4/0526A/R1/TT dated 23 June 2009) prepared by Acoustic Logic Consultancy details the assessment methodology and noise control measures that would be applied during the construction phase of the proposed development. The report recognises that during heavy construction works the predicted noise levels at New Beach Road residences may exceed the NSW EPA Noise Control Manual "Construction Noise and Vibration Guideline". Section 7 of the report thoroughly details noise control methods in dealing with such exceedences, however the report does not make it clear whether continuous noise monitoring would be undertaken during the construction phase to 'alert' of exceedences with the projected noise goals detailed in the Construction Noise and Vibration Management Plan (Report No. 2008593.4/0526A/R1/TT dated 23 June 2009).*

The Environmental Health Officer recommends that the proponent prepare and implement a Noise Control Program during the construction phase and that all mitigation and control methods detailed in the CMP – noise and vibration be fully implemented.

The contamination report in the EIS includes the results of laboratory testing of soils taken from the site which verifies the existence of potential acid sulfate soils. While the existence of actual or potential acid sulfate soils is not, of itself, a relevant matter for consideration under cl.18 the exposure of such soils to oxygen resulting in the creation of acid sulfates can create unpleasant odours. The contamination report includes an acid sulfate soil management plan that provides for on site neutralisation of acidic soils which should also control associated odours.

The proposal is considered to be satisfactory with regard to cl.18(1)(a).

The Traffic Engineer's report (annexure 2) includes the following comments:

*The construction management plan is acceptable and a condition of consent requiring compliance with the plan subject to deleting the alternative route back to New South Head Road via Thornton Street and Darling Point Road is recommended....*

*Due to the volume of construction vehicle traffic utilising New Beach Road, it is imperative that a dilapidation report on this infrastructure be undertaken... .*

*A Work Zone is proposed (and is considered essential in this location) and therefore the relevant condition of consent (Condition D.10) should also be applied.*

A revised CMP was submitted with the amended DA. The revisions include deletion of the alternative route back to New South Head Road via Thornton Street and Darling Point Road. The Traffic Engineer's comments are supported and subject to their implementation the proposal is considered to be satisfactory regarding cl.18(1)(b) & (c).

Council's Heritage Officer does not raise an issue with the proposed excavations in terms of the heritage significance of any heritage item or with the setting of any heritage item. Heritage items and their settings are sufficiently distant from the proposed excavations so as not to be adversely impacted. The proposal is considered to be satisfactory with regard to cl.18(1)(d).

Clauses 18(1)(e) & (f) relate to impacts on natural landforms and vegetation and natural water runoff patterns. The site is man made (i.e. a reclamation) rather than natural. Nevertheless, the development will have little effect on the apparent landform as the excavation will be covered by a concrete slab not dissimilar to the level and form of the existing decks. The area of the existing slipway will, if anything, appear more as an infill than an excavation.

A consequence of the excavation will be the removal of two (2) trees (a Willow Myrtle and a Mediterranean Cypress) on the site. Two (2) other trees on the Plantation Reserve, a Cocos Palm and a Willow Myrtle, are proposed to be removed to accommodate vehicular accesses. Council's Tree and Landscape Officer has raised no objection to the removal from the site of the Willow Myrtle or the Mediterranean Cypress from the site, see annexure 3. Various recommendations have been made regarding landscaping along the Plantation Reserve, see annexure 3A. Council's Parks and Recreation Coordinator's referral response does not include any comments in relation to the affected trees on the Plantation Reserve.

There is an existing stormwater drainage line through the site from New Beach Road to Rushcutters Bay. It forms part of the New Beach Road/Darling Point stormwater drainage system. This drainage line will need to be removed to allow for the excavation. The applicant's flood study provides for upgrading drainage in New Beach Road to permanently divert waters to Rushcutters Bay via a drainage line to the south of the site across Rushcutters Bay Park. Council's Drainage Engineer has raised no specific concerns with this proposed arrangement, see annexures 1 & 1A. The applicant's geotechnical and hydrogeological report was considered to be satisfactory.

The proposal is considered to be satisfactory regarding cl.18(1)(e) & (f).

Clause 18(2) provides that the Council may decline to grant consent unless it has considered various specialist reports. The reports referred to earlier which form part of the EIS are considered to be satisfactory in terms of cl.18(2) subject to compliance with the recommendations of Council's referral officers.

The proposed excavation is considered to be acceptable in terms of cl.18. In terms of the EPA Act, s.108(3), the provisions of cl.18 of the WLEP are not considered to derogate from the incorporated provisions.

#### **14.2.2 Clause 19 HFSPA:**

This clause is as follows:

##### **19 Development in the harbour foreshore scenic protection area**

- (1) This clause applies to all land within the harbour foreshore scenic protection area.*
- (2) The Council shall not grant consent to an application for development on land referred to in subclause (1) unless it has made an assessment of:*
  - (a) the visual impact when viewed from Sydney Harbour of the design of the proposed development, including the colours, textures, styles and types of materials to be used and the type and form of any roof, and*
  - (b) the impact of the proposed development on the natural landform and topography.*

The land is in the HFSPA, as is the majority of Darling Point. The most relevant parts of the EIS to the assessment of cl.19(2)(a) are parts:

- 4.2.9 Materials and Finishes
- 7.1.10 Woollahra LEP 1997 *Development in the Harbour Foreshore Scenic Protection Area*
- *Visual impact assessment*, by Richard Lamb & Assoc, dated August 2009

Council's Urban Design Planner commented on the proposal by way of referral response dated 18/9/09, see annexure 7.

The proposed development on land in the HFSPA consists of a 1 and part 2 storey building and courtyard above the basement carpark. The 2 storey part of the building is on the northern end of the site and abuts an existing 2 storey building on the adjoining land, being the d'Albora Marina. It is setback a minimum of 800mm (cantilevered 1<sup>st</sup> floor) from the existing line of the waterway to the west. The single storey part of the building is setback 17m from the existing line of the waterway.

The west elevation of the building, facing the waterway, will mainly consist of recycled timber, lightweight cladding and aluminium framed and frameless glazed walls. The roof of the 2 storey section will be a combination of skillion and deck roofs with metal/zinc cladding. The single storey section will be a concrete slab covered with soft landscaping. The appearance of the building from the waterway will be obscured from the north/west by the existing d'Albora Marina building and from the south/west by the existing CYCA Club building.

The proposed hardstand to the west (which is outside the HFSPA) varies in width from 24-31m with an RL 1.8 AHD or 1.245m above the MHW (RL 0.555 AHD). It effectively increases the distance between the proposed buildings and the nearest accessible part of the waterway. It is intended to be used for the dry storage of yachts and dinghies. As such its size, height and use will dominate views from nearby locations on the waterway.

From locations on the waterway beyond the line of the existing marinas the view towards the proposed buildings will be dominated by boats on the existing wet berths with some restricted views along the fairways.

Council's Urban Design Planner raises no specific issue regarding views from the waterway. His comments include:

*The large number of sailing yachts berthed at the marina to the immediate west of the clubhouse means that the view of the buildings on land are substantially obscured, when viewed from the water, by masts and superstructures.*

Part 4.2.9 of the EIS includes a statement by AJ+C Architects regarding materials which includes:

*The selected materials for the western, 'working' side of the club were chosen for their durability. The ground floor façade on the new building is to be clad in recycled timber which will be recovered from the demolished northern hardstand deck. The western façade to the sailing/marina office and sailing school will be predominantly glass to promote a strong visual connection between the offices and the operations on the marina.*

The applicant's Visual Impact Assessment includes:

- *Close views from the water to the land based component of the proposal would be possible along the fairways of the existing marina facility. These views would be laterally restricted by the presence of and the density of vessels and masts associated with the yachts berthed within the marina.*
- *Medium and distant views from the general waterway of Sydney Harbour to the north and northwest of the site of the marina are possible. From these locations it would be unlikely that any viewer could identify the additional yachts berthed within the extension to marina Arm D. Filtered views to the proposed new marina buildings would be possible from some of these locations. However it would be difficult from these locations to discern any architectural detail of the new buildings as a result of the screening effects of intervening power and sailing vessels and associated masts.* (pp.17&18)

External building finishes which can cause reflectivity and glare can result in buildings with a waterfront setting having a negative visual impact. The proposed use of glazing and metal surfaces in this instance is considered appropriate. This is because glazing on the west facing elevation is within deep recesses or behind louvers which would prevent reflectivity and glare. Also, the dominant wall material will be recycled timber. The western elevation is considered to be well articulated as the design incorporates wall recesses and projections, a variety of walling materials and roof forms. The soft landscape roof will eliminate reflection and in particular afternoon glare nuisances to residential properties on the adjacent Darling Point hillside.

In relation to its visual impact as viewed from the Harbour, the proposal is also considered to satisfy the relevant specific objectives and controls in the SHDCP, cls.4.5, *Built form* and 4.7, *Marinas (commercial and private)* and the Woollahra Residential Development Control Plan (WRDCP), part 5.11, *Harbour foreshore development*. These provisions contain objectives and controls that are considered to be a useful guide for assessing the proposal in terms of cl.19.

The visual impact of that part of the development proposed on land within the HFSPA is considered to be acceptable in terms of cl.19(2)(a).

The landform and topography are a consequence of earlier reclamation works. They are not natural. In terms of cl.19(2)(b) it is therefore considered that further assessment is not required.

The proposal is acceptable in terms of Clause 19. With regard to the EPA, cl.108(3), the provisions of cl.19 are not considered to derogate from the incorporated provisions.

#### **14.2.3      Clauses 22A & 22 Foreshore building lines:**

The land is not affected by a FSBL.

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

This clause provides as follows:

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

- (1) *This clause applies to all land adjoining public open space.*
- (2) *The Council shall not grant consent to an application for development on land which adjoins public open space unless it has made an assessment of the impact of the development on the amenity of the public open space and it has taken into consideration whether the development is in conflict with any plan of management for the public open space.*

The land from, and including, Rushcutters Bay Park to the south and Yarranabbe Park to the north of the CYCA is zoned open space. This includes all land on the western side of New Beach Road, which also includes the land occupied by the CYCA and the d'Albora marina. *Public open space* is defined in schedule 1 of WLEP as:

***public open space** means land used for public recreation purposes and includes public parks, recreation reserves, civic spaces, formal gardens, beaches, public playgrounds and bushland.*

For the purposes of cl.24, Rushcutters Bay Park and the Plantation Reserve are considered to fit the definition of public open space with regard to the CYCA land. However it needs to be noted that the Plantation Reserve is more in the form of a linear pedestrian pathway/footpath linking the more traditional recreation reserves to the north (i.e. Sir David Martin Reserve/Yarranabbe Park) and south (i.e. Rushcutters Bay Park) rather than the type of spaces referred to in the *public open space* definition. Sir David Martin Reserve, located to the north of the d'Albora marina and Yarranabbe Park do not adjoin the CYCA land. Therefore, an assessment of the impact on those parks is not considered to be necessary in terms of cl.24.

Rushcutters Bay Park and the Plantation Reserve are the subject of a plan of management (POM) known as the *Rushcutters Bay Park Yarranabbe Park and Plantation Reserve Plan of Management*.

The relevant part of the POM is 5.2, *Action plan*. In relation to *Harbourside setting* it includes the following strategies:

- *Maximise opportunities for a foreshore link between Rushcutters Bay Park and Yarranabbe Park.*
- *Cater for the desire by park users to enjoy the harbour views from the parks.*

The proposal will provide direct public access from the northern side of the existing Club to the northern boundary of the land across the new hardstand. Presently the existing CYCA slipway prevents such access. This would assist in providing part of the link between Rushcutters Bay and Yarranabbe Parks referred to in the POM. However, direct access to Yarranabbe Park would still not be possible due to existing buildings and structures on the adjoining d'Albora Marina land and Sir David Martin Reserve.

In this regard the proposal is not considered to conflict with the POM's stated actions for achieving the strategies in 5.2.

The land based component of the proposal will not be prominent from Ruschcutters Bay Park. This is because the existing Club building, which is to remain, and existing boats on the marina berths obscure its visibility.

From the Plantation Reserve adjacent to the CYCA site westerly views to the waterway, marina, Elizabeth Bay, Garden Island and the Harbour Bridge are limited. This is due to the existing buildings, fencing and boats on the marina's berths. The limited views are through gaps created by pedestrian/vehicular access points. The proposed building on New Beach Road will impact on these limited views, the main impact being on the existing gap in the fence which allows vehicular and pedestrian access to the northern hardstand carpark. The view includes about 2/5ths of the northern extent of the Harbour Bridge's arch. Superior views of the Harbour Bridge are available from Yarranabbe Park however the loss of this view, albeit a limited view, is considered to conflict with the POM.

In considering whether or not this impact on views is acceptable it is relevant that:

- the use of the Plantation Reserve is primarily as a pathway/footpath linking parklands to the north and south. The Reserve is not conducive for users to appreciate the view
- the gap in the fence is limited, being approximately 5m
- the proposal includes improved foreshore access through the site from which better views than those which are currently available from the Reserve will be possible – this is discussed in more detail in parts 17.1 & 20 of this report

In the circumstances, this conflict with 5.2 of the POM is not considered to be unacceptable in terms of cl.24(2) of the WLEP.

In relation to *Open parkland* the POM contains the following strategy:

- *recognise the importance of healthy trees and plantings to the character and amenity of the parks*

An action for achieving the above strategy is:

- *Enhance the landscape character of Plantation Reserve and visual screening of adjoining commercial leases*

The proposal involves the removal of 3 trees, a Cocos Palm and a Willow-myrtle, from the Plantation Reserve. Council's Team Leader - Open Space and Recreation Planning, has



commented on the proposal and has raised no issue with the proposed removal of the trees, see annexure 4.

Council's Tree & Landscape Officer's referral response of 29/9/10 (see annexure 3A) makes recommendations which relate to removal of vegetation from Plantation Reserve that is of poor quality and for replacement trees, i.e. Tuckeroos. These conditions are aimed at improving the overall appearance of the Plantation Reserve in a coordinated manner with the works being proposed by the DA, see conditions B.3, E.8, E.9 & E.28 and advising K.24.

In relation to *Access* the POM contains the following strategies:

- *Increase opportunities for residents and park users to park in New Beach Road.*
- *Rationalise the number of vehicle crossing points across Plantation Reserve.*

The EIS maintains the proposal will generate demand for an additional 16 parking spaces whereas it is proposed to provide 45 more on site parking spaces than what currently exists. This means that the proposal will contain 29 'extra' parking spaces. The amended DA is for 38, rather than 45, more parking spaces with the 'extra' parking spaces being reduced from 29 to 22. This may assist in increasing the opportunity for residents to park in New Beach Road. Nevertheless it will not conflict with the POM strategy.

Council's Urban Design Planner's referral response included the following comment:

*The access and egress point to the underground parking is adjacent to the access for the neighbouring commercial marina. When combined these crossovers create a considerable break in the pavement. One of the potential contributions to the public realm of the proposal is the improvement made in the quality of the connection between the waterside parks to the north and the south of the proposal. A clear prioritising of the pedestrian path is required to ensure this is actually the case. Pavement delineation and a pedestrian refuge between the two crossovers should be considered.*

Council's Parks and Recreation Coordinator's comments include:

- Improve pedestrian circulation within the parks and improve access for people with disabilities to the parks and reserves – *the two proposed driveways should be constructed in such a way to provide awareness devices at the beginning of each driveway (for eg. Tactile indicators) to assist in the provision of a safe pedestrian walkway across the driveways. The pathway should remain uninterrupted at all times and no parking of any vehicles be permitted over the pedestrian pathway*

The Urban Design Planner and the Parks and Recreation Coordinator's comments relating to the crossovers/driveways should form part of any consent, see condition D.18.

The proposal is acceptable in terms of Clause 24(2).

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

This clause provides as follows:

##### **25 Water, wastewater and stormwater systems**

- (1) *The Council must not grant consent to the carrying out of development on land or subdivision of land to which this plan applies for the purpose of a habitable building unless it is satisfied that adequate water and sewerage services will be available to the land it is proposed to develop.*
- (2) *The Council must not grant consent to the carrying out of development on land or the subdivision of land to which this plan applies for any purpose unless it is satisfied that adequate provision has been made for the disposal of stormwater from the land it is proposed to develop.*

In relation to cl.25(1), water and sewerage services are available from Sydney Water. The applicant will need to comply with the requirements of Sydney Water.

In relation to cl.25(2), the EIS includes:

- *Drainage assessment report*, by Eclipse Consulting Engineers dated 7/7/09 (the Eclipse report)
- Stormwater Management Plans, by Sparks and Partners

Council's Drainage Engineer commented on the report and plans, see annexures 1 and 1A. The comments in annexure 1 specifically covered the safety issues related to the basement car park, the treatment of street water prior to discharge into the Harbour and the cover for pipes or culverts crossing the park. The applicant was informed of these matters by letter dated 9/11/09. Documents submitted with the amended DA included:

- a letter dated 24/4/10 from the CYCA advising that these be subject to a condition of consent
- a letter dated 19/4/10 from Eclipse Consulting Engineers confirming that there is a minimum 300mm cover over the pipe crossing the park and that details will be submitted with the Construction Certificate application

The Eclipse report describes the proposed stormwater drainage works, including works to Council's drainage system for New Beach Road. The proposal is for stormwater from roofs to be harvested for reuse for washing boats. A 150,000 litre rainwater harvesting tank will be located beneath the hardstand for this purpose. Surface waters will be discharged to the Harbour after passing through a solid pollutant filter/oil and grease arrestor.

An existing stormwater pipe which runs through the northern side of the property (without an easement) and which conveys water from New Beach Road to the Harbour is to be decommissioned. Existing stormwater pits in New Beach Road adjacent to the frontage of the property are to be reconstructed and 2 new pits are proposed in New Beach Road adjacent to the south eastern corner of the existing Club building. A new drainage line is proposed from the kerb in New Beach Road, across Rushcutters Bay Park to the south of the Club building and discharge to the Harbour through the sandstone sea wall.

Council's Drainage Engineer recommends the imposition of a number of conditions relevant to drainage, see annexure 1A.

The proposal is acceptable in terms of Clause 25(1) and (2) subject to works proposed by the Eclipse report being carried out in accordance with the conditions recommended by Council's Drainage Engineer.

#### **14.2.6 Clause 25D Acid Sulfate Soils:**

Clause 25D(3) provides as follows:

**(3) Considerations for consent authority**

*The Council must not grant consent required by this clause unless it has considered:*

- (a) the adequacy of an Acid Sulfate Soils Management Plan prepared for the proposed development in accordance with the Acid Sulfate Soils Manual, and*
- (b) the likelihood of the proposed development resulting in the discharge of acid water, and*
- (c), (d) (Repealed)*

The EIS includes an *Acid sulfate soil and stage 1/2 contamination assessment*, by Martens consulting engineers, dated March 2009 (ASS report). Part 3.7 of the ASS report is an acid sulfate management plan.

The ASS report is based on laboratory testing of 10 samples of soil profiles likely to be excavated. No samples were classified as actual acid sulfate soils and 4 samples were classified as potential acid sulfate soils.

The ASS management plan includes provisions for neutralising soils, dewatering and excavation procedures, soil and water monitoring, stockpiling of untreated soil, off site disposal and a contingency plan.

Council's Environmental Health Officer commented on the ASS report, refer annexure 5. The comments include a recommendation that, based on the ASS report, the Acid Sulfate Soils Management Plan as detailed in section 3.7 be fully implemented.

NSW Industry and Investment's general terms of approval (refer annexure 9) include:

- 3. *The Acid Sulphate Soil Management Plan submitted with this application is to be implemented. These works must not result in any subsequent Acid Sulphate Soil related impacts on the adjoining aquatic environment. Any leachate that is discharged from the worksite must be tested before discharge and treated so that the required pH levels are achieved.***

NSW Planning's letter dated 6/10/09 includes the following comments on the ASS management plan:

*The Department's Major Hazards Unit has reviewed the Acid Sulfate Soils Management Plan and provided some general comments. In this regard, the procedures in the management plan for monitoring the pH and salinity of the extracted soils and water and the application of lime to neutralise them are considered consistent with the 1988 Acid Sulphate Soils Management Guidelines. Consideration has also been given to the procedures in the plan for the stockpiling of untreated soil and the off-site disposal of neutral soil and the proposed contingency plan should any of the management strategies fail.*

*The Department will not be making any specific comments on the management plan.*

The proposal is considered to be satisfactory in relation to cl.25D subject to the implementation of the ASS management plan.

**14.2.7      Clauses 26-33 Heritage and conservation area provisions:**

The site itself does not contain any heritage items under the WLEP. There are heritage items listed in the WLEP in the vicinity site, i.e. on the opposite side of New Beach Road. The relevant clause therefore is cl.27, which provides as follows:

***27 Development in the vicinity of heritage items, heritage item groups, heritage conservation areas, archaeological sites or potential archaeological sites***

*The Council must take into consideration the likely effect of the proposed development on the heritage significance of a heritage item, heritage item group, heritage conservation area, archaeological site or potential archaeological site, and on its setting, when determining an application for consent to carry out development on land in its vicinity.*

The EIS includes:

- *Heritage impact statement*, prepared by Urbis, dated July 2009
- *Demolition report* prepared by Urbis, dated July 2009

Council's Heritage Officer commented on the proposal, see annexure 6.

The heritage items on the opposite side of New Beach Road comprise 6 pairs of 2 storey residential flat buildings being numbers 27-28, 29-30, 31-32, 33-34, 35-36 and 37-38 New Beach Road. The statement of significance for each of these heritage items reads the same and is as follows:

*The site formed part of the original grant to Arthur Frederick Smart in 1888. This group of twelve residential buildings have aesthetic significance as a largely intact grouping of Federation Queen Anne style buildings which were constructed as a group for John Cameron in 1911. Although the buildings were modified as flats in the 1930s they have retained their style, form and scale of the exterior and are a rare cohesive group of buildings in identical styling to remain intact in the district. The buildings have high aesthetic significance as a group for the strong contribution they make to the streetscape of the immediate area even though they have undergone some modification throughout the years. The buildings have social significance for their association with the Cameron family throughout the twentieth century. (source: NSW Heritage Office website)*

The heritage significance of these places is aesthetic (*.....intact grouping of Federation Queen Anne style buildings..... as a group for the strong contribution they make to the streetscape of the immediate area.....*) and social (*.....for their association with the Cameron family throughout the twentieth century*).

The proposal will not affect the grouping of the buildings, the contribution they make to the streetscape or their association with the Cameron family.

There are other heritage items under the WLEP in the locality, as mentioned in the Heritage Officer's report. Due to the nature of the proposed development and the proximity of these heritage items to the subject site their heritage significance will not be affected and further assessment under cl.27 is considered to be unnecessary.

As the area of the site under WLEP is reclaimed land there is unlikely to be any archaeological interest.

Our Heritage Officer recommends approval subject to a condition for a recording of existing buildings on the site that are proposed to be demolished.

The proposal is considered to be satisfactory in terms of cl.27.

It should also be noted that Rushcutters Bay Park is a heritage item and is within a heritage conservation area under South Sydney LEP 1998. The heritage item and heritage conservation area relates to that area of the park within the boundaries of the City of Sydney Council, i.e. the area of the park to the west of the stormwater drain. The significance of the park, as referred to in the Urbis' Heritage Report, relates to the grandstand at Reg Bartley Oval, a former air raid shelter and a public toilet block. It is not considered that the heritage significance of the heritage item or the heritage conservation area will be compromised by the proposal. The City of Sydney Council was advised of the proposal under cl.77 of the Regs. No submission was received from the Council.

## DEVELOPMENT CONTROL PLANS

### *15.1 Sydney Harbour Foreshores & Waterways Area Development Control Plan 2005 (SHDCP)*

The SHDCP applies to the proposed development as it applies to all development within the foreshores and waterways area as identified in the SHREP. All of the proposed development is within such area.

The SHDCP contains provisions for assessing the impact of developments on the ecology (part 2) and landscape (part 3). It also contains general design guidelines for various types of development (part 4) and guidelines for specific developments including marinas (both commercial and private, part 4.7). Appendix D of the SHDCP contains specific guidelines for assessing the visual impact of marinas.

Annexure 15 is the SHDCP Assessment Table. It contains comments on the provisions relevant to the assessment of this DA. Provisions of the SHDCP relating to visual impact are discussed in detail in part 17.1 of this report.

### *15.2 DCP for off street parking provision and servicing facilities (Car Parking DCP)*

The Car Parking DCP was originally adopted in 1995 with the stated aim of:

*The aim of this DCP is to provide a comprehensive guide of the provision of car parking and vehicular access for development in the Municipality.*

The DA was amended on 27/4/10. The amendments involve reducing the size of the basement level car park so that it does not extend into the waters of Rushcutters Bay. This results in the car parking capacity of the basement car park being reduced from 77 spaces

as originally proposed to 65 spaces. An additional 5 parking spaces are provided at grade, i.e. on the hardstand to the north west of the proposed new building. The number of car parking spaces overall has been reduced by 7, i.e. the original DA proposed 97 spaces whereas the amended DA proposes 90 spaces.

The EIS includes a report, *Traffic impact assessment*, by Traffix, traffic & transport planners, dated 12/7/09. The report covers parking requirements, traffic impacts (construction and operational) and access and internal design. A letter dated 15/4/10 was received from Traffix in connection with the amended DA (a further letter dated 31/5/10 from Traffix relates to a minor error in their earlier letter).

Council's Development & Traffic Engineer provided a referral response dated 27/10/09 on the original DA and a further referral response dated 22/6/10 on the amended DA, see annexures 2 & 2A.

## Parking

The 1<sup>st</sup> objective of the Car Parking DCP is:

*i. To ensure that developments generating vehicular traffic make adequate provision off the public street for the car parking and servicing needs of its occupants and users, including visitors, employees and deliveries.*

### **Means of achieving objective:**

*Require that all new development and changes of use provide off-street parking spaces in accordance with the car parking generation rates contained in this DCP (refer Section 2).*

The proposal involves an increase in marina berths and for an increase in the floor space of land based buildings. The proposed increases to the water and land based components will generate an additional demand for off-street parking spaces.

Table 2.3 of the Car Parking DCP – *Transport and communication*, includes the following note:

*0.6 car parking spaces per wet berth, 0.2 parking spaces per dry storage berth and swing mooring and 0.5 parking spaces per marina employee.*

In relation to boat storage, the proposal is to increase the number of marina berths by 9, from 204 to 213 and to reduce the number of moorings by 3, from 27 to 24. Based on the above figures, the existing/proposed parking requirements in relation to boat storage under the Car Parking DCP are as follows:

Existing marina berths	204	Car	Parking	DCP	requirements
122.4 spaces					
Existing moorings	<u>27</u>				
5.4 spaces					
<b>Total</b>					<b>231</b>
	<b>127.8</b>				

<b>Proposed marina berths requirements</b>	<b>213 127.8 spaces</b>	<b>Car Parking DCP</b>
Proposed moorings <u>4.8</u> spaces <b>Total</b>	<u>24</u> <b>132.6</b>	Car Parking DCP requirements <b>237</b>

The EIS states that there is to be no change to the number of marina employees.

In relation to boat storage the proposal will increase parking demand by 5 spaces.

The total increase in the floor space between the existing and proposed buildings is 499m<sup>2</sup>. The increased floor space will be used for commercial (334m<sup>2</sup>), retail (35m<sup>2</sup>) and education (130m<sup>2</sup>). Under the Car Parking DCP the car parking generation rate for these uses is:

- Commercial 2.5 spaces per 100m<sup>2</sup>
  - Retail 3.3 spaces per 100m<sup>2</sup>
  - Education\* 1 space per 100m<sup>2</sup>
- \* The definition includes business college, art school, ballet school, drama school, etc

The increased parking demand for the land based component of the proposal is as follows:

Commercial area	$\frac{334 \times 2.5}{100}$	=	8.35 spaces
Retail area	$\frac{35 \times 3.3}{100}$	=	1.15 spaces
Educational area	$\frac{130 \times 1}{100}$	=	1.3 spaces

In relation to the land based component the proposal will increase parking demand by 11 spaces.

The total increase in car parking generated by the proposal under the Car Parking DCP will be 16 car parking spaces.

Currently there is a total of 52 on site car parking spaces accommodated in 2 hardstand car parking areas. The number of on site car parking spaces proposed, in accordance with the amended DA, is 90 spaces, 65 spaces in the basement level car park and 25 at ground level. Therefore, the proposal will provide an additional 38 car parking spaces compared to the existing situation.

In terms of the Car Parking DCP, the proposed increased number of car parking spaces (i.e. 38) will be 22 spaces more than the additional number of spaces that the proposal will generate (i.e. 16).

The Development and Traffic Engineer's referral response dated 22/6/10 (see annexure 2A) relating to the amended DA includes the following recommendation in relation to parking:

*The proposal has reduced the capacity of the proposed basement carpark by an additional 7 spaces thereby increasing the parking shortfall. Whilst the proposal improves upon the current parking capacity of the site, increased floor areas and additional wet berths will have a corresponding increase in parking demand which maintains a significant parking shortfall. The Planning Department are advised to note this when undertaking a merits based approach to assessment of the development application.*

In relation to this recommendation, the improved parking capacity in fact exceeds the additional parking demand by 22 spaces rather than corresponding to it. The 'significant parking shortfall' is based on no allowance being given to the existing shortfall.

The fact is that when the parking demands generated by the existing and proposed developments are compared the off street parking situation is improved by 22 spaces. This potentially translates to a corresponding improvement in the on-street parking situation as CYCA patrons who currently compete for on-street parking spaces will be able to park on site. This is a positive outcome given the well documented parking issues in this section of New Beach Road, which are confirmed by surveys undertaken by the applicant and which show street parking to be at capacity.

It is also noted that in granting consent to DA98/117 on 23/11/98 Council imposed a condition requiring the CYCA to surrender the consent for a 3 level car park which formed part of DA182/75. In imposing this condition the Council, in effect, accepted the car parking arrangements that existed at the time.

The provisions of the Car Parking DCP relating to non-conforming uses (cl.6.7) require all car parking to be provided on site in circumstances where a change of use is proposed which would involve an intensification of parking generation. The proposal does not involve a change of use and as such it is considered appropriate, and consistent with the DCP, to assess the car parking requirements based on the increased parking demand generated by the proposal.

In the circumstances, the proposal is considered to be satisfactory in terms of the off-street parking requirements of the Car Parking DCP.

### **New Beach Road & construction management plan**

The recommendation made by the Development & Traffic Engineer's original referral response (see annexure 2) includes:

- That the proposed parking restrictions in New Beach for disabled parking and a pick-up/drop-off area not be supported
- The construction management plan (CMP) is acceptable subject to the alternate route to New South Head Road via Thornton Street and Darling Point Road being deleted

The Traffix letter dated 15/4/10 explains that the parking restrictions in New Beach Road were recommendations for Council's consideration. The amended DA shows a disabled parking space on the hardstand to the north west of the proposed building. This satisfies the requirements of our Access Development Control Plan and therefore also satisfies cl.6.10 of the Car Parking DCP relating to disabled parking spaces.

The Traffix letter includes the following comments on the pick-up/set-down area:



*.....If Council does not support this, then this has no bearing on the development application..... It is expected that all set-down and pick-up activity associated with private cars will occur using the on-site parking that is provided for this purpose; as well as on-street parking spaces when these are available;*

The Development & Traffic Engineer's referral response on the amended DA (see Annexure 2A) includes the following recommendation on the pick-up/drop-area:

- *The site will maintain reliance upon the surrounding onstreet parking to satisfy the parking demands of its patrons. The provision of a pickup-dropoff area within the site that is accessible by the public is therefore required. As noted above, Councils Traffic Section will accept the dedication of such an area on site during periods of high demand to enable full utilisation of parking on the site during other periods.*

The plans submitted with the original and amended DA show works on New Beach Road, including the reconfiguration of street parking along the length of the property frontage being changed from angled to 90 degree parking (Council has now reconfigured the angled parking which has resulted in approximately 2 additional kerbside parking spaces), as well as the disabled and pick-up/drop-off spaces. These works do not strictly form part of the proposal as separate approval under the Roads Act would be required. However, the recommendations of the Development & Traffic Engineer regarding such works are supported and therefore an advising should be included on any consent to the effect that it does not include the works relating to the parking arrangements on New Beach Road, see advising K.22.

In response to the Development Engineer's original recommendation to amend the CMP regarding truck routes, the amended DA was accompanied by a revised CMP, *Construction Management Plan including erosion & sediment control plan*, prepared by TLB Engineers, dated 7/4/10. The referral response on the amended DA states as follows on the revised CMP:

*The revised CMP has validated that heavy vehicles will exit the site and proceed directly to New South Head Road as requested in the initial referral response.*

In relation to construction management issues, the original referral response also recommends that standard conditions be imposed requiring a dilapidation report on New Beach Road infrastructure and that a work zone be implemented. See conditions D.2 & D.4.

### **Other objectives of the Car Parking DCP**

Other objectives of the Car Parking DCP concern:

- the safe and efficient movement of vehicles within, entering and leaving properties

Two vehicular crossovers are proposed off New Beach Road. The southern most crossover will service the hardstand parking area to the north west of the proposed building which accommodates 16 parking spaces. The northern crossover will service the basement car park (65 spaces) and the parking area on the ground level of the proposed part 2 storey building (9 spaces). The Traffix report discusses the visual splay of the northern driveway as being technically non-compliant but acceptable due to low traffic volumes, access/egress being controlled by an automatically activated gate, constraints to realigning the access point (e.g. existing street trees) and suggests that a convex mirror should be provided to aid visibility between vehicles and pedestrians (see condition H.4). Also refer to earlier comments in part 11.2 of this report regarding WLEP, clause 24.

- minimising the environmental effects, particularly visual impact, of parked vehicles

Vehicles parked in the basement car park will not be visible from outside the basement. Vehicles on the hardstand/ground level will be screened from view from New Beach Road by the proposed buildings.

- ensuring that access points to car parking areas are situated so as to minimise disruption to the movement of vehicles on the public road system

The situation of access points will minimise disruption to vehicles using New Beach Road.

The Development & Traffic Engineer has not raised any issues regarding the provisions of the Car Parking DCP for safe and efficient movement of vehicles, environmental effects of parked vehicles or the situation of access points on the disruption to the movement of vehicles on the public road system.

### **Servicing**

There is an existing loading dock at the southern end of the site. The proposal is for this arrangement to remain. A servicing management plan should be prepared which requires all servicing and deliveries to occur on site and requiring deliveries by trucks to be managed to avoid times of peak parking demand. This is consistent with part 8.7.4 of the EIS. See conditions C.18 & I.13.

### **Traffic**

The Traffix report (part 6.1) and the Development & Traffic Engineer's original referral response discuss traffic impacts. Traffic impact is not a specific matter for consideration under the Car Parking DCP, however, it is appropriate to discuss it in this section of the report.

The Traffix report predicts that, based on the additional parking generation (i.e. 16 spaces), the proposal will generate a maximum of about 15 vehicle trips/hour during weekday peak periods, assuming 0.8 trips/space/hour as per the RTA's Guidelines. Also, that a lower level of traffic generation is likely on weekend days, due to the dispersed nature of arrivals and departures and the relatively long 'dwell' times associated with recreational boating. The increased traffic activity is described as moderate overall and can be readily accommodated by the external road system.

The report maintains that there is expected to be an improvement in local traffic conditions due to:

- searching for parking spaces will be internalised improving double and illegal parking
- parking for the proposed expansion will be provided in full compliance with Council's requirements
- opportunities for a set-down/pick-up area adjacent to the site (this is opposed by the Traffic & Development Engineer and is not supported)
- in practice the proposal is intended to provide improved facilities and amenity for existing patrons and visitors and therefore may not result in an increase in traffic
- traffic will be dispersed onto all available access routes

In relation to the traffic impacts of the development the Traffix report concludes:

*Having regard to the above factors, it is considered that the wider regional traffic impacts will be readily accommodated, with no change in existing levels of service either during weekday peak periods or on weekends. .... (p.11)*

In relation to traffic generation the Development & Traffic Engineer's original referral response (annexure 2) states:

**Traffic Generation**

*The submitted Traffic Report has estimated there will be an additional 15 vehicle trips per hour during weekday peak hour periods due to the increased commercial floor areas. The level of traffic generation is relatively minor in comparison to the total volume conveyed by the New Beach Road (approximately 350 vehicles per hour in the afternoon peak period) and is not expected to be detrimental to the capacity of the roadway or pedestrian amenity in the area.*

*It is agreed the level of traffic volume generated by the development is not going to be substantially different from the existing level or at such a level to adversely affect the area.*

The Car Parking DCP also refers to referrals required to the Traffic Committees under SEPP 11 (now division 17 of *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP)). The proposal was not considered to trigger referral to the Traffic Committees under the Infrastructure SEPP. The RTA was advised of the proposal under cl.77 of the Regs and a response was received dated 19/10/09 which stated:

*Following a review of the traffic report and information submitted, the RTA will not object to the subject development application provided that the following requirements are incorporated into the development consent (if the development application were to be approved):*

- 1. Council's Local Traffic Committee should consider reviewing the existing parking restrictions around the subject site to cater for any expected overflow parking as a result of the proposed development.*
- 2. Car parking requirements are to be to Council's satisfaction.*
- 3. The layout of the proposed car parking areas associated with the subject development (including grades, turn paths, sight distance requirements, aisle widths and parking bay dimensions) should be in accordance with AS2890.1 – 200 and AS2890.2 – 2002 .*
- 4. All regulatory signposting/road works shall be at no cost to the RTA and Council.*

In relation to item 1 Council has recently implemented improved parking arrangements in New Beach Road adjacent to the frontage of the subject site. Items 2 & 3 have been addressed in the Development & Traffic Engineer's referral responses. Advising K.20 is included in the recommendation regarding items 3 & 4.

**Objections**

Objections received following public exhibition of the original and amended DAs raised traffic and parking as a major concern. Parking is an issue in New Beach Road with the commercial maritime uses and residents competing for the limited number of on-street spaces. Specific issues raised in the objections include:

- Increased parking will lead to increased traffic

- The CYCA should make up for the short fall in parking that they have never provided over the years
- Additional parking will be for club members only, not visitors
- All day parking (on-street) should not be allowed, except for residents
- Council's parking requirements for berths and classrooms need to be reviewed
- Some statements in the EIS regarding traffic and parking are questionable and/or wrong

Increases in traffic volumes will be modest and not exceed the capacity of the street. The argument that parking should now be provided to accommodate the existing and proposed demands has been discussed earlier and is not considered to be justifiable on planning grounds. The car park should be available for all CYCA patrons, including members and visitors to the licensed club, employees, other businesses occupying the premises (i.e. sailing school, shipwrights, chandlery, kiosk, and others who may be in occupation from time to time), boat owners and their invitees. See conditions C.17 & I.12 conditions.

### **Conclusion**

Subject to conditions as discussed above, the proposal is considered to be satisfactory with regard to the provisions of the Car Parking DCP and with regard to traffic issues.

## **15.3      *Access Development Control Plan (Access DCP)***

The Access DCP came into force on 18/2/04. It requires new buildings to be fully accessible, i.e. designed and built to accommodate the needs of people with a disability and which complies with BCA and AS1428.1.

The ground floor level of the proposed 2 storey building will be accessible at grade. The 1<sup>st</sup> floor and basement will be accessible via an internal passenger lift. The design of the building therefore presents no problems in being fully accessible. A parking space suitable for use by people with a disability is proposed on the hardstand area to the north west of the proposed building.

The proposal includes a public foreshore access pathway across the site from Rushcutters Bay Park to the south to d'Albora Marina to the north of the site. This pathway will be at grade and be suitable for use by people with a disability.

Gangways from hardstand areas to the marina berthing pontoons should be designed to achieve a gradient of not greater than 1:14 for 80% of the time.

The proposal is considered to be satisfactory with regard to the provisions of the Access DCP.

## **15.4      *Other codes and policies***

### **15.4.1      Development Control Guidelines for the Provision of Foreshore Open Space and Access**

The Guidelines were adopted by Council on 26/8/91 under SREP 23 (now replaced by SHREP) and as a policy in relation to the Council's own determinations.

The purpose of the Guidelines, as contained in part 2, is to state the means by which the Council intends to implement its foreshore objectives.

The foreshore objectives, as stated in part 3, relate to:

- preserving existing public open space along the foreshore and to provide further public pedestrian access to the foreshore in appropriate locations
- discourage alienation of the foreshore by buildings and encourage greater public access
- foster an environment which satisfies community needs and expectations while protecting the natural environment
- foster opportunities for the study and appreciation of the intertidal zone
- provide stopping points for people exploring the foreshore by small boats.

Part 5 contains 25 means by which the Council will implement its objectives. These mostly relate to initiatives for Council to undertake.

Item 24 states:

*24. Promote the protection of existing views and the creation of new ones, from public spaces such as parks and roads, to the foreshore and the water, so as to complement physical access with visual access.*

The impact on views from public spaces of the land based component has been discussed in relation to cl.24 of WLEP, see part 11.2 of this report. The impacts are not considered to be unacceptable in the context of the development control guidelines. The impacts in relation to the water based component are discussed under part 17.1 of this report.

Also, the proposal will provide improved foreshore access by providing an access pathway across the site from Rushcutters Bay Park to d'Albora Marina.

The proposal is considered to be satisfactory with regard to the provisions of the development control guidelines.

#### **15.4.2 NSW Boat ownership and storage: growth forecasts to 2026**

The introduction to this document (which was apparently first published in July 2010) includes:

*The report has been long sought by industry for its own information and to assist future land use planning and decision making. .... The report aims to quantify accurately the number and types of vessels currently owned and stored in the State and to provide an insight into indicative of future needs in boat ownership and storage demand based on past trends. This will facilitate more informed decision making by government at all levels and assist the private sector – both developers and the boating industry.*

*The report supersedes the 2004 Boat Storage Policy for Sydney Harbour and identifies future trends in ownership and the demands on storage capacity in NSW up to 2026.*

Information on boat ownership in Sydney Harbour includes:

- It has more large boats (proportionally) than other regions with 41.5% of its boats in the 6m plus range; 63.4% of additional registered boats between 1999 and 2009 were over 6m in length
- It has the lowest annual growth at 1.3% probably due to geographic limits of storage space and lack of on water storage capacity
- It has the lowest number of boats per person at 19/1000ppl

Forecasts for Sydney Harbour include:

- An additional 3,431 boats from 18,011 (2009) to 21,442 (2026), an increase of about 19%
- 71% (2,666) of additional boats are expected to be large boats (i.e. >6m)
- Overall growth is expected to be relatively modest, i.e. around 1% and a growth to 2026 of around 19%
- It has the highest demand for on-water storage of any region in the state and relatively few avenues for expansion

Discussion on Sydney Harbour includes:

- Development of strategies for better integrated planning, management and satisfaction of demand are needed:
  - Integrated urban planning for the Sydney Metropolitan area taking into consideration increasing demand for recreational boating and related storage needs
  - Encouragement of development of boating facilities in areas on the outskirts of Sydney including Port Hacking, Botany Bay and Broken Bay
  - Matching supply of marina berths with demand
  - Consultation with local councils for boat ramp traffic and trailer parking management to prevent undue waiting times at congested locations, especially at holiday and weekend peaks
  - Identification of new sites and funding sources for moorings and other options such as dry stack storage for smaller boats such as dinghies
  - Consideration of alternative strategies for increasing on-water storage such as converting swing moorings to marina style moorings
  - Local Councils dealing effectively and equitably with dinghy storage around foreshores and trailer parking on city and suburban streets
  - Expanding spare capacity of transient boating infrastructure for visiting vessels.

The EIS includes a section (7.2.1) on the Boat Storage Policy for Sydney Harbour. As mentioned above, the growth forecasts document, which was released after the DA was lodged, supersedes the boat storage policy.

Considering the relatively minor change to the proposed boat storage capacity of the CYCA marina the information in the growth forecasts document is of limited relevance to the assessment of this DA. However, the proposal provides some additional boat storage and for the conversion of swing moorings to marina style moorings/berths.

An objection to the current DA was received from the Rushcutters Bay Foreshore Protection Association (RBFPA) (a petition containing 25 signatories cites the matters raised in the RBFPA's submission as a ground for its objection). The objection maintains that Rushcutters Bay has reached maximum (boat storage) capacity. It refers to a condition placed on the d'Albora Marina in 1991 by NSW Maritime when consent was granted for alterations to that marina limiting the number of vessels moored at that marina to not exceed 95. The objection also refers to changes since 1991 such as:

- usage and access to the waterway being confined to a small congested area of New Beach Road
- increased berths, 17 at Sir David Martin Reserve, 70 moorings in Naval waters and 4 at d'Albora marina
- CYCA exceeding its limit on overnight berths by 3 boats 'every night of the year'
- CYCA breaching its consent conditions regarding deliveries
- Other activities conducted by the CYCA, e.g. weddings, functions, seminars, etc

The objection is strongly against any increase in berths or moorings because of their deleterious effect on the amenity of the local neighbourhood.

By way of comment in relation to growth forecasts and the RBPA's objection, although overall growth is expected to be relatively modest (19% over 17 years) it still means accommodating an additional 3,341 mainly large boats in the bays of Sydney Harbour. The aesthetic and environmental consequences of providing additional boat storage capacity to accommodate the forecast growth is a real concern. However, for the purpose of assessing this DA the planning controls which currently apply, i.e. SHREP and SHDCP, contain the prime matters for consideration. The DA process should not bring about planning outcomes that are inconsistent with the relevant strategic plans which, from a planning perspective, are accepted as reflecting current community expectations.

#### **15.4.3 AS 3962-2001 Guidelines for design of marinas**

AS 3962 contains guidelines for marina designers, manufacturers and operators in relation to recreational marinas and small commercial vessels up to 50m in length. The standard covers investigations, dimensional criteria, loading & stability, design considerations, services, onshore boat facilities and traffic & parking.

The EIS, including technical appendices, make various references to guidelines contained in AS 3962. It states that AS 3962 was utilised to assist in the design of the marina.

Section 3 – *Dimensional Criteria* of AS 3962 sets out minimum dimensions for various aspects of marinas, including channel widths (3.1), berth sizes (3.3) and walkways, fingers and mooring points (3.5). The dimensions of channels, berths, walkways, fingers and mooring points for the proposed additional berths on arm D and the relocated berths between arms B and C are satisfactory in terms of section 3.

Section 8 – *Traffic and parking* of AS 3962 applies the same car parking rates for marina berths and swing moorings, i.e. 0.3 spaces per commercial berth/mooring. It states that these rates have been found to be acceptable in the absence of traffic and parking studies. Applying these rates to the existing and proposed marinas produces the following outcome.

Parking generation based on existing boat storage capacity	231 x 0.3 = 69.3
Parking generation based on proposed boat storage capacity	237 x 0.3 = 70.1

Based on these parking generation rates the proposal would generate demand for 1 additional parking space. The earlier comments in relation to the Car Parking DCP, part 13.2 of this report, are relevant. It should be noted that under the Car Parking DCP the parking demand generated by the changes to the boat storage capacity of the marina is greater (5 spaces) than under AS 3962 (1 space).

The proposal is considered to be satisfactory in terms of AS 3962.

#### 15.4.4 Land owner's consent

NSW Maritime, as owner of the waters of Sydney Harbour, granted land owner's consent to lodge the DA on 20/8/09. The application for land owner's consent was considered under NSW Maritime's *Obtaining permission to lodge a development /project application* policy. The owner's consent was not subject to any special conditions.

The Department of Lands, as owner of the land based component of the site, advised Allan Jack & Cottier by letter dated 29/4/09 that it had no objections to the lodgement of a DA. No special conditions were imposed apart from:

4. *Any works proposed on the adjoining reserve must be in accordance with the recommendations of the draft Plan of Management, the public purpose of "Access and Plantation" and aim to improve the overall presentation of the plantation reserve.*

An assessment of the impacts on the Plantation Reserve in the context of the POM has been made earlier in this report, see part 11, WLEP cl.24 - Land adjoining public open space. The proposal is considered to be satisfactory in term of the POM.

## 16 APPLICABLE REGULATIONS

Under the EPA Reg the following are matters required to be considered:

- the Government Coastal Policy, under clause 92(1) – the Policy's boundaries were extended to include parts of the Woollahra Municipality in November 2005. However, under the regulation only the seaward provisions of Policy apply to Woollahra. Therefore the Policy is not relevant to the consideration of this development proposal.
- Australian Standard AS 2601-1991: The demolition of structures as in force 1 July 1993, under clause 92(2). The proposal includes demolition of existing buildings and structures. Conditions can be imposed to require compliance with the Standard.
- The fire protection and structural adequacy of a building if the development proposes a change of use and no building work is involved, clause 93. The development does not propose a change of building use. New buildings will be designed to conform with the Building Code of Australia (BCA), including with regard to fire protection and structural adequacy.
- Whether a building should be brought into total or partial conformity with the Building Code of Australia, under clause 94. Council's Fire Officer has considered this issue and is of the opinion that a condition of consent should be imposed



requiring the existing buildings to be brought into partial conformity with the Building Code of Australia.

## 17 LIKELY IMPACTS OF THE PROPOSAL

Many of the impacts of the proposal have been discussed elsewhere in this report. Parking, which was raised in many of the objections, is addressed under part 15.2 - Car Parking DCP. Impacts on marine ecology are discussed under parts 13.1 – EPBC Act and 13.2 – NSW threatened species legislation. Heritage is discussed in part 14.2.7 – WLEP cl.26-33. The provisions of SHREP and SHDCP are commented upon in the respective assessment tables, refer to annexures 14 and 15.

This part of the report discusses in detail visual and noise impacts.

### 17.1 Visual impacts

Visual impacts in respect of this proposal include impacts associated with the water based and land based components of the development.

The main criteria for assessing the visual impact of the water based component are contained in the SHREP and the SHDCP.

The land based component requires an assessment of visual impacts on private residences in New Beach Road and on public domain areas in New Beach Road and the Plantation Reserve. The Land and Environment Court planning principle for view sharing, known as Tenacity, sets out a process that is considered to be appropriate for assessing view impacts on the residential properties in this situation. Although, it is acknowledged that this may not strictly be a view sharing situation as the proposal, being a commercial development, may not have been designed to capture views.

The impact on views from the Plantation Reserve has been discussed in part 14.2.4 of this report.

#### 17.1.1 Water based component

The water based component that will have most visual impact is the proposed extension to berthing arm D to accommodate 9 additional berths. Berthing arm D is the southern most of the berthing arms, closest to Rushcutters Bay Park. The extension walkway will be off-set 17.11m to the south of the existing walkway and have a length of 65.24m. The 9 berths will consist of 4 dual berths and 1 single berth, all located on the northern side of the walkway. Finger pontoons will be located between the berths and at the western end of the walkway. The walkway and finger pontoons will be held in position by piles driven into the sea bed. The berths are designed to accommodate 18m yachts.

The proposed arm D walkway will be 63m from existing berthing arm A and its western extremity will be approximately 27m to the east (i.e. shorter) than arm A. The setback from the existing curved sea wall of Rushcutters Bay Park will be approximately 53m.

The EIS includes a report titled *Visual impact assessment*, by Richard Lamb & Associates, dated August 2009 (Lamb report). It adopts a methodology for assessing the visual impact of

the proposal that includes reference to the SHDCP, appendix D, *How to undertake a visual impact assessment for marinas*.

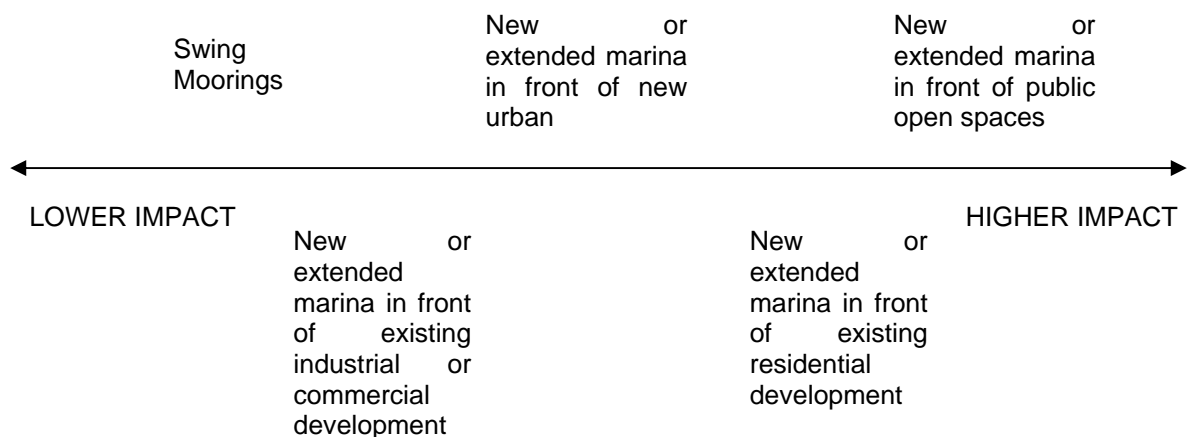
Part 4 of the SHDCP contains guidelines for water-based and land/water interface developments. Part 4.7 contains specific guidelines for marinas. The following note is included under *visual impact*:

*Note: For detailed provisions on how to undertake a visual impact analysis see Appendix D in this DCP.*

Appendix D consists of:

- Part D1, *Known characteristics of various types of boat storage facilities*.
- Figure D1, *Indicative potential visual impact of various development scenarios* (reproduced below)

FIGURE D1. INDICATIVE POTENTIAL VISUAL IMPACT OF VARIOUS DEVELOPMENT SCENARIOS



- D1.2, *What is a visual impact assessment?*
- D1.3 *When is a visual impact assessment required?* – in relation to changes to or expansion of existing marinas and the consolidation of swing moorings into a marina this part states that an evaluation be made of the cumulative visual impact of the total development compared to the existing visual impact
- D1.4 *How to undertake a visual impact assessment* – this includes preparing a matrix, figure D3 is a view analysis matrix and figure D4 is an example of a completed view analysis matrix
- D1.5 *Lodging a visual impact assessment with a development application*

The following matrix has been prepared based on appendix D. The view locations are from:

- View 1 - Rushcutters Bay Park, in close proximity to the sea wall, i.e. < 100m from the extended marina
- View 2 – Rushcutters Bay Park, away from the sea wall, i.e. 100 – 1,000m of the extended marina
- View 3 – waterway < 100m from the extended marina

- View 4 – waterway 100 – 1,000m from the extended marina
- View 5 – from residences

It is acknowledged that the viewing locations are generalised but they are indicative and considered to represent a balanced assessment of visual impacts.



**VISUAL ASSESSMENT MATRIX**  
**(based on Sydney Harbour DCP, appendix D)**

Factor	View 1	View 2	View 3	View 4	View 5
Location of viewer	3 (3)	3 (3)	3 (3)	3 (3)	2 (2)
Distance of view	3 (3)	2 (2)	3 (3)	2 (2)	2 (2)
Period of View	2 (2)	2 (2)	2 (2)	2 (2)	3 (3)
Scale or relative size (boat numbers and mix of vessel types)	2 (2)	2 (2)	2 (2)	2 (2)	2 (2)
Boat storage type / Spatial relationship (ie private or commercial marina or swing moorings and its settings)	3 (3)	3 (3)	3 (3)	3 (3)	3 (3)
Motion of objects	1 (1)	1 (1)	1 (1)	1 (1)	1 (1)
Overall potential visual impact (average Score)	2.3 (2.3)	2.2 (2.2)	2.3 (2.3)	2.2 (2.2)	2.2 (2.2)

The degree of impact ratings are High = 3 / Medium = 2 / Low = 1  
Bracketed ratings are for the existing situation

The matrix presents the proposal as having a high overall potential impact. However, comparing the proposed and existing situations shows there is no difference between the potential visual impact and the existing visual impact. Basically Rushcutters Bay south of Macleay Point is fully occupied by boat storage. The boat storage is mainly in the form of the CYCA and d'Albora marinas' marina berths with some swing moorings and access channels on the western side.

The extended arm D will affect acute, direct view lines to the north west from parts of Rushcutters Bay Park, i.e. towards Elizabeth Bay. The area of the park affected is between approximately 100m to 200m from the existing CYCA Club building. The views are of residential buildings on the hillside. While the view lines will be affected by the location of the arm D extension in reality the land/water interface is presently not visible due to existing vessels on swing moorings while the skyline (i.e. the roofs of apartment buildings) and the majority of the apartment buildings on the hillside will still remain visible over the yachts.

From other parts of Rushcutters Bay Park yachts on extended arm D will be viewed against the backdrop of yachts on existing arm A. The plans of the extension to arm D show no berths on its southern side or on its western extremity (although an aerial montage submitted with the DA does show a yacht on the western extremity). The yachts occupying the

additional berths will be closer to the Rushcutters Bay sea wall than the yachts on arm A. However, the southern alignment of yachts on the additional berths will be approximately the same as the existing alignment of yachts on arm D as no berthing is proposed on the southern side of the extended arm. It is necessary for a condition to be imposed which prohibits vessels being berthed on the southern side of, or on the western extremity of, extended arm D, see condition I.14.

The visual impact of the additional berths on private residences will, at worst, be negligible. This is because of the distance between the residences and the additional berths, the screening effect of the existing yachts and the CYCA club building and the elevated nature of the residences.

It needs to be noted that, in terms of the SHREP and SHDCP, commercial marinas are defined as land/water interface development. They are therefore not technically water based development for the purposes of those planning controls.

### **17.1.2 Land based component**

The land based component of the proposed development most likely to result in visual impacts is the proposed new building on New Beach Road. The visual impact of this building on the Plantation Reserve has been discussed earlier, see part 14.2.4 of this report. Other areas which may be impacted are the residential units on the eastern side of New Beach Road opposite the proposed building and from New Beach Road.

#### **Residential units - New Beach Road**

These are the 6 pairs of heritage listed buildings being numbers 27-38 New Beach Road.

These buildings are 2 storey residential flat buildings the front section of which each contains separate units on the ground and 1<sup>st</sup> floors. The ground floor levels of the buildings are elevated in relation to the New Beach Road carriageway. Some of these properties have had front garages added which are excavated partly beneath the ground floor while the others have original stone retaining walls. Surveys submitted with the DA show the ground floor of no. 35 to be RL6.33AHD. The 1<sup>st</sup> floors are shown to vary from approximately RL9.95AHD (nos. 37 & 38) to RL9.25 (nos.27 & 28). The New Beach Road carriageway is shown as varying from RL2.28AHD to RL2.44AHD across the frontage of the properties.

The existing 2 storey Shipwrights building to be demolished is 13m to the north of the CYCA Club building. It has a width of 11.6m to New Beach Road. The front section is designed with a skillion roof which slopes from north to south, i.e. from RL8.89AHD to RL6.23AHD. The remainder of the New Beach Road frontage to the north of the Shipwrights building is occupied by single storey ancillary buildings, walls, fences and gates.

Immediately to the north of the site is a 2 storey building used by d'Albora Marina. It has a south to north sloping skillion roof the high point of which is on the boundary line and has a maximum height of RL9.02AHD. There are also significant trees on the Plantation Reserve at the front of the property.

The proposed new building will be setback from the existing CYCA Club building a similar distance to the existing Shipwrights building, i.e. 13m and it will occupy the remainder of the site's New Beach Road frontage, being a distance of approximately 57.5m, abutting the 2 storey d'Albora Marina building to the north. The majority of the new building will be single storey with a flat, landscaped roof having an RL6.3AHD, i.e. similar to the low point of the skillion roof of the Shipwrights building. The 2 storey part of the building will abut the northern boundary/the 2 storey d'Albora Marina building. It will occupy 15.8m of the New Beach Road

frontage. The roof will be a composite flat and skillion design matching the height of the d'Albora Marina building on the northern side (RL9.02AHD) and with a maximum height of RL10.375AHD.

It is considered appropriate to carry out an analysis of the impact on views from properties in New Beach Road using the principles developed by the Land and Environment Court in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 (Tenacity). It is noted that Tenacity is primarily about view sharing. It may be argued that this is not strictly a view sharing situation, i.e. the proposal is not seeking to capture views at the expense of views from surrounding residences. Notwithstanding, Tenacity does provide an established mechanism for assessing view impacts which can be meaningfully applied in this situation. The analysis is based on views from:

- 1/27 New Beach Road – opposite the northern side of the CYCA Club building at ground floor level
- 2/27 New Beach Road – opposite the northern side of the CYCA Club building at 1<sup>st</sup> floor level
- 2/28 New Beach Road – opposite the entry to the existing southern car park at 1<sup>st</sup> floor level
- 1/31 New Beach Road – opposite the existing slipway at ground floor level
- 1/32 New Beach Road – opposite the southern side of the northern car park at ground floor level
- 1/33-34 New Beach Road – opposite the entry to the existing northern car park at ground floor level
- 2/34 New Beach Road – opposite the entry to the existing northern car park at 1<sup>st</sup> floor level

Tenacity applies a 4 step approach to assessing view sharing.

- **Step 1** - What is the value of the view?

The Court said: *"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."*

Views from the above properties are as follows:

1/27 New Beach Road : The view comprises the CYCA Club building; yachts on the hardstand and marina berths, apartment buildings at Elizabeth Bay as viewed between the CYCA Club building and the Shipwrights building; the Shipwrights building; parts of Garden Island and the d'Albora Marina building.

2/27 New Beach Road: The view comprises the CYCA Club building; yachts on the hardstand and marina berths; apartment buildings at Elizabeth Bay; Garden Island including the shoreline and water as viewed over the Shipwrights building; the Shipwrights building; the northern foreshore; and, the d'Albora Marina building.

2/28 New Beach Road: The view comprises the CYCA Club building; boats on marina berths and swing moorings; apartment buildings at Elizabeth Bay; Garden Island including foreground water views; northern shoreline, water and some of Yarranabbe Park as viewed over the d'Albora Marina building; and, the d'Albora building.



1/31 New Beach Road: The view comprises the CYCA Club building; the Shipwrights building; the masts of yachts, apartment buildings at Elizabeth Bay/Potts Point and Centre Point tower as viewed above the roofs of the CYCA Club and Shipwrights buildings; winch stores adjacent to the slipway; boats on d'Albora Marina berths; parts of Garden Island including a limited area of water; the northern foreshore; and, the d'Albora Marina building.

1/32 New Beach Road: The view comprises the CYCA Club building; the Shipwrights building; apartment buildings at Elizabeth Bay; winch stores adjacent to the slipway; boats on marina berths; Garden Island including some of the shoreline and a limited area of water; the northern foreshore; about the northern 1/5<sup>th</sup> of the arch of the Harbour Bridge; and, the d'Albora Marina building.

1/33-34 New Beach Road: The view comprises the CYCA Club building; the Shipwrights building; part of the existing CYCA northern car park; apartment buildings at Elizabeth Bay; winch stores adjacent to the slipway; boats on marina berths; the southern part of Garden Island; about the northern 1/4 of the arch of the Harbour Bridge; and, the d'Albora Marina building.

2/34 New Beach Road: The view comprises the CYCA Club building; the Shipwrights building; part of the existing CYCA northern car park; apartment buildings at Elizabeth Bay; winch stores adjacent to the slipway; boats on marina berths; the northern part of Garden Island including the shoreline; the northern foreshore from the shoreline to the ridgeline and expansive areas of the waterway; a small part of the arch of the Harbour Bridge; and, the d'Albora Marina building.

- **Step 2 - From what part of the property are the views are 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 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."*

In all cases views are from living areas at the front of the properties and are enjoyed from both standing and sitting positions.

- **Step 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."*

**1/27 New Beach Road :**

The Lamb report includes the following comment on view impacts from this location (view point 29):

*Overall the view to the water would be increased. The proposed building would be visible in the foreground of this view. The second storey component of the building would be screened behind existing vegetation and would not result in loss of view as this vegetation presently screens views in that direction. (p.69)*

The view point data sheet in the Lamb report states as follows in relation to this view point:

View Composition	<i>restricted</i>
Visual Effect	<i>medium</i>
Visual Impact	<i>low</i>

Comments:

- *The removal of the shipwrights building and its replacement with a single storey building in this location will increase the extent of view to the Harbour.*
- *The second storey component of the building will be largely located behind existing vegetation and as a result there would be no significant view loss.*
- *Overall it is considered that the relocating of building bulk within the site will improve the visual experience from this apartment.*
- *It is considered that the architectural character of the building will result in an improvement to the scenic qualities of the streetscape when seen from this location.*

No objection was received from the owner of this unit.





***Existing View***

Montage Location 9b: View from apartment 1/27 New Beach Road



**Proposed View**

Montage Location 9b: View from apartment 1/27 New Beach Road

Views will be improved through removal of the Shipwrights building and a palm tree on the Plantation Reserve. Views of the northern shoreline, some water views and Garden Island which do not presently exist, will be available over the single storey part of the new building.

**2/27 New Beach Road:**

The Lamb report includes the following comment on view impacts from this location (view point 28):

*From this location it would be possible to look down upon the new building and associated roof gardens. There will be more extensive views toward the Harbour and also greater visibility of the hard stand area adjacent to the water. Views to the second storey component of the building will be filtered by existing vegetation on the street. (p.68)*

The view point data sheet in the Lamb report states as follows in relation to this view point:

View Composition	<i>expansive</i>
Visual Effect	<i>low-medium</i>
Visual Impact	<i>low</i>
Comments:	

- *The removal of the shipwrights building and its replacement with a single storey building in this location will increase the extent of view to the Harbour.*
- *The second storey component of the building will be largely located behind existing vegetation and as a result there would be no significant view loss.*

- *Overall it is considered that the relocating of building bulk within the site will improve the visual experience from this apartment.*
- *It is considered that the architectural character of the building will result in an improvement to the scenic qualities of the streetscape when seen from this location.*

No objection was received from the owner of this unit.



**Existing View**

Montage Location 9a: View from apartment 2/27 New Beach Road





**Proposed View**

Montage Location 9a: View from apartment 2/27 New Beach Road

Views will be improved through removal of the Shipwrights building and a palm tree on the Plantation Reserve. Views of the northern shoreline, water and Garden Island and boats on marina berths, which do not presently exist, will be available over the single storey part of the new building. The 2 storey building will have a negligible impact on water views.

**2/28 New Beach Road:**

The Lamb report made no assessment of view impacts from this location.

An objection was received from the owner of this unit, Mr S Dickson. In relation to views the objection raised the following matters:

- The 2<sup>nd</sup> storey of the proposed northern building is a major concern
- The CYCA montages do not include from across the road from the northern building
- The roof design unnecessarily increases its height and decreases views from this unit
- The ground floor is primarily a 9 berth VIP car park and the 2<sup>nd</sup> storey is unnecessary

It is considered that removal of the Shipwrights building will improve views of vessels on marina berths and of apartment buildings at Elizabeth Bay. Views of Garden Island will not be affected. The 2 storey part of the new building will block most of the views to the water and parts of the northern foreshore including the shoreline currently visible over the d'Albora Marina building. The north shore ridgeline will not be affected.



**Existing view**

2/28 New Beach Rd: View from front living room

The view loss would be slightly worse than the view gains. Considering that there will be some improvement of views, in terms of Tenacity, the overall impact would be minor.

**1/31 New Beach Road:**

The Lamb report includes the following comment on view impacts from this location (view point 34):

*The proposed second storey element of the new building would partly obscure the view towards the water in the direction of Garden Island. The view towards Rushcutters Bay and Potts Point would be increased as a result of the removal of the Shipwrights building in the foreground. The views from the apartment above this would be largely unaffected by the proposal. (p.71)*

The view point data sheet in the Lamb report states as follows in relation to this view point:

View Composition	<i>restricted</i>
Visual Effect	<i>medium</i>
Visual Impact	<i>low</i>
Comments:	

- *The removal of the shipwrights building and its replacement with a single storey building in this location will increase the extent of view to parts of Rushcutters Bay.*



- *The second storey component of the building will result in some loss of the oblique view towards a section of the Garden Island foreshore.*
- *It is considered that the architectural character of the building will result in an improvement to the scenic qualities of the streetscape when seen from this location.*

An objection was received from the owner of this unit, Mr C Culpin (also the Chairman of Strata Plan 2285, 31-32 New Beach Road). In relation to visual impact the objection refers to the applicant's visual impact statement as grossly underestimating the visual impact. That the 2 storey building will forever extinguish views over the water to the Harbour Bridge. Also that the existing d'Albora building is a poor excuse to justify adding to the eyesore from street level.

It is considered that removal of the Shipwrights building will have limited benefits in terms of views to apartment buildings at Elizabeth Bay. The view of Centre Point tower will not be affected. The 2 storey part of the new building will block views of the water, parts of Garden Island (although landmark features, such as the 'hammerhead' crane, will still be visible), boats on marina berths and the northern foreshore. The current views from this unit do not include the Harbour Bridge.



**Existing View**

Montage Location 11: View from apartment 1/31 New Beach Road



***Proposed View***

Montage Location 11: View from apartment 1/31 New Beach Road

The view loss would be worse than the view gains. In terms of Tenacity the overall impact would be moderate/severe.

***1/32 New Beach Road:***

The Lamb report makes no assessment of the view impacts from this location.

An objection was received from the owners of this unit, Mr A Csillag. In relation to views the objection raises the following matters:

- Loss of amenity and property value
- The 2 storey d'Albora building does not justify another 2 storey building
- Class rooms and parking does not need a 2 storey building
- The applicant's visual impact statement is based on selected viewing locations which do not properly represent the extent of impacts
- Water and Harbour Bridge views will be lost forever with the planned 2 storey development

The removal of the Shipwrights building will have marginal benefits in terms of views to boats on marina berths and apartment buildings at Elizabeth Bay. The 2 storey part of the new building will block views of the water, Garden Island, boats on marina berths and the northern foreshore. The view of the northern part of the Harbour Bridge arch will not be affected.





**Existing view**

1/32 New Beach Road: view from front deck/garage roof

In terms of Tenacity the impact would be moderate/severe.

**1/33-34 New Beach Road:**

The Lamb report makes no assessment of the view impacts from this location.

An objection was received from the owner of this unit, Mr A & Mrs E Schuman and from Mr J Webb, a member of the Executive Committee for this building (and for 35-36 and 37-38 New Beach Road). In relation to view impacts the objections raise the following matters:

- The 2<sup>nd</sup> storey of the northern building is a major concern
- The applicant's photomontages are not from across the road from the proposed northern building
- A 2 storey building is not required as the ground floor level is a VIP car park which can be accommodated within the underground car park

The removal of the Shipwrights building will have marginal benefits in terms of views to boats on marina berths and apartment buildings at Elizabeth Bay. The new 1 and part 2 storey building will block views of boats on swing moorings while the 2 storey part will block almost all of the Harbour Bridge.





**Existing view**

1/33-34 New Beach Road: view from front living room

In terms of Tenacity the view impact would be severe.

**2/34 New Beach Road:**

The Lamb report makes no assessment of the view impacts from this location.

An objection was received from the occupant of this unit but it does not raise view loss as an issue.

The removal of the Shipwrights building will improve views of the waterway and boats on marina berths. The 2 storey part of the new building will block a small area of waterway, some boats on marina berths and some of the apartment buildings at Elizabeth Bay. The small area of the Harbour Bridge will not be affected and neither will the expansive views of the waterway and northern foreshore.



**Existing view**

2/34 New Beach Road: view from front living room

In terms of Tenacity the view impact would be negligible.

Other properties in New Beach Road more directly opposite the location of the 2 storey section of the proposed new building, i.e. 35-36 New Beach Road and 37-38 New Beach Road, currently have their westerly views blocked by trees on the Plantation Reserve. Objections were received from the Home Owner's Corporations of these properties and also from Mr and Mrs A Griffiths, 37 New Beach Road and Ms J Harlen, 2/37 New Beach Road. However, the visual impact of the proposal on these properties will be satisfactory.

- **Step 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 non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."*

As discussed in relation to the WLEP there is no statutory height or density controls for development on the subject site. The maximum height of the proposed building is 9.225m (based on a ground level RL1.14AHD). In relation to the New Beach Road footpath the height is 8.255m. Whilst the building will be higher than the existing Shipwrights building (+2.285m) and the d'Albora Marina building (+1.355m) it will be lower than the CYCA Club building (-0.295m). In terms of Tenacity step 4 the impact does not arise as a result of a non-compliance with a planning control.

The views that are negatively affected are from those residential properties to the south east of the 2 storey part of the proposed building. Presently these properties look across the northern hardstand car park with the southern wall of the existing 2 storey d'Albora Marina building blocking Harbour views further to the north and north west.

The 'cut-off' point of the proposed building in terms of additional view loss is the south western corner of the 2 storey portion and the roof. This is particularly so in relation to views from 1/31, 1/32 and 1/33-34 New Beach Road and, to a lesser extent, in relation to 2/28 New Beach Road. The western part of the 1<sup>st</sup> floor is to accommodate a classroom for the Youth Sailing Academy (southern corner) and a deck (northern corner). Reversing this configuration would effectively relocate this cut-off point 7m to the east and 6m to the north of its proposed location.

Also, the internal ceiling heights are shown to be 3m at ground floor (between floor slabs) and a minimum of 3m at 1<sup>st</sup> floor which has a raked ceiling. It is considered that a 1m reduction in the overall height of the building is readily achievable without unduly compromising the proposed accommodation.

The benefits in terms of view impacts of the design changes discussed above would be:

- in terms of 1/31 and 1/32 New Beach Road, view loss to Garden Island and the northern foreshore would be reduced
- in terms of 1/33-34 New Beach Road, view loss to the Harbour Bridge would be reduced
- the impact on water views currently available from 2/28 New Beach Road over the d'Albora Marina building would be reduced

## **New Beach Road**

Views are currently available from the footpath on the eastern side of New Beach Road over the winch stores and the brushwood fence and vehicular access to the northern car park. The views include apartment buildings at Elizabeth Bay, the masts of yachts on marina berths and some of the Harbour Bridge's arch. The proposed new building will partly block the apartment buildings and the yacht masts but the affectation is minor.

The Harbour Bridge is a heritage item under the SHREP and views of it are generally accepted to be iconic views. The views are available from the footpath in front of 33-34 New Beach Road, a distance of about 18m. The extent of the arch visible varies and the maximum extent is about a ¼ of the arch.





**Existing view**

New Beach Road: opposite northern car park

The views of the arch are partial views and the viewing location is limited. Panoramic views of the full arch are available from New Beach Road between the buildings at d'Albora Marina and Sir David Martin Reserve, a distance of approximately 75m to the north, and from Yarranabbe Park.



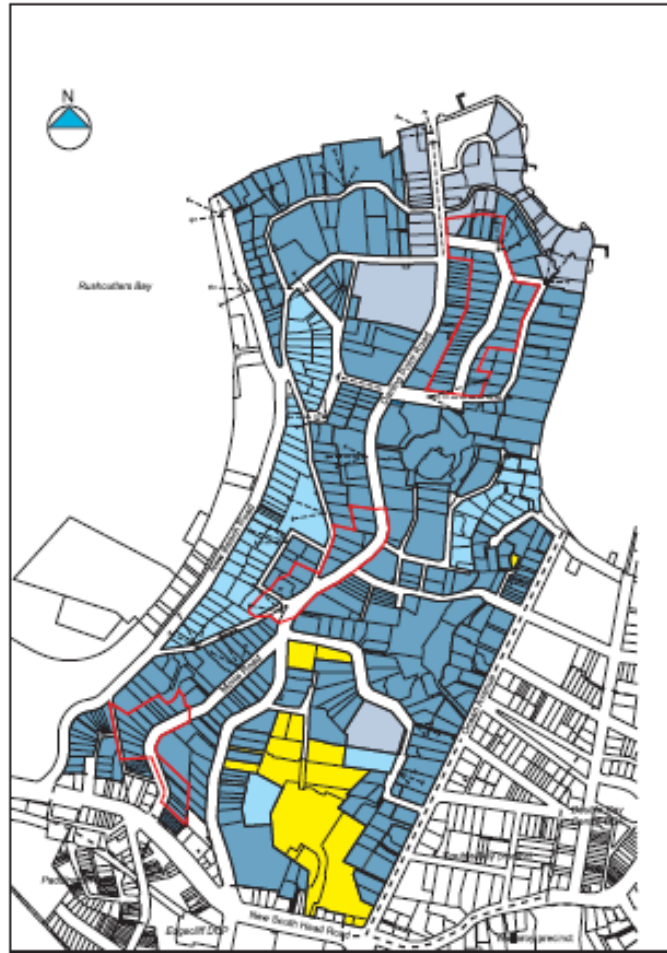
**Existing view**

New Beach Road: east side between d'Albora Marina and Sir David Martin Reserve

Also, better views are potentially available from the public walkway that is proposed through the CYCA site than those currently available from New Beach Road. The public walkway follows a path from the CYCA club building across the proposed hardstand to d'Albora Marina. The public walkway will be to the west of the new building. The hardstand area further to the west is intended for use for dry boat storage (etchells and J24s) and as a rigging area. A rigging crane is to be relocated to the north western corner of the hardstand. The boats are stored on cradles and are shown on the plans to be in 2 rows, 1 row adjacent to the new building and the other row adjacent to the western edge of the hardstand. The row adjacent to the new building ends about 15m from the northern boundary, i.e. the common boundary with d'Albora Marina. Dinghy storage is shown to the north of this row. The western row finishes about 8m from the northern boundary. The location of the western row of boats and the dinghy storage will compromise views from the public walkway to the north west, i.e. towards the Harbour Bridge. It is considered that boat storage, including dinghy storage, should be setback a minimum of 15m from the line of the northern boundary. Based on the information shown on the plans this will require the relocation of 3 boats as well as the dingy store. It is considered that these changes are necessary to compensate for the loss of views from New Beach Road and to maximise the public benefit of the walkway. It is also noted that the walkway will provide direct access to an area of d'Albora Marina from which there are better views towards the Harbour Bridge. Conversely, the public access to the walkway will be restricted to between 7am and sunset.

The Woollahra Residential Development Control Plan (WRDCP) precinct map for Darling Point (see below) identifies significant views and vistas from public domain areas. It does not identify views or vistas from the section of New Beach Road in the vicinity of the CYCA as being significant. The significant views that are shown will not be affected by the proposal. The significant views that are shown across the CYCA are from elevated locations and will still be available over the proposed buildings.

### WRDCP PRECINCT MAP FOR DARLING POINT



The design and appearance of the proposed building will, in themselves, result in a significant improvement over the existing structures in terms of the streetscape's built form and the site's built edge condition. Also, the proposed replacement of the 2 storey Shipwright building with a single storey building in the same location will open up views from the adjacent parts of New Beach Road.

The loss of even partial views of the Harbour Bridge from limited locations of the public domain is the cause for concern. However, subject to a condition being imposed in relation to views from the public domain as discussed above, it is considered that on balance the proposal is acceptable in terms of visual impacts from New Beach Road.

#### 17.1.3 Planning controls

The SHREP, cls. 25 & 26 contain matters for consideration in relation to scenic quality and view impacts.



## **25 Foreshore and waterways scenic quality**

*The matters to be taken into consideration in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways are as follows:*

*(a) the scale, form, design and siting of any building should be based on an analysis of:*

- (i) the land on which it is to be erected, and*
- (ii) the adjoining land, and*
- (iii) the likely future character of the locality,*

*(b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries,*

*(c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores.*

## **26 Maintenance, protection and enhancement of views**

*The matters to be taken into consideration in relation to the maintenance, protection and enhancement of views are as follows:*

*(a) development should maintain, protect and enhance views (including night views) to and from Sydney Harbour,*

*(b) development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items,*

*(c) the cumulative impact of development on views should be minimised.*

Part 3 of the SHDCP includes the following general aims:

### *3.2 GENERAL AIMS*

*All development should aim to:*

- minimise any significant impact on views and vistas from and to:*
  - public places,*
  - landmarks identified on the maps accompanying the DCP, and*
  - heritage items;*

Part 4 of the SHDCP contains design guidelines for water-based and land/water interface developments. Commercial marinas are land/water interface development. Part 4.7 relates to private and commercial marinas. Under *visual impact* it contains the following:

### *Visual Impact*

*Note: For detailed provisions on how to undertake a visual impact analysis see Appendix D in this DCP.*

- the visual contrast (derived from an analysis of form, line, colour and texture) between the marina and the existing or planned future character of its setting is to be minimised;*
- the visual impact of the marina on people in the visual catchment (derived from an analysis of the potential number of viewers, their location within the landscape, distance from the marina, and duration of view) is to be minimised;*
- any visual analysis shall consider the impact of the largest motor vessel(s) capable of being berthed at the marina;*
- the largest vessels (motorised or otherwise) to be berthed at the marina are to be located as far from shore as possible;*

- *waterside structures and berthed vessels associated with marinas are not to block views from foreshore public open space or views to foreshore public open space from the waterway;*
- *the bulk and scale of buildings and other structures on land is to be minimised through appropriate mitigation measures including landscaping, articulated walls, detailing of surfaces and by using smaller elements (see also Section 4.5 of this DCP);*
- *the visual impact of car parking from the waterway is to be minimised; and*
- *all signage is to be located on dry land below the roofline (or parapet) of buildings. Advertising signs are not to detract from the visual quality or amenity of the foreshores and waterways when viewed from the waterways.*

The provisions of Appendix D have been discussed earlier in relation to the water based component of the development.

SHREP, cl. 26(c) requires that consideration be given to minimising the cumulative impact on views. Subject to conditions to change the design of the western end of the 2 storey part of the proposed building and to lower the roof, as discussed earlier, the impact on views from private residences is considered to be satisfactory. The earlier assessment based on the visual impact matrix approach in appendix D of the SHDCP also discusses the visual impact of the proposal in the context of the visual impact of the existing facility. The cumulative impact of the proposal is considered to be satisfactory in terms of Rushcutters Bay.

Further comments in relation to the specific provisions of the SHREP and SHDCP are contained in annexures 14 and 15.

WLEP 95, cl.2(2)(h)(iv) and (v) includes objectives for the foreshore and harbour foreshore scenic protection area relating to views:

- (iv) to consider the impact of development on the views of Sydney Harbour enjoyed by existing residents and promote the practice of view sharing,*
- (v) to protect and, where possible, improve the view of Sydney Harbour and its foreshore areas obtained from public land,*

Assessment of the impact on views of Sydney Harbour enjoyed by existing residents has been undertaken using the processes set out in Tenacity. That assessment concludes that design changes are required to the proposed new building to reduce view impacts. The design changes that are considered to be necessary can be achieved through conditions of consent.

Views from public land have been discussed in relation to criteria in the WRDCP. There will be some improvement of views through the replacement of the 2 storey Shipwright building. However, there will also be loss of harbour views, including partial views of the Harbour Bridge from limited locations on New Beach Road. Conversely, better views will be available from the proposed public walkway through the site although access will be restricted to 7am to sunset. The WRDCP does not identify the affected locations on New Beach Road as having significant views. On balance, it is considered that the proposal would be consistent with objective (v) of WLEP, cl.(2)(h).

#### **17.1.4 Conclusion**

The water based component of the proposal is considered to be satisfactory with regard to its visual impacts particularly in terms of the SHDCP, part 4.7.



The design changes discussed above in relation to the 2 storey part of the new building would reduce the view loss of the Harbour Bridge from 1/33-34 New Beach Road and reduce view loss to Garden Island and the northern foreshore from 1/31 and 1/32 New Beach Road. They would also reduce the loss of water views currently available from 2/28 New Beach Road over the d'Albora Marina building. As the changes can be achieved without unduly compromising the accommodation being sought by the applicant it is considered that they are appropriate and it is therefore recommended that any consent be conditioned accordingly, see condition C.1.

The proposal is considered to be satisfactory in relation to its visual impacts, subject to the imposition of conditions requiring design changes to the western end of the 1<sup>st</sup> floor level and the lowering of the height of the 2 storey section of the proposed new building as described above.

## 17.2 Noise

The EIS includes a report on operational noise associated with the proposed development, i.e. noise from the Shipwright workshop, underground car park and additional marina berths – prepared by Acoustic Logic Consultancy, dated 8/7/09 (Operational Noise Report). It also includes a report titled *Construction noise and vibration management plan*, by Acoustic Logic Consultancy, dated 23/6/09.

Council's Environmental Health Officer's referral comment, see annexure 5, comments on the operational and construction noise reports.

### 17.2.1 Operational noise

The Operational Noise Report establishes the background noise levels for New Beach Road as follows:

Location	Time	Background Noise Level – dB(A) <sub>L<sub>90</sub></sub>
New Beach Road	Day - 7am-6pm	46
	Evening - 6pm-10pm	44
	Night - 10pm-7am	40

Noise emission objectives are based on the DECC Industrial Noise Policy (Intrusiveness and Amenity Criteria) using the above background noise levels.

The Operational Noise Report uses the loudest machinery used in the Shipwright building, i.e. planers (x3 at 103dB(A) each). The Shipwright operates between 7am and 6pm. Its doors open onto Rushcutters Bay. The predicted noise level at New Beach Road residences is 48dB(A)leq which is 3dB(A) below the intrusive noise criteria of 51.

The use of the car park is predicted to result in a noise level at the New Beach Road residences of 43dB(A)Leq which is below the intrusive noise criteria of 51dB(A)Leq for day, evening 49dB(A)Leq and night 45dB(A)Leq. It should be noted that an assumption used in the Operational Noise Report was that the car park would accommodate 77 car parking spaces. The amended DA has reduced the car parking capacity of the car park to 65 spaces.

In relation to mechanical plant emissions the Operational Management Plan states that an acoustic review be made at CC stage following detailed plant selection. Satisfactory levels

will be achievable through appropriate plant selection and location and, if necessary, standard acoustic treatments such as duct lining, acoustic silencers and enclosures.

The impact of noise from the additional berths is based on sleep disturbance criteria. Both the average and peak noise predictions on New Beach Road residences are below the sleep disturbance criteria.

The Operational Noise Report recommends that:

- no additional building works are required to meet acoustic requirements
- a detailed acoustic review of any new external mechanical plant should be undertaken at CC stage

In relation to operational noise the Environmental Health Officer's referral response includes the following comments:

- Background noise measurements: ..... *Based on this information, the Background Noise Levels provided ..... are accepted.*
- Noise breakout from the Shipwright: *It has been demonstrated ..... that for the New Beach Road residences compliance is achieved with the DECC Intrusiveness Criteria for the Daytime period when the Shipwright is operating between 7am to 6pm and that compliance for the d'Albora marina is also achieved with the DECC Amenity (Commercial When In Use) Criteria for the hours of 7am to 6pm.*
- Noise from the increased number of marina berths and existing operational noise: ..... *Noise emissions have been predicted on the assumption that it is the existing berths closest to New Beach Road that are generating the noise. Given that the proposed new berths are located further away from the New Beach Road residences, Table 5-Average Noise Emission of the amended report shows compliance with the 'Sleep Disturbance Noise Criterion.'*
- Mechanical plant noise emissions: ..... *It is recommended that plant and equipment be selected on acoustic performance and installed to achieve Council's Noise Criterion for Mechanical Plant & Equipment. All proposed acoustic treatments that may be required to achieve compliance with the criteria shall also be included at the Construction Certificate stage.*

### 17.2.2 Construction noise

The Construction Noise and Vibration Management Plan identifies sheet piling, excavation and concrete slab construction to be the loudest typical activities to be undertaken. It states that the hours of work to be 7am to 6pm Monday to Fridays and 8am to 2pm Saturdays with some allowance for emergencies.

Under construction noise and vibration objectives the plan refers to the applicable guidelines as:

- EPA Noise Control Manual Construction Noise and Vibration Guideline – for construction periods up to 6 months the recommended noise level is 10dB(A) above the background
- Australian Standard 2436-1981 "Guide to Noise Control on Construction Maintenance and Demolition Sites"
- Department of Environment and Conservation NSW "Assessing Vibration: A Technical Guideline" (Feb 2006)

The plan stipulates noise control methods, it makes an assessment of potential noise emissions and an assessment of vibration and includes a complaints handling section. The plan concludes that:

- Piling and use of concrete pumps are likely to generate noise levels that will require additional management – adopting the elements of the plan will ensure that noise impacts are minimised
- Ground vibration is unlikely to adversely impact nearby properties

In relation to the Construction Noise and Vibration Management Plan Council's Environmental Health Officer referral response recommends:

- that the proponent prepare and implement a Noise Control Program to evaluate compliance or otherwise with noise goal objectives
- that the mitigation and noise control methods detailed in the plan be fully implemented.

A number of objections to the DA raise noise as a concern. These concerns include existing background noise levels, traffic, general intensification of the use and noise associated with current bottle collection. These matters have been discussed apart from noise associated with current bottle collection activities. This is considered to be outside the scope of this DA as it relates to noise associated with the CYCA Club. Conditions were imposed on DA98/117 for the CYCA Club building relating to noise emissions. Compliance with these conditions is a matter which would require investigation and action if there are breaches of the terms of the development consent.

### **17.2.3 Conclusion**

Subject to compliance with the recommendations contained in the Council's Environmental Health Officer's referral response, noise impacts are considered to be satisfactory.

## **18. THE SUITABILITY OF THE SITE**

Site suitability issues have been addressed under part 11, SEPP 55 and part 14.2.6, WLEP cl.25 D of this report. The site can be made suitable for marina use purposes and this is supported by the land contamination report prepared by Martens that forms part of the EIS. The remediation works, including the preparation of a remedial action plan, is to be the subject of a separate DA and for this purpose a 'deferred commencement' consent condition is recommended.

Note: A 'deferred commencement' condition can not defer consideration of a fundamental planning issue unless the outcome of the assessment will not have a significant bearing on the approved development. Site suitability is a fundamental planning issue. In this case detailed specialists reports have been prepared on the site's geology and the condition of the land/soil. The reports have identified that the land is contaminated and that remediation is necessary. Those reports also identify the primary process for remediating the land in this situation, i.e. the removal of the contaminated material for disposal off-site. That process is also fundamental to the construction methodology which involves bulk excavation of the land to permit construction of the basement car park. In the circumstances it is considered that the outcome of the further assessment is unlikely to significantly impact on the approved development. The purpose of the required remediation DA is to establish the terms under which the remediation works will take place rather than whether or not the works are practicable.

Council's Environmental Health Officer, in considering the soil contamination assessment recommends the course of action recommended by the applicant's consultant, i.e. that a remedial action plan be prepared as a condition of consent. However as the remediation works require development consent under SEPP 55 and are not specifically proposed as part of the current DA a separate DA will be necessary. This issue was raised with the applicant who was given the option of either amending the current DA to include remediation works or submitting a separate DA. The applicant opted to submit a separate DA.

These comments have been made with reference to Council's Register of Legal Advices. It includes advice by Wilshire Webb and an article in the Local Government Law Journal which references a decision by Talbot J in *Torquil Cameron v Nambucca Shire Council & Resource Design & Management Pty Ltd* [NSWLEC 40036 of 1997].

## 19. SUBMISSIONS

In accordance with the provisions of the EPA Act and the EPA Regs the DA was publicly exhibited as required for designated development.

Section 79 of the EPA Act sets out public participation requirements for designated development. It requires that the DA must be placed on public exhibition for a period of not less than 30 days and consist of written notice to adjoining land owners, a notice being exhibited on the land and advertisements being placed in a local newspaper.

Written notices, site notices and newspaper advertisements required by cls.78, 79 & 80 of the EPA Reg were arranged and the submission period for the original DA commenced on 17/9/09 and ended on 20/10/09. In total 1,601 notification letters were sent to Woollahra Council residents. Another 1,542 notification letters were sent to residents of City of Sydney Council.

86 submissions were received:

- 50 objections to the original DA, including 25 signatories to a petition
- 27 support letters for the original DA
- 8 objection the amended DA
- 1 support letter to the amended DA

The amended DA was re-exhibited from 13/5/10 to 11/6/10. Nine submissions were received in response to the re-exhibition of the amended DA, 8 raising objections to the proposal and 1 letter in support. It should be noted that the amendments deleted part of the basement car park which, as proposed by the original DA, would have encroached into the waters of Rushcutters Bay. The main consequences of the amended DA are that it removed part of the development which may have constituted reclamation works under the SHREP and it reduced the overall number of parking spaces from 97 to 90. Otherwise the amended DA did not change the above ground envelope of the buildings or the configuration of the additional marina berths. The encroachment of part of the basement car park as proposed by the original DA was not, in itself, the main focus of objections received as a result of its public exhibition. It is considered therefore that issues raised in the objections to the original DA relating to matters such as view loss and parking apply to the amended DA.

The objections are shown in the following tables:

<b>OBJECTIONS TO CYCA DA441/2009/1</b>	
<b>OBJECTOR</b>	<b>OBJECTIONS</b>
A Csillag * 1/32 New Beach Road Darling Point	Original proposal: Adverse effect on views, particularly to right side; Compound existing parking issues; Increase traffic congestion; Incremental commercialisation of area; Building design unsympathetic; Rooftop garden could contribute to view impacts; Deceptive and misleading proposal
	Amended proposal: Parking impacts; Incremental commercialisation of area
C Culpin - SP 2285 * 31-32 New Beach Road Darling Point	Original proposal: Adverse effect on views: particularly to right side; Compound existing parking issues; Increase traffic congestion and noise; Incremental commercialisation of area; Building design unsympathetic; Rooftop garden could contribute to view impacts
	Amended proposal: Adverse effect on views: particularly to right side; Compound existing parking issues; Increase traffic congestion and noise; Incremental commercialisation of area; Rooftop garden could contribute to view impacts
	Amended proposal: Parking impacts; Incremental commercialisation of area
S Dickson * 2/28 New Beach Road Darling Point	Original proposal: Compound existing parking issues including storage trailers; Sir David Martin Bldg should be used by CYCA; Adverse effect on views: particularly those from across street
	Amended proposal: Compound existing parking issues including storage trailers; Sir David Martin Bldg should be used by CYCA; Adverse effect on views: particularly those from across street due to height of roof line
C Garvey 9/50 Roslyn Gardens Elizabeth Bay	Reduced aesthetics of Rushcutters Bay; Reduced view of Bay's water surface
A M & J M Griffiths	Increase in vehicle traffic; Adverse effect on views;

OBJECTIONS TO CYCA DA441/2009/1	
OBJECTOR	OBJECTIONS
37 New Beach Road Darling Point	Compound existing parking issues
N Gross * 12/42 New Beach Road Darling Point	Original proposal: Mechanical plant noise including existing; Compound existing parking issues; Increased traffic generation and noise impacts; Potential for unapproved change in usage of building (Incremental commercialisation of area)
	Amended proposal: Compound existing parking issues
J Harlen 2/37 New Beach Road Darling Point	Compound existing parking issues including storage trailers; Sir David Martin Bldg should be used by CYCA; Adverse effect on views
P Hawcroft 6/2 Elizabeth Bay Crescent Elizabeth Bay	Increase in traffic generation; Compound existing parking issues; Adverse effect on views; Overcrowding of Bay; Promotes exclusivity of use of the Bay by CYCA members
SP 2286 29-30 New Beach Road Darling Point	Compound existing parking issues including storage trailers; Sir David Martin Bldg should be used by CYCA; Adverse effect on views particularly from across the road
A Hollibone # PO Box 295 South Yarra	Amended proposal: Building will detract from beauty of Rushcutters Bay; Adverse effects on views from the public domain; Proposed height unacceptable so close to the foreshore
P Jordaan # 75 Elizabeth Bay Road Elizabeth Bay	Amended proposal: Loss of amenity to general public
D Kavlovski Penthouse C 22 New Beach Road Darling Point	Hours of operation of noisy work during construction not until 9am; Rubbish collectors' present hours should be changed to after 9am
C & V Mapp Penthouse A 22 New Beach Road Darling Point	Hours of operation of noisy work during construction not until 9am; Rubbish collectors' present hours should be changed to after 9am
C Morgan 2/34 New Beach Road Darling Point	Increase in traffic generation; Compound existing parking issues including storage trailers
R & G Porter 6/39 New Beach Road Darling Point	Adverse effect on residents' views; Adverse effect on view from public domain; Increased traffic generation; Excessive bulk & scale
J Renwick - Body Corporate 22 New Beach Road Darling Point	Increase in traffic generation; Incremental commercialisation of area; Compound existing parking issues; Potential for increase in hours of operation, patronage and licensing arrangements; Increase in noise of operation (crowds etc)

<b>OBJECTIONS TO CYCA DA441/2009/1</b>	
<b>OBJECTOR</b>	<b>OBJECTIONS</b>
Design Collaborative - SP 6342* 39 New Beach Road Darling Point	Original proposal: Incremental commercialisation of area; Increase in traffic generation; Increase in noise of operation (crowds etc); Adverse effect on residents' views; Adverse effect o views from the public domain; Excessive bulk and scale; Safety
	Amended proposal: Incremental commercialisation of area; Increase in traffic generation; Increase in noise of operation (crowds etc); Adverse effect on residents' views; Adverse effect o views from the public domain; Excessive bulk and scale
A J Rowell 55/93 Elizabeth Bay Road Elizabeth Bay	Overdevelopment of the Bay; Adverse effect on residents' views; Adverse effect on views from public domain; Increase in noise of operation; Adverse imapct on marine environment
Rushcutters Bay Foreshore Protection Association 22/42 New Beach Road Darling Point	Compound existing parking issues; Increase in traffic generation; Deleterious effects on amenity of neighbourhood
M & J Stening # 31 The Crescent Vaucluse	Amended proposal: Adverse impact on residents' views
Dynamic Property Services - SP 9079 5-7 The Esplanade Elizabeth Bay	7 recommended conditions for approval regarding neighbourhood amenity upgrade
A Spender 1/28 New Beach Road Darling Point	Compound existing parking issues including storage trailers; Sir David Martin Bldg should be used by CYCA; Adverse effects on residents' views
V Taylor # 6/67 Yarranabbe Road Darling Point	Amended proposal: Increase in traffic generation; Compound existing parking issues; Adverse effects on views and amenity from public domain
J Walker - 23/22 New Beach Road Darling Point	Compound existing parking issues including storage trailers; Sir David Martin Bldg should be used by CYCA; Adverse effects on residents' views
SP 6967 33-34 New Beach Road SP 6968 35-36 New Beach Road SP 6969 37-38 New Beach Road Darling Point	Adverse effects on residents' views; Adverse effects on views from the public domain; Compound existing parking issues including storage trailers

\* Objected to original DA and amended DA

# Objected to amended DA only

<b>PETITION</b>
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SIGNATORY	OBJECTIONS
M & R Beaumont 32/42 New Beach Road Darling Point	<ul style="list-style-type: none"> <li>• There should be no increase in berths or moorings in The Bay</li> <li>• Any increase would have a deleterious effect on the amenity of the local neighbourhood</li> </ul>
P, M & A Bowers 6 New Beach Road Darling Point	
K Connor 51 New Beach Road Darling Point	
A DaCosta 42 New Beach Road Darling Point	
E S de Floram 62/42-43 New Beach Road Darling Point	
P D & P de Rome 62/41 New Beach Road Darling Point	
E & L Elder 1/5 New Beach Road Darling Point	
G Frampton 50 New Beach Road Darling Point	
T Gavin 6 New Beach Road Darling Point	
M Junner 5/46 New Beach Darling Point	
N Kessler 31/42 New Beach Road Darling Point	
P & M Luker 52/42 New Beach Road Darling Point	
S Marinar 6 New Beach Road Darling Point	
M A & W T Maunsell 52 New Beach Road Darling Point	
J Millard 42/42 New Beach Road Darling Point	
M Seamonds 22/42-43 New Beach Road Darling Point	
M & T Sholl 12A New Beach Road Darling Point	



A number of the individual objections have been referred to and discussed in various parts of this report. Part 17.1 contains an assessment of view loss from a number of properties in New Beach Road, the residents of which lodged objections to the proposal. Objections raised by the Rushcutters Bay Foreshore Protection Association and in the petition are discussed in part 15.4.2.

The matters raised in other objections have been discussed throughout the report other than the use of existing facilities at Sir David Martin Reserve and the possible impact of the landscaped roofs on views, which have been raised in a number of objections.

The facilities at Sir David Martin Reserve may or may not be suitable for the accommodation being sought by the CYCA and there is an issue of availability and tenure agreement with the facility owner. Notwithstanding that these issues may be resolvable the question is whether what is being proposed is satisfactory in terms of the relevant matters for consideration under s.79C of the Act. The conclusion of this report is that it is satisfactory subject to the conditions contained in the recommendation. This, of course, does not prevent the CYCA entering into negotiations to use the Sir David Martin Reserve facilities and amending the DA. However, they are matters for the CYCA.

The Landscape Plan submitted with the EIS lists options for plantings proposed for the landscaped roofs. The species vary in height from 300mm to 450mm. The landscaped roofs are to the single storey section of the proposed building. The height of plantings should be restricted to the 300mm species, i.e. RL6.6AHD and conditioned not to exceed that height, see condition I.19.

The matters raised in the objections are considered to warrant the imposition of conditions relating to view loss from residential units in New Beach Road, visual impacts on the public domain of New Beach Road and for the management of externalities associated with the construction and operational phases of the proposed development.

However, the matters raised in the objections do not justify refusal of the DA. This is because the proposal, subject to the conditions contained in the recommendation of this report, is considered to comply with the various, relevant planning controls. As discussed below in part 20, the proposal is not considered to be contrary to the public interest.

A number of the submissions received express support for the proposal. These submissions include a letter from the President of the Darling Point Society Inc. The main reasons for supporting the proposal relate to:

- The increase in off-street car parking spaces
- Improved views
- Improved harbour foreshore access for the public
- Improved amenity and street address
- Improved facilities for teaching youth how to sail and remain active

Submissions in support were received from the following people.

**Supporters of original proposal:**

R Bearman, 9/1-3 Mona Lane, Darling Point  
K Blake, 27 New Beach Road, Darling Point  
I Dawson, 17 Mona Road, Darling Point  
Darling Point Society, PO Box 1131, Edgecliff  
P Geddes, 12/93 Elizabeth Bay Road, Darling Point  
Grado Pty Ltd, 3/48 Mona Road, Darling Point

D J Hodgkinson, 20 Manning Road, Double Bay  
M Kelly, 18B New Beach Road, Darling Point  
G L King, 7A/73 Yarranabbe Road, Darling Point  
P S Lavis, 3/22 New Beach Road, Darling Point  
G Lewis-Bearman, 9/1-3 Mona Crescent, Darling Point  
D Lysaght, 155 Darling Point Road, Darling Point  
R MacDonald, 4/2 Elizabeth Bay Crescent, Elizabeth Bay  
D Mason, 3/24 Mona Road, Darling Point  
W J Mirow, 3/67 Yarranabbe Road, Darling Point  
B & A Penty, 54/93 Elizabeth Bay Road, Elizabeth Bay  
J Regle, no address given  
J Short, 37/7 Springfield Avenue, Potts Point  
P Shultz, no address given  
I & A Treleaven, 6/78 New Beach Road, Darling Point  
B Tweedie, PO Box 594, Mullumbimby  
R Warburton, 9/79 Elizabeth Bay Road, Elizabeth Bay  
A Watson, 405/109 Darling Point Road, Darling Point  
K Hudson & P Christie, 610/1A Clement Place, Rushcutters Bay  
A Yared & C Fogarty, 56 New Beach Road, Darling Point  
2 Anonymous submissions

**Supporter of amended proposal:**

G & F Ricketts, 74B New Beach Road, Darling Point

## 20. PUBLIC INTEREST

The Land & Environment Court judgement, *Double Bay Marina v Woollahra Council [2009] NSWLEC 1001*, (*Double Bay Marina*) sets out a planning principle for discerning the public interest. Although the planning principle was intended to apply to the assessment of all DAs, it is particularly relevant to this proposal as it also related to a proposed marina redevelopment.

It is noted that the planning principle set out in the *Double Bay Marina* judgement has not been adopted by the Land & Environment Court as a planning principle. Advice from the Court suggests it will not be adopted as a planning principle. Nevertheless, the judgement does set out a methodology for assessing public interest that is considered to be of some relevance and is therefore discussed below. However, caution needs to be exercised in drawing conclusions from application of the process considering it has no formal status as an adopted Land and Environment Court planning principle.

The *Double Bay Marina* judgement sets out 3 steps for discerning the public interest in the assessment of a development proposal:

1. define the public whose interest is being invoked
2. define the benefit towards which a proposal claims to make a contribution (or from which it is claimed to detract)
3. make explicit the weight given to the public interest relative to other considerations

### Who is the public?

In *Double Bay Marina* the judgement states that 'the public' requires redefinition in every case.

*.....the public may be all people in the world. At its narrowest, the public may be the people who live or work in a locality or a business centre or use a public facility, such as a park or a beach. (p.48)*

*Councils often confuse the public interest with the complaints of individual objectors. In most cases the interest of objectors is a private interest. The fact that the number of objectors is large does not, by itself, render their interest public. For the interest of objectors to be equated with the public interest, the objectors must be identifiable as a section of the public as described above. The fact that their number may be small (for example the users of a park), does not deny the public nature of their interest. (p.49)*

In applying this step in *Double Bay Marina* the judgement states:

*In my opinion, the loss of these views (from the ground floor of some 10-20 dwellings) is a private detriment. The owners or occupants of those dwellings do not constitute the "public" or even a "section of the public". They are a collection of private interests. (p.54)*

*In support of its contention that the renewal of the marina represents a private interest, the council tendered the Articles of Association of the applicant company. Even without the Articles of Association (which seem little different from those of other private business organisations) it seems clear that the application serves a private rather than the public interest. The berths will be available for purchase under Strata title. This is no different from an apartment building. .... (p.56)*

Applying this approach to the current proposal, the public is considered to be the users of the nearby public domain areas. These areas are specifically considered to be New Beach Road opposite the CYCA Marina, the Plantation Reserve and Rushcutters Bay Park.

The people who made submissions in support or opposing the DAs are considered to be the public only if they are also users of the public domain areas referred to above. However, some of the issues raised in some of the submissions relate to matters of public interest, e.g. the visual impact of the proposal on Harbour views from New Beach Road and Rushcutters Bay Park. Similarly CYCA Club members, users of the Club's other facilities and the holders of marina berths and moorings are considered to be the public only if they are also users of the public domain areas. Otherwise those people who made submissions or are CYCA patrons are considered to represent private interests.

### **What is the benefit/detriment?**

The *Double Bay Marina* judgement states:

*The next step is to make explicit the benefit to which a proposal contributes or from which it detracts. Where the detriment or benefit can be quantified, this should be done; however, not all benefits lend themselves to accurate measurement. Moreover, not all benefits are universally recognised as benefits. In the case of some benefits there is likely to be general agreement that they are benefits. For example, everyone would agree that reducing the risk of traffic accidents is a benefit. Hospitals, nursing homes and schools, whether public or private, are usually considered a public benefit. When it comes to changing a view composed of natural elements of the landscape into one dominated by man-made elements, the benefit-detriment debate becomes less clear-cut, though most people would prefer natural landscapes. However, when it is a*

*question of a new building replacing an old one, opinions may split evenly on whether this is desirable or undesirable. Where there are competing and feasible claims whether a proposal contributes to or detracts from the public interest, there is no option for the decision-maker but to make a subjective choice between them. (p. 50)*

In applying this step in *Double Bay Marina* the judgement refers to the loss of view from the beach as follows:

*..... the loss of views from the intertidal beach between the marina and the private jetty at the end of Beach Street constitutes a diminution of the public interest, in other words it is a public detriment. (p.53)*

It considers that provision of the proposed marina facilities *..... serves a private rather than the public interest.* This followed an acknowledgement of the Double Bay Marina's Articles of Association although they did not seem to significantly influence the Court's opinion, refer to the earlier quote from p.56.

The competing public and private interests were summarised as:

- *view loss from the intertidal beach, which is a public detriment;*
- *the provision of disabled facilities in the renewed marina, which is a public benefit;*
- *the significant loss of views of ten to twenty dwellings behind the intertidal beach, which is a private detriment;*
- *the provision of improved mooring facilities for the future users of the existing marina, which is a private benefit. (p. 58)*

Part 4.1 of the EIS includes objectives of the proposed development. The following is an extract relating to public benefits:

- *To provide a wide range of public benefits including:*
  - *Enhanced parking facilities on site by providing more than sufficient parking for the net increase in areas associated with each use component of the proposed redevelopment. Existing car parking deficiencies will be addressed by providing 97 off-street car parking spaces. The proposal has the potential to reduce on-street parking demands by up to 29 spaces and consequently reduce local traffic impacts associated with people looking for an on-street car park.*
  - *Opportunity exists to provide three (3) allocated pick up and drop off car parking spaces in front of the CYCA, which will help reduce the occurrence of double and illegal parking and other potentially unsafe behaviours in the vicinity of the site.*
  - *Provide a new 1-2 storey building along New Beach Road, which will define and improve the overall streetscape and visual appearance of the site.*
  - *Landscaping in front of the CYCA will improve the visual appearance of the CYCA.*
  - *The provision of public access (accessible for people with disabilities) along the entire length of the foreshore of the CYCA through to d'Albora will allow the local community and a wide cross section of the public to enjoy Rushcutters Bay and Sydney Harbour. This will enhance the public access along the foreshore in this area and result in improved pedestrian amenity.*
  - *The proposal will result in an improved environment by decommission and the removal of the disused slipway.*

Applying the judgement's approach, the enhanced parking facilities and the provision of public access could be regarded to be public benefits. Although the quantum of parking

spaces has been reduced through the amended DA more spaces than are required to accommodate the additional demand are still being proposed. This will benefit the CYCA by providing more spaces for use by its patrons, i.e. a private benefit. It may also have a public benefit by reducing the demand for the on-street parking spaces which are available for use by the general public.

The public access walkway is located on the western side of the proposed new building. The amended DA reduces its width to 1.5m for part of its length to accommodate additional parking spaces on the hardstand. The plans show dry boat storage on the hardstand to the west of the northern part of the walkway, i.e. towards the boundary with d'Albora marina.

The impact on the outlook of people using Rushcutters Bay Park, the Plantation Reserve and New Beach Road is a public detriment. The view impacts on the residential apartments on the eastern side of New Beach Road are a private detriment. The additional marina berths are, essentially, a private benefit.

### **Weighing up the public interest**

In *Double Bay Marina* the judgement discusses this step as follows:

*The final and most difficult step is the ranking of the various interests. This may require weighting one public interest against another or balancing the public interest against private interests. Although only few planning instruments contain a statement that the public interest is paramount, in planning decisions, other things being equal, the public interest overrides the private interest. However, other things are rarely equal, and where a public detriment is minor, a major private benefit may take precedence over it. (p. 51)*

*The hardest conundrum occurs when the decision-maker must choose between competing public interests. .... In these cases the decision makers cannot avoid making value judgements but they owe it to the readers of their judgement to make the value judgements explicit. (p. 52)*

In applying this step the judgement states:

*It seems to me that the two matters that determine the fate of this application are the weight one gives to the loss of views from the intertidal beach and the balancing of the private benefit of better boat accommodation against the private detriment of view loss from the dwellings behind the intertidal beach. (p. 59)*

*In my opinion, the public interest of preserving the views from the intertidal beach, because of its low accessibility, should be given moderate weight. Even so, it outweighs the public benefit of providing disabled facilities in the new marina, which is likely to be used by a very small number of people. (p. 60)*

*The nature of the benefit and detriment greatly influences the balancing of the private interest of boat owners against the private detriment of the occupants of the affected dwellings. The interest of boat owners is to have more up-to-date accommodation for their boats. The detriment to the occupants of the dwellings is to deprive them of their water view, which is probably the amenity they value the highest in their dwelling. It seems to me the loss of water views is a devastating (and, in a waterfront dwelling, unexpected) experience. (p.61)*

In weighting the public interest in the current application, the SHREP, cl.2(2) under *Aims of the plan*, relevantly provides:

- (2) *For the purpose of enabling these aims to be achieved in relation to the Foreshores and Waterways Area, this plan adopts the following principles:*
- (a) *Sydney Harbour is to be recognised as a public resource, owned by the public, to be protected for the public good,*
  - (b) *the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores,*
  - (c) *protection of the natural assets of Sydney Harbour has precedence over all other interests.*

It is clear that this provision strongly underpins the views expressed in the judgement that ..... *the public interest overrides the private interest.*

The views from Rushcutters Bay Park in the direction of the proposed development is currently dominated by boats on marina berths and on swing moorings and by the CYCA Club building. Essentially this will not change. The 9 additional marina berths on arm D will be noticeably closer to the sea wall than the existing yachts on arm A. However, they will be mostly seen against a backdrop of the existing yachts or against the backdrop of Elizabeth Bay both of which have a high visual absorption capacity. The public detriment to park users will be minor.

The impact of the proposal on views from the Plantation Reserve and the section of New Beach Road adjacent to the CYCA have been discussed in detail earlier in this report. Considering:

- the improved views that will be available from the proposed public walkway through the site
- the opening up of views by the replacement of the 2 storey Shipwright building
- and the vastly superior views available from New Beach Road a short distance to the north of the CYCA

on balance the public detriment is not considered to be undue. However, the reduction in width of the walkway as a result of the amended DA is considered to compromise its use by the public. Also, the location of dry boat store area on the hardstand could compromise views to the north west, i.e. towards the Harbour Bridge. Therefore, conditions are recommended to maintain a width of 2.7m for the length of the walkway and to prevent dry boat storage within a line setback 15m from the d'Albora marina boundary, see condition C.1. This will necessitate the relocation of some boats and the dinghy store. The relocated rigging area and crane on this part of the hardstand will not unduly impact on views.

Provided the recommended design changes are made to the 2 storey section of the proposed new building in terms of cutting back the south western corner and reducing its height the private detriment in terms of the impact on views from the New Beach Road apartments is not considered to be unreasonable.

This final step for discerning public interest as set out in the *Double Bay marina* judgement is to weigh the public disbenefits against the public benefits. The main public benefit related to the subject application is the public foreshore access. This is significant not just because of the additional foreshore access it will provide in the short term but because it also creates an opportunity, in the longer term, to complete a foreshore route between Rushcutters Bay Park and Sir David Martin Reserve/Yarranabbe Park further to the north.

The benefit of additional parking spaces on-site is more difficult to measure. However, measures can be put in place to try and maximise the use of the additional spaces and thereby reduce the demand for on-street parking for use by the general public.

## Conclusion

Although this assessment has endeavoured to quantify the benefits and disbenefits, in the words of judgement, in this case it is considered that ..... *there is no option for the decision-maker but to make a subjective choice*. However, the foregoing discussion is considered to make the benefits and disbenefits *explicit*.

Subject to the recommended conditions it is considered that in terms of public interest considerations the proposal is acceptable.

### 20.1. Ecologically sustainable development (ESD)

Section 5(a)(vii) of the EPA Act provides that an objective of the Act is to encourage ESD. Under s.79C(1)(e) of the EPA Act consideration of the public interest is required if it is relevant to the development. Whether this development is ESD is a matter for consideration.

Section 8 of the *Local Government Act 1993* contains a charter for Councils, i.e. *a set of principles that are to guide a council in the carrying out of its functions*. S.8(1) includes:

#### 8 The council's charter

##### (1) A council has the following charter:

.....

- *to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the **principles of ecologically sustainable development*** (emphasis added)

.....

There are a number of Land & Environment Court cases involving ESD principles. *BGP Properties Pty Limited v Lake Macquarie City Council* [2004] NSWLEC399 (12 August 2004) and *Telstra Corporation v Hornsby Shire Council* [2006] NSWLEC 133 are among those more frequently referenced. These judgements explain the concept of the precautionary principle, its constituent elements and an analytical framework for its application, including in NSW environmental and planning laws.

ESD in its most basic formulation is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (World Commission on Environment and Development, *Our Common Future*, 1987 p.44, also known as the Brundtland Report).

Mandatory issues for an EIS are included in schedule 2 of the EPA Reg. They include reasons justifying the development including the following principles of ESD:

- precautionary principal
- inter-generational equity
- conservation of biological diversity and ecological integrity
- improved valuation, pricing and incentive mechanisms

Part 11.3 of the EIS comments on these ESD principles. Each of the ESD principles is discussed below. The comments rely on assessments and conclusions reached earlier in the report.

### **Precautionary principle**

#### *Meaning*

This means if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

#### *EIS*

*The potential environmental impacts of the development have been carefully evaluated and, where considered necessary, mitigating measures have been proposed (refer **Section 8** and **Section 9**). The redevelopment of the site will not pose any significant risks to community health.*

#### *Comment*

Various scientifically based documents have been used to assess the environmental impacts of the proposal, e.g. aquatic ecology, sediment quality, noise/vibration. These have established the likely environmental impacts of the development. It is concluded that the proposal does not pose a threat of serious or irreversible environmental damage. Precautions to avoid environmental damage can effectively be implemented through the imposition of consent conditions.

### **Inter-generational equity**

#### *Meaning*

This means that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations.

#### *EIS*

*Intergenerational equity implies that the present generation should ensure that its local environment is maintained or enhanced for the benefit of future generations.*

*The marina redevelopment, which aims to provide boat storage facilities and services to meet demand and incorporate best practice environmental controls, is consistent with the objective of social equity including intergenerational equity.*

#### *Comment*

The applicant's reference to the provision of boat storage facilities is noted. However, the incorporation of best practice controls is more appropriately associated with environmental considerations. The proposal will continue historical use of Rushcutters Bay for marina purposes. The proposed remediation of the site as part of the redevelopment has generational, environmental benefits. Inter-generational principles are considered to be satisfactory.

### **Conservation of biological diversity and ecological integrity**

#### *Meaning*

Conservation of biological diversity and ecological integrity should be a fundamental consideration.

#### *EIS*



*The impact of the proposal on flora and fauna species and communities has been addressed in detail in this EIS. The proposed development would not have any adverse impacts on biological diversity and ecological integrity.*

**Comment**

It is agreed that the proposal will conserve biological diversity and ecological integrity.

**Improved valuation, pricing and incentive mechanisms**

**Meaning**

Environmental factors should be included in the valuation of assets and services, e.g. polluter pays. Environmental goals should be pursued in the most cost effective way.

**EIS**

*The value of the environmental resources affected by the proposal has been acknowledged and provided for through the examination of environmental consequences of the proposal and identification of mitigation measures to address potential impacts, including any short term construction impacts.*

**Comment**

Pricing mechanisms in relation to matters such as waste disposal, electrical power and fuel consumption factor environmental levies. The cost of managing environmental protection can be transferred to the applicant through consent conditions.

**Conclusion**

The proposal is considered to be satisfactory when assessed against the principles of ESD.

## 20.2 Global warming

“Global warming” refers to a rise in global temperatures that has coincided with human induced (anthropogenic) increases in concentrations of greenhouse gases in the atmosphere. The “greenhouse effect” is the name given to the natural build up of greenhouse gases in the lower atmosphere that prevent heat from the sun's rays from escaping back into space. When the balance of greenhouse gases is disrupted, more heat is trapped and the earth gradually heats up. Carbon dioxide (CO<sub>2</sub>) through the burning of fossil fuels and land clearing is the most important anthropogenic greenhouse gas. Other important anthropogenic greenhouse gases include methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O) and various forms of fluorocarbons.

An objective of WLEP, cl.2(2)(j) is:

*(j) in relation to global warming –*

- (i) to promote energy conservation measures,*
- (ii) to promote energy-efficient building development and mass transport systems, and*
- (iii) to ensure that new development takes account of global warming effects,*

The EIS includes the outline for an Environmental Management Plan (EMP) to be submitted with the construction certificate. It should be required that the EMP incorporate measures which are directed at reducing green house gas emissions.

Greenhouse gas emissions associated with the storage of 9 additional yachts will be negligible.

Changes to water levels associated with global warming may have an impact on marina design. The proposal has been designed to levels recommended by NSW Maritime. The inherent design of the additional walkway and berthing facilities utilising floating pontoon marina, as opposed to fixed structures, is better suited to sea level changes.

For planning purposes the NSW Government has adopted sea level rise benchmarks of 0.4m by 2050 and 0.9m by 2100. According to the SHDCP the highest astronomical tide is 1.175 AHD (2.1 ZFDTG). The proposed hardstand will have an RL 1.8 AHD and the ground floor level of the proposed new building is RL2.4AHD.

By mathematical (rather than scientific) interpolation, applying the NSW Government's sea level rise planning benchmark for 2050 the hardstand would be 0.225m above the water level at high tide. Using the 2100 benchmark it would be 0.275m below the water level. In relation to the floor level of the new building using the 2050 benchmark the water level would be 0.825m below the ground floor level whereas using the 2100 benchmark the water level would be 0.325m below the ground floor level. These figures do not take into account wave action and vessel wash which are likely to be minimal due to the wave attenuation action of the floating pontoons and limited vessel access on the adjacent water area. A condition is recommended that the development be designed with regard to the State Government's sea level rise benchmarks.

Other consequences of sea level rise include increased water depth which should lead to a reduced need for maintenance dredging and less likelihood of contaminated sediments being disturbed. The perceived height of boats as seen from the land may also be accentuated.

The proposal was referred to DECCW. Their response did not raise an issues relating to greenhouse gas emissions.

The proposal is considered to be acceptable in terms of global warming.

## **21. DISCLOSURE STATEMENTS**

Under S.147 of the Environmental Planning and Assessment Act, 1979 there have been no disclosure statements regarding political donations or gifts made to any councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.

## **22. CONCLUSION**

The main areas of contention are parking and visual impacts from private residences and from public domain areas.

Parking in New Beach Road has been problematic for many years. Older residential buildings either do not have parking or have insufficient parking to cater for current car ownership patterns. The commercial maritime properties, including the CYCA, generate high parking demands. Other demands include recreational users of nearby parklands.

The proposed number of off-street parking spaces will exceed the increased demand that the proposal will generate when assessed against the requirements of Council's Car Parking DCP. The applicant's contention that this will provide a public benefit by reducing the demand for on-street parking contains some merit. Although the current off-street parking allocation is significantly lower than what the facility presently generates this is a situation which was effectively accepted when consent was granted to DA98/117, subject to a condition requiring the surrender of an earlier consent to build a 3 level car park. Car parking issues are discussed in detail in part 15.2.

Views from private residences will be impacted as will views from public domain areas. The view impacts from private residences warrants changes to the design of the proposed new building. The views from public domain areas are not considered to be unacceptable when assessed against the provisions of the WLEP, for reasons detailed earlier in this report, see in particular part 17.1.

The site contains contaminants and the applicant proposes remediation works including the preparation and implementation of a remedial action plan. The applicant has advised that a separate DA will be submitted for the remediation works. It is therefore appropriate that any consent to this current DA be a 'deferred commencement' consent, i.e. subject to a condition requiring the applicant to provide evidence the site can be made suitable for marina purposes. The condition needs to require the submission of the separate DA and a remedial action plan for the remediation work as required by SEPP 55.

A number of authorities have been consulted in relation to this proposed development. These consultations include referrals to approval bodies required under the integrated development provisions of the EPA Act. None of the authorities have suggested that the proposed development should not be approved and the approval bodies have provided their general terms of approval, where relevant.

Internal referral comments do not recommend that the proposal is unsatisfactory. The issue raised by Traffic Engineer's in relation to a shortfall of parking spaces does not take account of the current shortfall. When the overall impact of the development on parking is taken into consideration there is the potential for the proposal to have a positive outcome, not only for CYCA patrons but for other users of New Beach Road.

Environmental externalities associated with the construction and operational phases are manageable. The EIS includes an outline of the Environmental Management Plan (EMP) which indicates that the final plan will cover all aspects of the operational phase of the marina. Additional environmental controls will apply through the on going licensing of the premises as a 'scheduled activity' under the *Protection of the Environment Operations Act 1997* by DECCW and the general terms of approval issued by NSW Industry & Investment under the *Fisheries Management Act 1974* and NSW Office of Water under the *Water Management Act 2000*.

## 23. RECOMMENDATION: Pursuant to Section 80(1) of the Environmental Planning and Assessment Act, 1979

THAT the Joint Regional Planning Panel, as the consent authority, grant a 'deferred commencement' development consent to DA 441/2009/1 for redevelopment of the Cruising Yacht Club of Australia's marina on land known as 1 New Beach Road Darling Point, subject to the following conditions:

### A. General conditions

#### A.1 Conditions

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

Standard Condition: A1

#### A.2 Definitions

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

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

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

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

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

**Council** means Woollahra Municipal Council

**Court** means the Land and Environment Court

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

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

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

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

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

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

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

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

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

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

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

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

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

**Work** for the purposes of this consent means:

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

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

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

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

That the site can be made suitable for use for marina purposes. It will be necessary to obtain development consent from Council for the purpose of carrying out any remediation works that are necessary to make the site suitable for use for marina purposes. For this purpose a separate development application is to be submitted to Council for approval for any necessary

remediation works. Documentation submitted with the development application is to include a remedial action plan in accordance with the provisions of *State Environmental Planning Policy 55 – Remediation of Land* (SEPP 55) in addition to any other information and documents required by cl.50 of the *Environmental Planning and Assessment Regulation 2000*.

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

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

Clause 95(4) of the *Regulation*:

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

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

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

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

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

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

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

Reference	Description	Author/Drawn	Date(s)
P0802189JR02_v4	Acid Sulphate Soil Management Plan	Martens Consulting Engineers	March 2009
2008593.1/3009 A/R7/TA	Acoustic Report	Acoustic Logic Consultancy	8 July 2009
Architectural Plans			
DA1002 (07)	Site/roof plan	Allen Jack + Cottier	24/07/09
DA1003 (04)	Marina and site plan	Allen Jack + Cottier	24/08/09
DA1004 (02)	Site boundary and setbacks	Allen Jack + Cottier	24/08/09
DA1100 (06)	Demolition plan	Allen Jack + Cottier	27/07/09
DA2000 (15)	Ground floor plan	Allen Jack + Cottier	21/04/10
DA2100 (14)	Basement plan first floor plan	Allen Jack + Cottier	21/04/10
DA3100 (12)	Elevations	Allen Jack + Cottier	21/04/10
DA3200 (12)	Sections	Allen Jack + Cottier	21/04/10
DA4200 (02)	Details car park basement ramp	Allen Jack + Cottier	27/07/09
2440-105/B	Layout of arm D extension and typical elevation	Bellingham Marine	12/03/2009
2440-08/D	Proposed arm B & C modification	Bellingham Marine	21/11/2008
2440-09/A	Gangway elevation & section	Bellingham Marine	3/03/2009
2008593.4/0526 A/R1/TT	Construction noise and vibration management plan	Acoustic Logic Consultancy	23 June 2009
Issue 2	Construction Management Plan	TLB Engineers P/L	7 April 2010
P0802189JR03_v2	Contaminated Land - Initial Site Investigation Report (Stage 1)	Martens consulting engineers	June 2009
	Demolition report	Urbis	July 2009
5788-002-dar	Drainage Assessment Report	Eclipse consulting engineers	07/07/2009
	Environmental Impact Statement	Urbis	14 July 2009
5788-002-dar	Flood study	Eclipse consulting engineers	7/7 09
P0802189JR01_v3	Geotechnical and hydrogeological assessment	Martens consulting engineers	March 2009
	Heritage Impact Statement	Urbis	July 2009
DA-L-001 (E)	Ground floor Landscape Plan	Oculus	21/07/09
11031	Arborist Report	Urban tree management	17 February 2009
Stormwater Management Plan			
SW-02	Stormwater management first floor plan	Sparks and Partners	25/06/09
SW-03	Stormwater management ground floor plan	Sparks and Partners	15/07/09
SW-04	Stormwater management basement floor plan	Sparks and Partners	15/07/09
08 184 report_v5	Traffic Report	Traffix	12 July 2009

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

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

Standard Condition: A5

#### A.5 General Terms of Approval – Fisheries Management Act 1994 (I&I)

The following general terms of approval have been imposed by the NSW Industry & Investment:

**Section 205** - permit to cut, remove, damage or destroy marine vegetation on public water land or an aquaculture lease, or on the foreshore of any such land or lease

1. *A permit to harm marine vegetation under the **Fisheries Management Act** is to be obtained from this Department for these works. The area of **Halophila** seagrass to be harmed must be outlined in the permit application. Permit application forms are available at <http://www.dpi.nsw.gov.au/data/assets/pdf/file/0010/331975/Part-7-Fisheries-Managementn-Act-permit-application.pdf>*
2. *The Acid Sulphate Soil Management Plan submitted with this application is to be implemented. These works must not result in any subsequent Acid Sulphate Soil related impacts on the adjoining aquatic environment. Any leachate that is discharged from the worksite must be tested before discharge and treated so that the required pH levels are achieved.*
3. *Environmental safeguards (silt curtains, booms etc.) are to be used during the proposed dredging works to ensure there is no escape of turbid plumes into the aquatic environment. Turbid plumes caused by run off, pile driving etc. have the potential to smother aquatic vegetation and have a deleterious effect on benthic organisms. Silt curtains are to be positioned so that they exclude adjacent seagrass from harm.*
4. *To minimise sediment re-suspension and dispersion during construction, pile driving and the raising of swing moorings is to be conducted in calm wind conditions during periods of minimal tidal amplitude.*
5. *No harm to any marine vegetation, including via shading, occurs without a permit from this Department.*
6. *Demolished material is deposited appropriately on land. Any rubble that enters the water is to be removed.*



7. *The materials used for construction should not be deleterious to marine life, for example antifouling paints or treated woods must not be used. These materials inhibit marine growth and reduce the habitat available to marine life.*
8. *All other relevant authorities have no objections to this proposal.*

**Note:** These conditions have not been imposed by Council but are required to be incorporate as conditions of development consent. Where there is any inconsistency between these general terms of approval and other conditions of this consent the more onerous requirement prevails.

**Note:** Should you have any questions relating to this condition please contact Conservation Manager, Cronulla Fisheries Centre, PO Box 21, CRONULLA NSW 2230..

Standard Condition: A10

#### **A.6 General Terms of Approval – Water Management Act 2000 (NSW Office of Water)**

The following general terms of approval have been imposed by the NSW Office of Water:

**Sections 89, 90 and 91** - Water use approval, water management work approval or activity approval under Part 3 of Chapter 3

##### ***Plans, standards and guidelines***

1. *These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to DA441/2009/1 and provided by Council:*

- (i) *site plan, map and/or surveys*

*Any amendments or modifications to the proposed controlled activities may render these GTA invalid. If the proposed controlled activities are amended or modified the NSW Office of Water must be notified to determine if any variations to these GTA will be required.*

2. *Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the NSW Office of Water. Waterfront land for the purposes of this DA is land and material in or within 40 metres of the shore of the foreshore identified.*

3. *The consent holder must prepare or commission the preparation of:*

- (i) *Stormwater Drainage Plan*
- (ii) *Outlet Structure Plan*
- (iii) *Erosion and Sediment Control Plan*
- (iv) *Landscape Plan*
- (v) *Basement Profile – showing reduced level of both basement and Mean High Water Level*

- (vi) Amendments to plan – Mean High Water Level plan view to be shown  
(i.e. identifies Crown Land Lease)
- 4. All plans must be prepared by a suitably qualified person and submitted to the NSW Office of Water for approval prior to any controlled activity commencing. Plans must be prepared in accordance with the NSW Office of Water guidelines located at [www.dwe.nsw.gov.au/water\\_trade/rights\\_controlled.shtml](http://www.dwe.nsw.gov.au/water_trade/rights_controlled.shtml)
- (i) In-stream Works
- (ii) Outlet structures
- 5. The consent holder must (i) carry out any controlled activity in accordance with approved plans and (ii) construct and/or implement any controlled activity by or under the direct supervision of a suitably qualified professional and (iii) when required, provide a certificate of completion to the NSW Office of Water.

#### **Rehabilitation and maintenance**

- 6. The consent holder must carry out a maintenance period of two (2) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the NSW Office of Water.
- 7. The consent holder must reinstate waterfront land affected by the carrying out of any controlled activity in accordance with a plan or design approved by the NSW Office of Water.

#### **Reporting requirements**

- 8. The consent holder must use a suitably qualified person to monitor the progress, completion, performance of works, rehabilitation and maintenance and report to the NSW Office of Water as required.

#### **Security deposits**

- 9. The consent holder must provide a security deposit (bank guarantee or cash bond) – equal to the sum of the cost of complying with the obligations under any approval – to the NSW Office of Water as and when required.

10-13 Not applicable

#### **Disposal**

- 14. The consent holder must ensure that no materials or cleared vegetation that may (i) obstruct flow, (ii) wash into the water body, or (iii) cause damage to river banks; are left on waterfront land other than in accordance with a plan approved by the NSW Office of Water.

#### **Drainage and Stormwater**

- 15. The consent holder is to ensure that all drainage works (i) capture and convey runoffs, discharges and flood flows to low flow water level in accordance with a plan approved by the NSW Office of Water; and (ii) do

*not obstruct the flow of water other than in accordance with a plan approved by the NSW Office of Water.*

16. *The consent holder must stabilise drain discharge points to prevent erosion in accordance with a plan approved by the NSW Office of Water.*

**Erosion control**

17. *The consent holder must establish all erosion and sediment control works and water diversion structures in accordance with a plan approved by the NSW Office of Water. These works and structures must be inspected and maintained throughout the working period and must not be removed until the site has been fully stabilised.*

**Excavation**

18. *The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the NSW Office of Water.*
19. *The consent holder must ensure that any excavation does not result in (i) diversion of any estuary (ii) bed or bank instability or (iii) damage to native vegetation within the area where a controlled activity has been authorised, other than in accordance with a plan approved by the NSW Office of Water.*

20-27                      *Not applicable.*

**Note:** These conditions have not been imposed by Council but are required to be incorporate as conditions of development consent. Where there is any inconsistency between these general terms of approval and other conditions of this consent the more onerous requirement prevails.  
Standard Condition: A16

**A.7 Prescribed Conditions**

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

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

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

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

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

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

Standard Condition: B1

## B.2 Recording of significant or contributory buildings prior to any demolition

A full archival record of the building and landscape elements to be demolished is to be submitted, to the satisfaction of Council's heritage officer, prior to the commencement of any work and prior to the issue of a Construction Certificate.

The archival record is to be completed by a heritage consultant listed on the Consultants Directory by the NSW Department of Planning Heritage Branch or by a suitably qualified consultant who must demonstrate a working knowledge of archival principles.

Photographic archival records must be taken of the building, landscape or item in accordance with 'The Heritage Information Series, Photographic Recording of Heritage Items Using Film or Digital Capture 2006' published by the NSW Department of Planning Heritage Branch.

There should be three sets of the photographic report and film materials or digital materials. The following table summarises the lodgment details for photographic records, depending on which material is selected. It is satisfactory to supply one material only and digital material is recommended.

Material	Minimum Requirement	Repository
Digital Materials	3 copies of photographic report – paper copy 3 CD-Rs or DVD 1 set of 10.5x14.8cm prints	<u>Woollahra Council</u> Report (paper) + CD-R or DVD + prints <u>Local History Centre</u> Report (paper) + CD-R or DVD <u>Owner/client</u> Report (paper) + CD-R or DVD
Black & White Film (plus any supplementary colour film)	3 copies of photographic report 1 set of negatives 1 sets of proof sheets and catalogue	<u>Woollahra Council</u> Report + negatives + 1st set of proof sheets <u>Local History Centre</u> Report + 2nd set of proof sheets <u>Owner/client</u> Report + 3rd set of proof sheets
Colour Transparencies or Slides	3 copies of photographic report 1 set of original transparencies and two sets of duplicates OR 3 sets of original images taken concurrently	<u>Woollahra Council</u> Report + original transparencies <u>Local History Centre</u> Report + duplicate/concurrent transparencies: <u>Owner/client</u> Report + duplicate/concurrent transparencies

**Note:** Refer to the NSW Department of Planning Heritage Branch website, [www.heritage.nsw.gov.au/docs/info\\_photographicrecording2006.pdf](http://www.heritage.nsw.gov.au/docs/info_photographicrecording2006.pdf)

Standard Condition: B3

## B.3 Establishment of Tree Protection Zones

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

a) Tree Protection Zone areas

Council Ref No	Species	Location	Radius from Trunk (Metres)*
Tree 2 to Tree 9	<i>Syagrus romanzoffianum</i> Cocos palm	Front – Plantation Reserve	1m – To be fenced as a single group
16	<i>Cupressus sempervirens</i> "Stricta" (Pencil pine)	Front – NE corner	1m – Fence southern 5 trees as a group. North most tree to be removed

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

- b) Tree Protection Zones are to be fenced with a 1.8 metre high chainmesh or weldmesh fence to minimise disturbance to existing ground conditions. The area within the fence must be mulched, to a depth of 75mm, irrigated and maintained for the duration of the construction works.
- c) Trunk protection, to a maximum height permitted by the first branches, is to be installed around the trunks of the trees listed in the table below;

Council Ref No	Species	Location
Tree 2 to Tree 9	<i>Syagrus romanzoffianum</i> Cocos palm	Front – Plantation Reserve

A padding material eg. Hessian or thick carpet underlay, is to be wrapt around the trunk first. Harwood planks, 50x100mm and to the maximum possible length, are to be placed over the padding and around the trunk of the tree at 150mm centres. These planks are to be secured in place by 8 gauge wire at 300mm spacing.

- d) A sign must be erected on each side of the fence indicating the existence of a Tree Protection Zone and providing the contact details of the site Arborist.
- e) Existing soil levels must be maintained within Tree Protection Zones. Where excavation is undertaken adjacent such an area, the edge of the excavation must be stabilised, until such time as permanent measures are installed (eg. retaining wall etc) to prevent erosion within the Tree Protection Zone.
- f) Sediment control measures are to be installed around all Tree Protection Zones to protect the existing soil levels.
- g) The storage of materials, stockpiling, siting of works sheds, preparation of mixes, cleaning of tools or equipment is not permitted within Tree Protection Zones.

Site personnel must be made aware of all Tree Protection requirements, measures and any actions that constitute a breach of the Conditions of Development Consent with regard to tree protection on site during their site induction.

Standard Condition: B5

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

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

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

- a. The western end of the proposed 2 storey portion of the new building being redesigned by reversing the location of 'CYA Classroom 1' and the deck to result in the south west corner of the building being relocated 7m to the east and 6m to the north of the location shown on the plans.
- b. The height of the 2 storey portion of the building being lowered by 1m, from RL10.375AHD to RL9.375AHD.

These conditions have been imposed with regard to reducing the impact on views from properties on the western side of New Beach Road and in particular 1/31 New Beach Road, 1/32 New Beach Road and 1/33-34 New Beach Road and to improve the public amenity of the public walkway.

- c. The public access walkway being increased in width to maintaining a width of 2.7m
- d. The hardstand layout being changed so that no boats are stored on the hardstand within 15m of line of the northern boundary, i.e the boundary with the d'Alboara marina.
- e. The underground carpark is to have emergency systems as detailed in "Flooding" Condition in this Consent
- f. Additional safety requirements as set out in Condition "Bicycle, Car and Commercial Parking Details" of this consent
- g. All street Run-Off is to be treated with a gross pollutant trap (GPT) before it enters the Harbour.

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

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

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

Standard Condition: C4

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

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

Description	Amount	Indexed	Council Fee Code
<b>LONG SERVICE LEVY</b>			
under Building and Construction Industry Long Service Payments Act 1986			

<b>Long Service Levy</b> <a href="http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm">http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm</a>	Contact LSL Corporation or use online calculator	No	
<b>SECURITY</b> under section 80A(6) of the Environmental Planning and Assessment Act 1979			
<b>Property Damage Security Deposit</b> - making good any damage caused to any property of the Council	\$252,678	No	T115
<b>Infrastructure Works Bond</b> -completing any public work required in connection with the consent (also see condition C.4).	\$604,000	No	T113
<b>DEVELOPMENT LEVY</b> under Woollahra Section 94A Development Contributions Plan 2009 This plan may be inspected at Woollahra Council or downloaded at <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a> .			
<b>Development Levy</b> (Section 94A)	\$125,339.00 + Index Amount	Yes, quarterly	T96
<b>INSPECTION FEES</b> under Section 608 of the Local Government Act 1993			
Public Road/Footpath Infrastructure Inspection Fee	\$406	No	
Security Administration Fee	\$180	No	T16
<b>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</b>	\$982,603 plus any relevant indexed amounts and long service levy		

#### **Building and Construction Industry Long Service Payment**

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

#### **How must the payments be made?**

Payments must be made by:

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

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

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

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

To ensure that the value the development levy is not eroded over time by increases in costs, the proposed cost of carrying out development (from which the development levy is calculated) will

be indexed either annually or quarterly (see table above). Clause 3.13 of the Woollahra Section 94A Development Contributions Plan 2009 sets out the formula and index to be used in adjusting the s.94A levy.

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

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

**Deferred periodic payment of section 94A levy under the Woollahra Section 94A Development Contributions Plan 2009**

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

- The reasons given;
- Whether any prejudice will be caused to the community deriving benefit from the public facilities;
- Whether any prejudice will be caused to the efficacy and operation of this 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 outstanding component of the section 94A levy will be adjusted in accordance with clause 3.13 of the plan. The applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.

Standard Condition: C5

### **C.3 Building upgrade (Clause 94 of the Regulation)**

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

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



1. that fire hose reels shall be provided as follows;
  - (a) No part of a berth should be beyond the reach of the nozzle end of a fully extended reel. Hose reels should be suitable for operation by one person.
  - (b) The length of hose on any reel should be 36 m.
  - (c) At least one reel should be located on the shoreline side of the first berth, and also at the seaward end of each walkway.
  - (d) The maximum distance between any two reels should be 30 m. Where more than two reels are required, they should be evenly spaced along walkways.
  - (e) At least two reels should be accessible from each berth.

The two most hydraulically disadvantaged reels (operated simultaneously) should each provide a minimum water flow rate of 0.63 L/s at a running pressure of not less than 275 kPa.

Where the required flow rate and running pressure cannot be achieved at all times from the normal water supply, a booster pump should be provided which should-

- (i) be self priming;
- (ii) have the capacity to supply water at a minimum rate of 1.26 L/s at the required running pressure; and
- (iii) operate automatically upon the flow of water through any hose reel.

Stand-alone mobile fire pumps should be considered, to augment the hose reels and other fire prevention devices.

2. That a fire hydrant shall be provided adjacent to the head of each gangway.
3. Portable fire extinguishers for fire hazards that cannot be extinguished with water shall be provided at the appropriate locations.
4. An audible fire alarm system shall be provided to the marina.
5. That the selection and location of equipment, training of staff and marina users and the development of an emergency response plan (where relevant complying with AS 3745-2002) shall be jointly developed by the marina operators, NSW Fire Brigades (both the marine section and the local fire brigade), the Sydney Ports Corporation, the RAN and Maritime NSW.
6. Double containment fuel lines shall be used for fuel delivery over water.

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

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

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

Standard Condition: C10

## 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:

### Road & Footpath

- Full width commercial crossings having a width of 3.5m at Section 04 and 6.0m wide driveway at Section 01 including new layback and gutter in accordance with Council's standard drawing RF2B.
- Removal and replacement of the existing footpath for the full width of the property in accordance with Council's standard drawing RF3.
- Removal of all driveway crossings and kerb laybacks which will be no longer required.
- Reinstatement of footpath, kerb and gutter to match existing.
- Where a grass verge exists, the balance of the area between the footpath and the kerb over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of Couch turf.

### Drainage

- Construction of new pipeline as shown on plan by Eclipse Consulting Engineers project 5788 Dwg No. C01B dated 07.07.09 along New Beach Rd and through Rushcutters Bay Park
- All street run-off is to be treated with a gross pollutant trap before it enters the Harbour.
- The gross pollutant trap is to be designed to bypass with minimal head loss if full of trash.
- A propriety gross pollutant trap (GPT) is to be located as close to New Beach Road (adjacent to the bus stop) as possible to enable easy access and cleaning
- The GPT will be required to be maintained by the applicant for 12 months after practical completion of the drainage system
- All pipes or culverts crossing the park shall have a minimum of 300mm cover.
- The new pipeline/pipelines in Rushcutters Bay Park are to be a minimum of 10m from the nearest face of the existing row of Fig trees to minimise any root disturbance.
- All disturbed areas as a result of the pipe and GPT works are to be filled as directed by Council with topsoil and turfed
- The existing pipe is to be sealed off.
- Construction of a standard gully pit in the kerb fronting the subject site in accordance with Council's Standard "Grated Gully Pit with extended Kerb Inlet" drawing DR1.
- The developer shall be responsible for carrying out any service investigations to allow a gravity connection.
- Should damage occur to the existing road shoulder during construction then the applicant will be required to resheet to pavement to Council's satisfaction

### Bond

- A bond of **\$604,000** will be used as security to ensure the satisfactory completion of the infrastructure works. The security or bank guarantee must be the original and not have an expiry date.
- Council may use all or part of the Infrastructure Bond as well as the Property Damage Security Deposit to meet the cost of removing or completing the works if they do not meet Council's requirements.
- The Deposit/Bond will not be released until Council has inspected the site and is satisfied that the Works have been completed in accordance with Council approved drawings and to Council requirements

**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. Advising*s of this Consent titled *Roads Act Application*.  
Standard Condition: C13

## C.5 Waste Storage

The Construction Certificate plans and specifications, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail provisions for waste management. Waste Storage Areas must meet the following requirements:

- a. Bins must be stored with lids down to prevent vermin from entering the waste containers.
- b. The area must be constructed with a smooth impervious floor graded to a floor waste. A waste storage area that is located internal to the building must be fitted with both a hot and cold water supply and hose cocks. Wastewater must be discharged to the sewer in accordance with the requirements of Sydney Water.
- c. Walls and ceilings of the waste storage area must be constructed of an impervious material with a smooth finish. The junction between the walls and the floor must be covered with a minimum radius of 25mm to prevent the accumulation of waste matter.
- d. The garbage storage area must be well lit to enable use at night. A timer switch must be fitted to the light fitting to ensure the light is turned off after use.
- e. Odour problems must be minimised by good exhaust ventilation.
- f. Both putrescible and recycling bins/crates must be stored together. Recycling bins must never stand alone. They must always be located beside putrescible waste bins. Putrescible bins must be located closest to the entrance to the waste storage room.
- g. Signage on the correct use of the waste management system and what materials may be recycled must be posted in the communal waste storage cupboard/ room or bin bay.

Standard Condition: C19

## C.6 Utility Services Generally

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

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

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

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

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

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

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

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

Standard Condition: C20

## C.7 Provision for Energy Supplies

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

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

Where an electricity substation is required within the site but no provision has been made to place it within the building and such substation has not been detailed upon the

approved development consent plans a section 96 application is required to be submitted to Council. Council will assess the proposed location of the required substation.

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

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

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

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

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

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

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

Standard Condition: C21

## C.8 Water and waste water - Section 73 Developers Certificate and Upgrading of existing system (Clause 25(1) WLEP 1995)

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

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

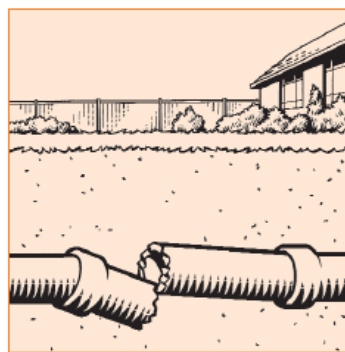
**Note:** Further information can be obtained from the Sydney Water Corporation on or telephone 13 20 92 or by visiting their web site:

[http://www.sydneywater.com.au/html/yourHome/edeveloper/urban\\_dev\\_qa.cfm](http://www.sydneywater.com.au/html/yourHome/edeveloper/urban_dev_qa.cfm).

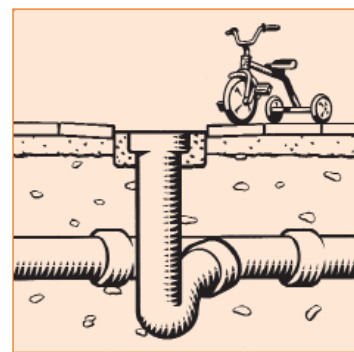
The Construction Certificate plans and specifications, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail the replacement of all private sewer pipes between all sanitary fixtures and Sydney Waters sewer main where they are not found by inspection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



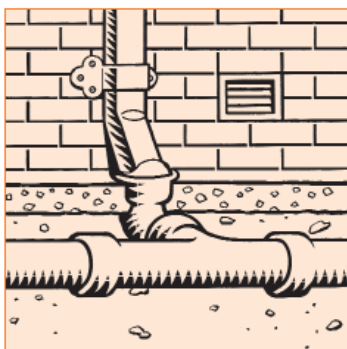
*Cracked pipes*



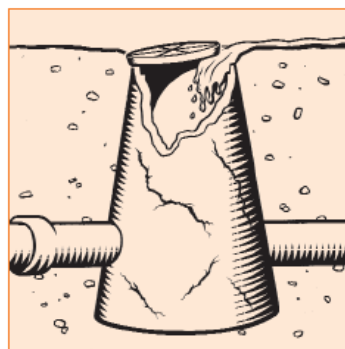
*Broken pipes*



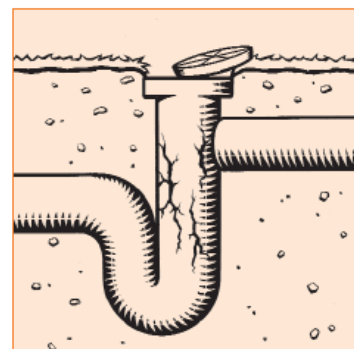
*Damaged or low-lying gullies*



*Direct stormwater connections*



*Hidden or damaged maintenance holes*



*Hidden or damaged inspection points*

**Note:** This condition has been imposed to ensure that where private sewer pipes are old, may leak or may be subject to root invasion (whether from existing or proposed private or public landscaping) that existing cast iron, concrete, earthenware or terracotta systems are replaced with new UPVC or copper continuously welded pipes between all sanitary

fixtures and Sydney Waters sewer main as part of the development, such that clause 25(1) of WLEP 1995 be satisfied. Further, leaking sewer pipes are a potential source of water pollution, unsafe and unhealthy conditions which must be remedied in the public interest.

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

Standard Condition: C22

## C.9 Soil and Water Management Plan – Submission & Approval

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

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

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

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

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

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

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

Standard Condition: C25

## C.10 Professional Engineering Details

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

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

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

Standard Condition: C36

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

The *Construction Certificate* plans and specification required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation* must be accompanied by a *Geotechnical / Hydrogeological Monitoring Program* together with civil and structural

engineering details for foundation retaining walls, footings, basement tanking, and subsoil drainage systems, as applicable, prepared by a *professional engineer*, who is suitably qualified and experienced in geotechnical and hydrogeological engineering. These details must be certified by the *professional engineer* to:

- a) Provide appropriate support and retention to ensure there will be no ground settlement or movement, during excavation or after construction, sufficient to cause an adverse impact on adjoining property or public infrastructure.
- b) Provide a detailed groundwater management plan as required in Council's document "Guidelines for Preparation of Geotechnical and Hydrogeological Reports" and in particular Section 5.4. "Hydrogeology" 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 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).
- d) 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.
- e) 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.
- f) 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 preset acceptable limits for peak particle velocity and ground water fluctuations;
  - Details recommended hold points to allow for the inspection and certification of geotechnical and hydro-geological measures by the professional engineer; and;
  - Details a contingency plan.

Standard Condition: C40

## C.12 Ground Anchors

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

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

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



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

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

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

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

Standard Condition: C41

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

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

- Sight distance requirements as shown Driveway Splay as shown in Section C5.4.8 in WRDCP
- All driveway entrance gates are to be set back a minimum of 5m from the property boundary
- 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

### C.14 Relocation or reconstruction of Council's stormwater drainage system

The developer must meet all costs of relocation or reconstruction of any part of Council's drainage system (including design drawings and easements) required to carry out the approved development. All engineering drawings (plan, sections and elevation views) and specifications of the new stormwater drainage system to be constructed are to be prepared by the applicant. The design plans must be lodged and approved by Council prior to the issue of a Construction Certificate.

**Note:** Four weeks should be allowed for assessment.

The design and construction of the works must be in accordance with Council's Draft Stormwater Drainage Management DCP (Draft Version 1.1, Public Exhibition Copy dated 14/12/2006) and "Specification for Road Works, Drainage and Miscellaneous Works" which include Council's Standard Drawings. Both documents are available from Council's website <http://www.woollahra.nsw.gov.au>.

**Note:** To ensure that this work is completed to Council's satisfaction, this consent by separate condition, may impose one or more Infrastructure Works Bonds.  
Standard Condition: C.48 (Autotext CC48)

### **C.15 Stormwater Discharge to Harbour (Clause 25(2) WLEP 1995)**

The developer must obtain written approval from the NSW Maritime Authority to discharge stormwater from the subject property directly into Sydney Harbour.  
Standard Condition: C50

### **C.16 Stormwater management plan (Site greater than 500m<sup>2</sup>)(Clause 25(2) WLEP 1995)**

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

The *Stormwater Management Plan* must detail:

- (a). general design in accordance with Stormwater disposal concept plan prepared by Eclipse Consulting Engineers project 5788 Dwg No. C01B dated 07.07.09 other than amended by this and other conditions and including;
  - A propriety gross pollutant trap (GPT) which is to be located as close to New Beach Road (adjacent to the bus stop) as possible to enable easy access and cleaning
  - The GPT will be required to be maintained by the applicant for 12 months after practical completion of the drainage system
- (b) the discharge of stormwater, by direct connection, to the new pipeline in New Beach Rd and through Rushcutters Bay Park ,
- (c) compliance the objectives and performance requirements of the BCA;
- (d) any rainwater tank required by BASIX commitments including their overflow connection to the *Stormwater Drainage System*, and
- (e) general compliance with the Council's draft Development Control Plan Stormwater Drainage Management (draft version 1.1 public exhibition copy dated 14/12/2006), and
- (f) on-site stormwater detention ("OSD").

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

#### **Layout plan**

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

It must include:

- All pipe layouts, dimensions, grades, lengths and material specification,
- All invert levels reduced to Australian Height Datum (AHD),
- Location and dimensions of all drainage pits,

- Point and method of connection to Council's drainage infrastructure.
- Subsoil Drainage - Subsoil drainage details, clean out points, discharge point.

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

Standard Condition: C51

### **C.17 Use of car parking spaces - preparation of a Car Parking Management Plan**

All car parking spaces are to be available for all CYCA patrons, including members and visitors to the licensed club, employees, other businesses occupying the premises from time to time (e.g. Youth Sailing Academy, shipwrights, chandlery and kiosk), boat owners and their invitees. For this purpose the applicant is to submit a Car Parking Management Plan to Council for approval prior to the issue of a construction certificate. The Car Parking Management Plan is to also include:

- a. provision for an electronic sign at the entrance to the basement car park advising how many spaces are available in the car park
- b. provision for a timed pick-up/drop-off parking area within hardstand car parking area on the site to facilitate the loading and unloading of bulky goods by competitors/attendants to the facility

This condition is imposed to maximise the use of the off-street parking spaces, to avoid restrictions being placed on the use of such parking spaces and to minimise the disruption to traffic using New Beach Road.

### **C.18 Servicing – preparation of a Servicing Management Plan**

All servicing and deliveries are to occur on site. Deliveries by trucks are to be managed to avoid times of peak parking demand. The applicant is to submit a Servicing Management Plan to Council for approval. This condition is imposed to reduce the impact of servicing and deliveries on the amenity of the surrounding residential area.

### **C.19 Acoustic performance/selection of plant and equipment**

Plant and equipment shall be selected on acoustic performance and installed to achieve Council's Noise Criterion for Mechanical Plant & Equipment. All acoustic treatments that may be required to achieve compliance with the criteria shall be included at the construction certificate stage. This condition is imposed to protect the aural amenity of surrounding residential properties.

### **C.20 Preparation of an Environmental Management Plan (EMP)**

An EMP is to be prepared by the applicant and approved by the Council prior to the issue of a Construction Certificate. The EMP is to be based on the outline contained in part 9 of the EIS. It is also to include:

- a. measures aimed at reducing greenhouse gas emissions
- b. provisions which reflect the conditions imposed on DA98/117 that relate to the operation of the existing Cruising Yacht Club of Australia's Club building.

This condition is imposed to ensure that the construction methodology and ongoing use of the premises takes environmental impacts into consideration and in particular the

consequences of global warming and that it incorporates measures to reduce greenhouse gas emissions.

### **C.21 Controlled activity approval – *Water Management Act 2000***

A Construction Certificate will not be issued over any part of the site requiring a Controlled Activity Approval until a copy of the Approval has been provided to Council. This condition has been imposed with regard to comments received from NSW Office of Water.

### **C.22 Light & Ventilation**

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

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

### **C.23 Food Premises – Construction Certificate Plans & Specifications**

The person with the benefit of this consent must submit to Council details for the construction and fit out of food premises. Such details must demonstrate compliance 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*.

No *Construction Certificate* relating to the construction or fitout of food premises must be issued until Council's Environmental Health Officers' have advised in writing that the plans and specification are considered satisfactory.

The details for the construction and fit out of food premises, as considered satisfactory by Council's Environmental Health Officers' must form part of any *Construction Certificate*.

**Note:** The assessment of food premises fitout plans and specifications is subject to an adopted fee. The construction and fitout of food premises is not listed under clause 161 of the *Environmental Planning & Assessment Regulation 2000* as a matter that a *Certifying Authority* may be satisfied as to. Hence, the detailed plans & specifications must be referred to Council and be to Council's satisfaction prior to the issue of any *Construction Certificate* for such works.

Standard Condition: C65

## C.24 Flood protection

The *Construction Certificate* plans and specifications, required by Clause 139 of the *Regulation*, must include flood mitigation measures to provide protection for the development up to the Flood Planning Levels (FPL's) as determined by Eclipse Consulting Engineers Ref: 5788-002-dar issue date 07-07-2009 requires:

- Minimum Habitable Ground Floor Slab Level - RL = 2.40 mAHD
- Minimum Basement/Car Park Entrance Driveway Crest Level - RL = 2.25 mAHD
- Works as shown on plan by Eclipse Consulting Engineers Drawing No. C01 B Rev B dated 07.07.09 which proposes the following flood remediation works in New Beach Road:
  - a) 2x450 dia pipes from the new driveway at the northern site boundary head south under the existing K&G and including several new drainage inlet pits
  - b) The pipe then enlarges to a single 750mm, then to 825 and eventually 900mm
  - c) The proposed 900mm replaces the existing 600mm dia pipeline across Rushcutters Bay Park

Further the underground carpark is to include:

- An emergency evacuation plan is to be prepared for the underground carpark
- A warning system is to be installed in the underground carpark to signal all personnel to evacuate the carpark when water reaches a level of 5cm below the entry level threshold to the car park.
- A pump system capable of handling a weir flow of 5cm deep down the driveway is to be installed in the carpark as a back up system,
- The pump system is to be powered by a uninterruptible power supply
- The driveway long section 01 and 02 as shown on the architectural Drawing No. DA 4200 prepared by Allen Jack Cottier, Rev 2 dated 22.07.09 show a threshold level of 2.4m which complies with the Flood Level "Minimum Basement/Car Park Entrance Driveway Crest Level - RL = 2.25m AHD"

The Flood Planning Levels (FPLs) are a combination of the 1:100 year flood level plus the selected freeboard allowance as set out below:

- Habitable floor levels not less than 300mm above the flood level.
- Non-habitable floor levels not less than 150mm above flood level.

Driveway crest not less than 150mm above flood level before descending into the site (as applicable).

**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.25 Public Open Space Protection

Works must not impact on Public Open Space or vegetation adjoining the property. An appropriate Soil and Water Management Plan must be prepared, with the required Erosion and Sediment Controls implemented and maintained during construction to ensure that material does not migrate off-site and into the Sydney Harbour or the Plantation Reserve.

Council will not permit the storage of building, excavation, demolition material or plant on Council's public open space or access to development through the adjoining Plantation Reserve or Rushcutters Bay Park unless prior written approval has been obtained from Council's Open Space & Tree Division.

The *principal contractor* or *owner builder* is to submit an application requesting access through Public Open Space on the required form with the appropriate fee. The form is available from the Technical Services Department.

**Note:** If access through a Reserve is approved a separate Bond will be required.

Standard Condition: C31

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

### D.1 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):

1A New Beach Road, Darling Point (d'Albora Marina).

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.2 Dilapidation Reports for Public Infrastructure

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

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

- a) Photographs showing any existing damage to the road pavement fronting the site,
- b) Photographs showing any existing damage to the kerb and gutter fronting the site,
- c) Photographs showing any existing damage to the footway including footpath pavement fronting the site,
- d) Photographs showing any existing damage to retaining walls within the footway or road, and
- e) Closed circuit television/video inspection (in DVD format) of public stormwater drainage systems fronting, adjoining or within the site and
- f) The full name and signature of the professional engineer.

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

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

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

Standard Condition: D5

### **D.3 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 & Implementation**

A works zone is required for this development. The *principal contractor* or *owner* must apply for a works zone. If the works zone is approved the *principal contractor* or *owner* must pay all fees for and implement the required works zone before commencement of any work.

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

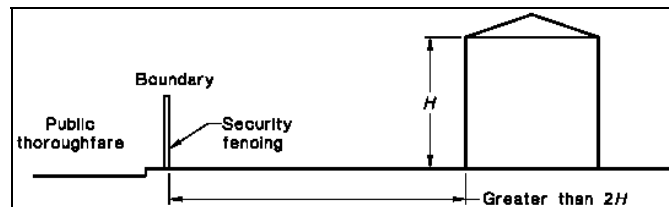
**Note:** The *principal contractor* or *owner* must allow not less than four to six weeks (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under the Clause 22 of the *Transport Administration (General) Regulation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

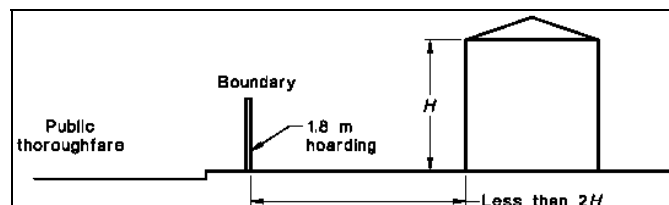
Standard Condition: D10

## 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.



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



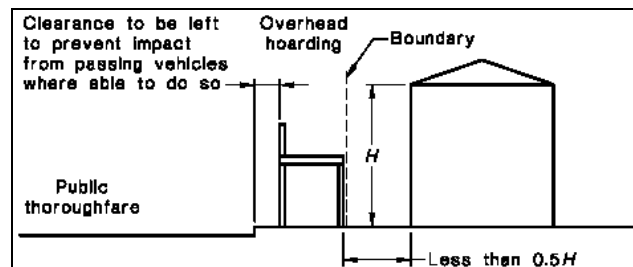
Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an *overhead protective structure* and the facing facade protected by heavy-duty scaffolding, unless either:



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

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

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



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

The *principal contractor* or *owner builder* must ensure that Overhead Protective Structures are installed and maintained in accordance with WorkCover NSW Code of Practice - Overhead Protective Structures, gazetted 16 December 1994, as commenced 20 March 1995. This can be downloaded from: <http://www.workcover.nsw.gov.au/Publications/LawAndPolicy/CodesofPractice/ohedpr otstructs.htm>.

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

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

Standard Condition: D11

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

Clause 227A of the Regulation provides:

***Signs on development sites***

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

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

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

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

Standard Condition: D12

## **D.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 Workcover 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*” published by the NSW Department of Housing 4th Edition” (‘The Blue Book’).

Where there is any conflict The Blue Book takes precedence.

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

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

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

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

**Warning:** Irrespective of this condition any person occupying the site may be subject to proceedings

under the *Protection of the Environment Operations Act 1997* where pollution is caused, permitted or

allowed as the result of their occupation of the land being developed.

Standard Condition: D14

## D.9 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

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

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

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

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

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

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

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

Standard Condition: D15

## D.10 Establishment of boundary location, building location and datum

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

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

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

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

Standard Condition: D18

#### **D.11 Amendment to the Construction Noise and Vibration Management Plan - Interim Construction Noise Guideline (July 2009)**

Construction noise impacts being assessed and managed in accordance with the Department of Environment Climate Change and Water's (DECCW's) publication "Interim Construction Noise Guideline" (July 2009). The Construction Noise and Vibration Management Plan is to be amended to reflect the guideline requirements. This condition has been imposed in accordance with comments received from DECCW.

#### **D.12 Soils and Construction, Volume 1, 4<sup>th</sup> edition, March 2004**

Sediment and erosion control measures are to be developed and implemented in accordance with Landcom *Soils and Construction, Volume 1, 4<sup>th</sup> Edition*, March 2004. The Sediment and Erosion control Plan should be amended to reflect these requirements. This condition has been imposed in accordance with comments received from DECCW.

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

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

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

Standard Condition: D19

#### **D.14 Tenure arrangements with NSW Maritime**

Appropriate tenure arrangements for all of the new building and marina components must be arranged with NSW Maritime prior to the commencement of construction. This condition is imposed having regard to comments received from NSW Maritime.

#### **D.15 Construction approval under the Management of Waters and Waterside Lands Regulation**

Construction approval under clause 65A of the Management of Waters and Waterside Lands Regulation, or an exemption from that provision must be obtained from NSW Maritime prior the commencement of construction. This condition is imposed having regard to comments received from NSW Maritime.

#### **D.16 Alteration to stormwater systems – approval under the *Maritime Services Act 1935***

Any alterations to the storm water system which result in storm water being discharged into Sydney Harbour must be approved by NSW Maritime under section 13TA of the *Maritime Services Act 1935* prior to the commencement of construction. This condition is imposed having regard to comments received from NSW Maritime.

#### **D.17 ‘Prescribed works’ – approval under the *Maritime Services Act 1935***

Prior to any ‘prescribed works’ within 10 metres on the landward side of the mean high water mark, written approval must be granted by NSW Maritime under section 13TA of the *Maritime Services Act 1935* prior to the commencement of construction. This condition is imposed having regard to comments received from NSW Maritime.

Note: prescribed works means excavation, removal of soil, sand gravel, stone, rock or other material from land or the removal of a retaining wall.

#### **D.18 Driveway crossover designs**

The new driveway crossovers are to be constructed in such a way so as to provide awareness devices at the beginning and end of each driveway, e.g. tactile indicators to assist in safe pedestrian movement along the Plantation Reserve. Details are to be submitted to Council for approval prior to the commencement of work.

#### **D.19 Piezometers for the monitoring of Ground Water Levels (GWL)**

The *principal contractor* must be provide piezometers within the excavation area and a further piezometers around the perimeter of the wall. The piezometers are to be installed to monitor groundwater levels before and during all dewatering works for the construction phase.

The Ground Water Levels monitoring wells and monitoring program must be maintained until the issue of the *Final Occupation Certificate*.

Ground Water Levels are to be regularly monitored during the course of the works as required by the Work Method Statement for the control of Ground Water Levels. Any damaged piezometers are to be replaced to allow uninterrupted monitoring.

Where there are any movements in the Ground Water Levels outside a safe range set by the Work Method Statement for the control of Ground Water Levels corrective action

must be undertaken under the direction of the *professional engineer* (hydrological/geotechnical engineer).

Standard Condition: D7

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

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

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

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

This condition does not apply:

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

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

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

Standard Condition: E1

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

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

Standard Condition: E2

### **E.3 Compliance with Construction Management Plan**

All development activities and traffic movements must be carried out in accordance with the approved construction management plan. All controls in the Plan must be maintained at all times. A copy of the Plan must be kept on-site at all times and made available to the *PCA* or *Council* on request.

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

Standard Condition: E3

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

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

Standard Condition: E4

#### E.5 Critical Stage Inspections

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

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

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

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

Standard Condition: E5

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Part C Management of Waste:

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

## E.8 Tree Preservation

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

### General Protection Requirements

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

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

## E.9 Tree Preservation & Approved Landscaping Works

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

- a) The following trees must be retained

- Trees on Private Land

Council Ref No	Species	Location	Dimension (metres)
16	<i>Cupressus sempervirens</i>	Front – North east corner	Avg. 7m

	" <i>Stricta</i> " (Pencil pine)	Northern tree in row of six to be removed. Five trees to be retained	
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- Trees on Council Land

Council Ref No	Species	Location	Dimension (metres)	Tree Value
1	<i>Agonis flexuosa</i> Willow Myrtle	Front – South end of Plantation reserve	6 x 8	Not assessed.
Tree 2 to Tree 9	<i>Syagrus romanzoffianum</i> Cocos palm	Front – Plantation Reserve	Avg. 12m	Not assessed.

**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)
10	<i>Syagrus romanzoffianum</i> Cocos palm	Front – Plantation reserve – North end of Group	12 x 4
11	<i>Callistemon viminalis</i> Weeping Bottlebrush	Front – Plantation Reserve - Centre	5 x 6
13	<i>Callistemon viminalis</i> Weeping Bottlebrush	Front – Plantation Reserve - Centre	3 x 2
14	<i>Eucalyptus leucoxylon</i> Yellow Gum	Front – Plantation reserve – North	11 x 9
15	<i>Agonis flexuosa</i> Willow Myrtle	Front – Plantation reserve – North	7 x 7
16	<i>Cupressus sempervirens</i> "Stricta" (Pencil pine)	Front – NE corner. Northern most tree only to be removed. Five trees to remain	Avg. 7m
17	<i>Agonis flexuosa</i> Willow Myrtle	Within site adjacent to entry boom gate	5 x 5

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

## E.10 Maintenance of Environmental Controls

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

- Erosion and sediment controls,
- Dust controls,
- Dewatering discharges,
- Noise controls;
- Vibration monitoring and controls;
- Ablutions;

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

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

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

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

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

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

Standard Condition: E12

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

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

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

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

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

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

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

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

Standard Condition: E13

### E.13 Vibration Monitoring

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

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

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

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

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

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

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

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

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

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

Standard Condition: E14

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

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

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

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

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



**Note:** 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.15 Disposal of site water during construction

The principal contractor or owner builder must ensure:

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

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

Standard Condition: E17

## E.16 Site Cranes

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

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

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

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

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

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

Standard Condition: E19

#### **E.17 Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum**

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

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

- a) Upon the completion of foundation walls prior to the laying of any floor or the pouring of any floor slab and generally at damp proof course level;
- b) Upon the completion of formwork for floor slabs prior to the laying of any floor or the pouring of any concrete and generally at each storey;
- c) Upon the completion of formwork or framework for the roof(s) prior to the laying of any roofing or the pouring of any concrete roof;
- d) Upon the completion of formwork and steel fixing prior to pouring of any concrete for any ancillary structure, flood protection work, swimming pool or spa pool or the like;
- e) Upon the completion of formwork and steel fixing prior to pouring of any concrete for driveways showing transitions and crest thresholds confirming that driveway levels match Council approved driveway crossing levels and minimum flood levels.;

- f) Stormwater Drainage Systems prior to back filling over pipes confirming location, height and capacity of works.
- g) Flood protection measures are in place confirming location, height and capacity.

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

Standard Condition: E20

### E.18 Placement and use of Skip Bins

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

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

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

Standard Condition: E21

### E.19 Prohibition of burning

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

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

Standard Condition: E22

### E.20 Dust Mitigation

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

This generally requires:

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



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

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

**Note:** 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.21 Compliance with Council's Specification for Roadworks, Drainage and Miscellaneous Works Road works and work within the Road and Footway**

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

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

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

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

Standard Condition: E24

## **E.22 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* dated January 2003.

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

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

**Note:** 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.23 Compliance with Acid Sulfate Soils Management Plan**

The Principal Contract / Owner Builder and any subcontractor must comply with the Acid Sulfate Soil Management Plan and the NSW Government Acid Sulfate Soils Management Advisory Committee guidelines.

**Note:** The Acid Sulfate Soils Management plan submitted with the Development Application sets out all the above requirements in detail.

**Note:** A failure to implement and maintain the Acid Sulfate Soils Management plan can result in the following environmental harm:

- damage to the soil structure so plant roots and soil organisms can't easily move about
- plant roots being burnt by acid, reducing plant health and productivity
- acid intolerant soil fauna and flora are killed, so the soil biodiversity and health are reduced
- plants and soil life can be poisoned by the available toxic metals
- loss of aquatic plants that can not survive acidic conditions
- loss of fish, crustaceans, birds and other animals
- damage to metal and concrete structures (such as bridge pylons and pipes)

Standard Condition: E28

### **E.24 Food Premises – Construction & Fitout**

The *principal contractor or owner builder* must ensure that all construction and fitout of the food premises complies with the details for the food premises submitted to and considered satisfactory by Council's Environmental Health Officers but no less compliant than with the *Food Act 2003*, *Food Regulation 2004*; the *Food Standards Code* as published by Food Standards Australia and New Zealand and AS 4674-2004: *Construction and fit out of food premises*.

This condition has been imposed to protect public health and ensure that food premises are easily maintained in a clean condition fit for food preparation and consumption.

Standard Condition: E29

### **E.25 Waste minimisation and management – Demolition**

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

- the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work
- 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)
- provide separate collection bins and/or areas for the storage of residual waste
- clearly 'signpost' the purpose and content of the bins and/or storage areas
- implement measures to prevent damage by the elements, odour, health risks and windborne litter
- minimise site disturbance, limiting unnecessary excavation

When implementing the SWMMP the applicant must ensure:

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

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

## E.26 Waste minimisation and management – Construction

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

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

Standard Condition: E32

## E.27 Works (Construction) Zone – Approval & Implementation

A works zone is required for this development. The *principal contractor* or *owner* must apply for a works zone. If the works zone is approved the *principal contractor* or *owner* must pay all fees for and implement the required works zone before commencement of any work.

The *principal contractor* must pay all fees associated with the application and occupation and use of the road as a works zone. All works zone signs must have been erected by Council to permit enforcement of the works zone by Rangers and 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 Traffic Authority 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

## E.28 Replacement trees which must be planted

The following compensatory replacement plantings must be planted to ensure the preservation of the landscape character of the area. Areas for future planting must be plotted on the submitted landscape or architectural plans and be protected from damage, especially soil compaction and contamination from construction activity by erecting a barrier or implementing ground protection. Where ground protection during construction activity is not implemented, remediation measures prior to planting such as soil ripping or subsoil aeration must be employed.

Any replacement plant is to be maintained in a healthy and vigorous condition until it attains a height of 5 metres or a spread of 3 metres, whereby it will be protected by Council's Tree Preservation Order. If the replacement plant 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 or Size of Tree (@ time of planting)	Minimum Dimensions at Maturity
6 X <i>Cupaniopsis anacardiodes</i> Tuckeroo	Front – Plantation Reserve – Trees to be evenly spaced in 54 metre strip adjacent to removed tree No10 to No15	200 litre	6 x 8
All replacement trees are to be NATSPEC grown.			

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

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

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

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

### **F.2 Provision of Category 1 Fire Safety Provisions (clause 93 of the Regulation)**

A person must not commence occupation or use of the whole or any part of a the building unless such of the Category 1 fire safety provisions as are applicable to the building's proposed new use are provided.

**Note:** Category 1 fire safety provision means the following provisions of the BCA, EP1.3, EP1.4, EP1.6, EP2.1, EP2.2 and EP3.2 in Volume One of that Code and P2.3.2 in Volume Two of that Code.  
Standard Condition: F3

### **F.3 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

### **F.4 Compliance Certificate from Sydney Water**

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

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

## F.5 Commissioning and Certification of Systems and Works

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

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

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

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

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

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

Standard Condition: F7

## F.6 Inspection, Certification and Registration of Regulated Systems

Prior to the issue of any *Occupation Certificate* or occupation or use of part of the building serviced by a *regulated system* the *principal contractor* or *owner builder* must submit to the satisfaction of *PCA* certification by a 'competent person' that the regulated system as installed can operate as required by Clause 9 of the *Public Health (Microbial Control) Regulation, 2000*.

The owner must register the regulated systems with Council and provide the *PCA* with evidence of registration pursuant to Clause 15 of the *Public Health (Microbial Control) Regulation, 2000*.

**Note:** *Regulated System* has the same mean as in the Public Health Act 1991.

**Note:** *Competent person* has the same meaning as in Clause 9(3) of the *Public Health (Microbial Control) Regulation, 2000*.

**Note:** The NSW Code of Practice for the Control of Legionnaires' Disease can be down loaded free from: [http://www.health.nsw.gov.au/pubs/2004/pdf/legionnaires\\_disease.pdf](http://www.health.nsw.gov.au/pubs/2004/pdf/legionnaires_disease.pdf)  
Standard Condition: F8

## F.7 Commissioning and Certification of Public Infrastructure Works

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

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

Standard Condition: F9

## F.8 Street Numbering

The development must be provided with street and sole occupancy unit numbers determined by Council. This condition has been imposed to ensure that emergency services, utility services, and the general public are able to clearly and readily locate any property. Further, this condition has been imposed to protect the integrity of street numbering and land information.

**Note:** Applications for the allocation of street and sole occupancy unit numbers should be made together with any application for a strata certificate or Torrens or community title subdivision certificate. Council will determine at its discretion in accordance with its policy street numbers and street addresses that best suit the public interest.

Standard Condition: F11

## F.9 Letter Box(es)

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

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

Standard Condition: F12

## F.10 Food Premises - Inspection and Registration

Prior to the issue of any *Occupation Certificate* or occupation or use of any food premises:

- The *Principal Contractor* or *owner* must arrange an inspection of the fit out of the Food Premises by Council's Environmental Health Officer;
- A satisfactory final inspection must have been undertaken by Council's Environmental Health Officer; and
- The *owner* or *occupier* must have registered the Food Premises (Notification of conduct under section 100 of the *Food Act 2003*).

**Note:** Notification can be done on-line [at www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au)

**Note:** Inspections are subject to payment of the adopted inspection fee.

**Note:** Section 100 of the *Food Act 2003* requires:

"100 Notification of conduct of food businesses

(1) The proprietor of a food business must not conduct the food business unless the proprietor has given written notice, in the approved form, of the information specified in the Food Safety Standards that is to be notified to the appropriate enforcement agency before the business is conducted. Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.”

**Note:** *Accredited Certifiers* are unable to issue *Compliance Certificates* in relation to compliance with the *Food Act 2003*, *Food Regulation 2004*; the Food Standards Code and the Australian Standard AS 4674-2004: *Construction and fit out of food premises*; since these are not matters which an *Accredited Certifier* can be satisfied in relation to under Clause 161 of the *Regulation*. This condition can only be satisfied following an inspection and sign off from Council's Environmental Health Officers.

Standard Condition: F15

### **F.11 Public walkway area**

Evidence is to be provided to Council that the lease (or other legal entitlement), required between the NSW Lands Department and/or NSW Maritime and the Cruising Yacht Club of Australia (CYCA) for the CYCA to occupy the subject land, includes an instrument ensuring public access to the proposed public walkway between 7am and sunset.

### **F.12 New Waste Services**

No occupation certificate must be issued until the owner/developer has procured the provision of required wastes services including purchase of all waste and recycling storage containers (bins and crates) from Council or otherwise in accordance with the approved *Waste Management Plan*.

Standard Condition: F19

### **F.13 Occupation of additional berths**

The additional berths are not to be occupied by vessels until the proposed basement car park has been constructed and is operational. This condition is imposed to minimise the impact on street parking.

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

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

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

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

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



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

Standard Condition: G4

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

### **H.1 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.2 Road Works (including footpaths)**

The following works must be completed to the satisfaction of Council, in accordance with the *Roads Act 1993* approvals and comply with Council's "*Specification for Roadworks, Drainage and Miscellaneous Works*" dated January 2003 unless expressly provided otherwise by these conditions at the *principal contractor's* or *owner's* expense:

- a) Stormwater pipes, pits and connections to public stormwater systems within the *road*;
- b) Driveways and vehicular crossings within the *road*;
- c) Removal of redundant driveways and vehicular crossings;
- d) New footpaths within the *road*;
- e) 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 80A(6) of the Act will not be release by Council until compliance has been achieved with this condition. An application for refund of security must be submitted with the *Final Occupation Certificate* to Council. This form can be downloaded from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or obtained from Council's customer service centre.

Standard Condition: H13

### H.3 Dilapidation Report for public infrastructure works

The *Principal Contractor* must submit a follow up dilapidation report, prepared by a *professional engineer*, on Council's infrastructure within and near the development site to Council upon completion of the work.

The Final Occupation Certificate must not be issued until Council's Civil Works Engineer is satisfied that the works have been satisfactorily completed and the PCA has been provided with correspondence from Council to this effect.

The dilapidation report must include:

- a) Photographs showing any existing damage to the road pavement fronting the site,
- b) Photographs showing any existing damage to the kerb and gutter fronting the site,
- c) Photographs showing any existing damage to the footway including footpath pavement fronting the site,
- d) Photographs showing any existing damage to retaining walls within the footway or road, and
- e) Closed circuit television/video inspection (in DVD format) of public stormwater drainage systems fronting, adjoining or within the site, and
- f) The full name and signature of the professional engineer.

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

The dilapidation report must specify (with supporting photographic/DVD evidence) the exact location and extent of any damaged or defective public infrastructure. If the required report is not submitted then Council will assume any damage to any infrastructure in the immediate vicinity of the site was caused by the principle contractor and owner carrying out work under this consent.

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

Standard Condition: H14

### H.4 Visibility – northern crossover

A convex mirror being provided, within the subject site, to aid visibility between vehicles using the northern crossover and pedestrians. This condition is imposed with regard to the objectives of Council's Development Control Plan for Off-Street Car Parking Provision and Servicing Facilities.

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

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

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

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

Standard Condition: H20

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

### **I.1 Operation of Regulated Systems**

The occupier must operate *regulated systems* in compliance with Clause 9 of the Public Health (Microbial Control) Regulation, 2000.

Where there is any change in the regulated system the occupier must register the changes in the *regulated systems* with Council pursuant to Clause 15 of the *Public Health (Microbial Control) Regulation*, 2000.

Water cooling system must be certified by a *competent person* annually as being an effective process of disinfection under the range of operating conditions that could ordinarily be expected.

This condition has been imposed to ensure public health.

**Note:** *Regulated System* has the same mean as in the *Public Health Act* 1991. Competent person has the same meaning as in Clause 9(3) of the Public Health (Microbial Control) Regulation, 2000. The *NSW Code of Practice for the Control of Legionnaires' Disease* can be downloaded free from: [http://www.health.nsw.gov.au/pubs/2004/pdf/legionnaires\\_disease.pdf](http://www.health.nsw.gov.au/pubs/2004/pdf/legionnaires_disease.pdf).

Standard Condition: I11

### **I.2 On-going maintenance of the on-site-detention system**

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

- a) Permit stormwater to be temporarily detained by the system;
- b) Keep the system clean and free of silt rubbish and debris;

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

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

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

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

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

**Note:** *Essential fire safety measure* has the same meaning as in clause 165 of the *Regulation*. *Annual fire safety statement* has the same meaning as in clause 175 of the *Regulation*. Part 9 Division 5 of the *Regulation* applies in addition to this condition at the date of this consent. Visit Council's web site for additional information in relation to fire safety [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au).  
Standard Condition: I22

### **I.4 Removal of Graffiti**

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

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

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

### **I.5 Storage and handling of flammable and combustible liquids**

The storage and handling of flammable and combustible liquids must be in accordance with AS1940-2004 - *The storage and handling of flammable and combustible liquids*.

This condition has been imposed to protect public safety.  
Standard Condition: I27

### **I.6 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*.

This condition has been imposed to protect public health.

**Note:** The provisions of the Food Act 2003 may change over time and irrespective of this condition compliance with this *Act*, regulations, food standards and other standards adopted under the Food Act (as amended) are mandatory. The *Food Act* and applicable regulations can be accessed free of charge at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).  
Standard Condition: I30

### **I.7 Outdoor lighting – Commercial**

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

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

**Note:** Council may consider, subject to an appropriate section 96 application relaxation of this condition where it can be demonstrated, by expert report, that the level of lighting in the existing area already exceeds the above criteria, where physical shielding is present or physical shielding is reasonably possible.  
Standard Condition: I43

### **I.8 Outdoor lighting – Roof Terraces**

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

All lighting to be installed on the roof terrace will be recessed lights or will be surface wall/balustrade mounted lights at a maximum height of 600 mm above the finished floor level of the roof terrace.

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 96 application relaxation of this condition where it can be demonstrated, by expert report, that the level of lighting in the existing area already exceeds the above criteria, where physical shielding is present or physical shielding is reasonably possible.  
Standard Condition: I44

## I.9 Commercial Waste Management

The owner and any occupier must comply with part 8.9 of the Environmental Impact Statement. All waste must be presented for collection in a receptacle. Waste receptacles must be presented no earlier than close of business on day before collection and removed from collection point an hour after open of business on day of collection. Receptacles are not to be stored in any public place at anytime. Waste and recycling receptacles must be stored at all times within the boundaries of the site.

**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: I46

## I.10 Noise Control

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

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

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

### Useful links:

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

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

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

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

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

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

Standard Condition: I50

## I.11 Maintenance of Sound Attenuation

Sound attenuation must be maintained in accordance with the *Acoustic Report*.

Standard Condition: I51

### **I.12 Availability of car parking spaces to all CYCA patrons**

All car parking spaces are to be available for all CYCA patrons, including members and visitors to the licensed club, employees, other businesses occupying the premises from time to time (e.g. sailing school, shipwrights, chandlery and kiosk), boat owners and their invitees. The Car Parking Management Plan is to be complied with at all times. This condition is imposed to maximise the use of the off-street parking spaces and to avoid restrictions being placed on the use of such parking spaces.

### **I.13 Servicing and deliveries**

All servicing and deliveries are to occur on site. Deliveries by trucks are to be managed to avoid times of peak parking demand. The provisions of the Servicing Management Plan are to be complied with at all times. This condition is imposed to reduce the impact of servicing and deliveries on the amenity of the surrounding residential area.

### **I.14 Restrictions on the berthing of vessels**

Vessels are not to be berthed on the southern side or on the western extremity of the extension to arm D. Vessels are not to be berthed on the proposed pontoon to the perimeter of the deck to the west of the club building and to the perimeter of the proposed hardstand. This condition is imposed with regard to visual impact and car parking considerations.

### **I.15 Public walkway**

Access to and along the public walkway by the general public is to be maintained from 7am to sunset. Boats are not to be stored on the hardstand within 15m of the line of the northern boundary. This condition is imposed to ensure that access to the walkway is not impeded and to maximise views from the walkway.

### **I.16 Use of additional marina berths**

The proposed additional marina berths are to be occupied by yachts only which do not exceed 18m in length. This condition is imposed to protect the visual amenity of Rushcutters Bay Park and to satisfy the provisions of *AS 3961 – 2001 Guidelines for design of marinas*.

### **I.17 Access for people with a disability**

The marina is to provide a point of access to boats for people with a disability. This condition is imposed with regard to access needs of people with a disability and to satisfy clause 4.7 of the *Sydney Harbour Foreshores and Waterways Area Development Control Plan*

### **I.18 Noise from mechanical plant and equipment**

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

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

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

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

### **I.19 Height of vegetation – landscaped roofs**

The height of vegetation on the landscaped roofs is not to exceed RL6.6AHD. Plant species are to be selected accordingly and the height of vegetation is to be maintained to comply with this height. This condition is imposed with regard to potential view impacts.

## **J. Miscellaneous Conditions**



## J.1 Global warming

The design of the marina is to take into account the impacts of the effects of global warming and in particular sea level rise. This condition is imposed having regard to sea level rise benchmarks adopted by the NSW Government, i.e. 0.4m by 2050 and 0.9m by 2100.

## K. Advisings

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

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

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

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

#### Warnings as to potential maximum penalties

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

#### Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council's policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order. This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

**Note:** The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of *the Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. You can obtain further information from the following web sites:  
<http://www.theshopfront.org/documents/ConvictionsCriminalRecords.pdf> and the Attorney General's [www.agd.nsw.gov.au](http://www.agd.nsw.gov.au).  
Standard Advising: K1

### K.2 Dial before you dig



The *principal contractor, owner builder* or any person digging may be held financially responsible by the asset owner should they damage underground pipe or cable

networks. Minimise your risk and Dial 1100 Before You Dig or visit [www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au).

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

Standard Advising: K2

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

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

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

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

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

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

Standard Advising: K3

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

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

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

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

Standard Advising: K4

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

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

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

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

Standard Condition: K5

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

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

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

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

The Guide can be down loaded from:  
<http://www.fairtrading.nsw.gov.au/pdfs/corporate/publications/dft242.pdf>

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

Standard Condition: K6

## **K.7 Workcover requirements**

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

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

Standard Condition: K7

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

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

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

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

- a) The Occupational Health and Safety Act 2000;

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

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

Standard Advising: K8

## **K.9 Lead Paint**

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

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

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

Standard Advising: K9

## **K.10 Decommissioning of fire protection systems**

Decommissioning of any Halon extinguishers and fixed flooding systems must be carried out by a technician authorised under the *Ozone Protection Act* 1989.

Yellow portable fire extinguishers contain halon. From 31 December 1995, use or possession of these extinguishers without approval has been illegal.

Standard Advising: K12

## **K.11 Decommissioning of fire protection systems**

Decommissioning of any Halon extinguishers and fixed flooding systems must be carried out by a technician authorised under the *Ozone Protection Act* 1989.

Yellow portable fire extinguishers contain halon. From 31 December 1995, use or possession of these extinguishers without approval has been illegal.

Standard Advising: K12

## **K.12 Decommissioning of refrigeration or air conditioning equipment**

Decommissioning of any refrigeration or air conditioning equipment must be carried out by an authorised person *under the Ozone Protection Act 1989*, with any fluorocarbon refrigerant recovered in accordance with the requirements of the *Ozone Protection Regulation 1997*.

Standard Advising: K13

## **K.13 Appeal**

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Peter Kauter, Executive Planner, on (02) 9391 7156

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

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

Standard Condition: K14

## **K.14 Release of Security**

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

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

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

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

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

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

Standard Condition: K15

## **K.15 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.16 Compliance with the Building Code of Australia**

Preliminary assessment of the development application drawings indicates that the proposal may not comply with the following sections of the *Building Code of Australia*:

- a) Part 3.3.4 - Weatherproofing of masonry
- b) Part 3.4.1 - Sub floor ventilation
- c) Part 3.7 - Fire safety
  - Part 3.7.1 Fire separation
  - Part 3.7.2 Smoke alarms
  - Part 3.7.3 Heating appliances
- d) Part 3.8 - Health and amenity
  - Part 3.8.1 Wet areas
  - Part 3.8.3 Facilities
  - Part 3.8.4 Light
  - Part 3.8.5 Ventilation
  - Part 3.8.6 Sound insulation
- e) Part 3.9 - Safe movement and access
  - Part 3.9.1 Stair construction
  - Part 3.9.2 Balustrades
  - Part 3.9.3 Pool access

**Note:** There must be no removal of heritage building fabric unless expressly authorised under this consent where compliance with the BCA cannot be achieved without work not authorised under this consent application to amend this consent is required.

Standard Condition: K20

### **K.17 Model**

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

Standard Condition: K21

### **K.18 Encroachments**

It is noted that there is an encroachment by the building over Council's road reserve. While in this case the encroachments are only minor, Council may at some future date require its removal or formalisation.

Standard Condition: K22

### **K.19 Dilapidation Report Condition**

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 request 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 Council 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.20 Roads and Traffic Authority comments**

The applicant is advised that:

- the layout of the proposed car parking areas associated with the subject development (including grades, turn paths, sight distance requirements, aisle widths and parking bay dimensions) should be in accordance with AS 2890.1 – 2004 and AS 2890.2 – 2002.
- all regulatory signposting/road works shall be at no cost to the RTA and Council.

## **K.21 Roads Act Application**

Works or structures over, on or under public roads or footpaths are subject to Sections 138, 139 & 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 roadway
- Installation of soil/rock anchors under the roadway

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 counter. 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 & 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 Council's draft Development Control Plan Stormwater Drainage Management (Draft Version 1.1, Public Exhibition Copy dated 14 December 2006), and

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

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

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

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

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

**Note:** The intent of this condition is that the design of the road, footpaths, driveway crossings and public stormwater drainage works must be detailed and approved prior to the issue of any *Construction Certificate*. Changes in levels may arise from the detailed design of buildings, road, footpath, driveway crossing grades and stormwater. Changes required under *Road Act* 1993 approvals may necessitate design and levels changes under this consent. This may in turn require the applicant to seek to amend this consent.  
Standard Advising: K24

## **K.22 Parking arrangements – New Beach Road**

The applicant is advised that this consent does not relate to parking arrangements shown on the plans for New Beach Road, i.e. pick-up/drop-off parking spaces and disabled parking spaces.

## **K.23 NSW Office of Water request**

The NSW Office of Water letter 17/05/10 requests that, in addition to its general terms of approval (GTA), that a number of matters be noted including the following:



*It is noted that the part of the proposed basement car park may be located below the Mean High Water Level of Rushcutters Bay. Please note that the NSW Office of Water will not allow any proposal that requires permanent or semi-permanent pumping of the groundwater/tidal flows to protect the building. Therefore any proposal must ensure that the design of the building will not require this style of facility or activity.*

*To facilitate this requirement, the construction of the basement, or any structure that may be impacted by groundwater/tidal flows, will require a waterproof retention system (i.e. a fully tanked structure) with an adequate provision for future fluctuations of the watertable level/tidal flows. A Licence under Part V of the Water Act 1912 may be required in relation to this development. It is recommended that a groundwater study be conducted to determine whether groundwater is intersected by the proposal. If groundwater is found to be an issue please provide necessary documentation so that the Department can issue a GTA appropriate for a groundwater license.*

*Enquiries in this regard can be directed to the Department's hydro-geologist, Mr Greg Russell, at [greg.russell@dnr.nsw.gov.au](mailto:greg.russell@dnr.nsw.gov.au) or 9895-6273.*

#### **K.24 Plantation Reserve – removal/replacement of vegetation**

The applicant is advised to consider the removal and replacement of existing shrubs and groundcovers in the garden bed in Plantation Reserve at the front of the clubhouse. Any new plant material added to this bed should be directed at creating a harmonious theme with the plant materials in the newly planted beds within the site and in Plantation Reserve to the north of the clubhouse. The same group of plant materials should be utilised throughout.

#### **K.25 Crime Prevention Through Environmental Design (CEPTED) – Safer by design**

The following general recommendations have been made by the NSW Police Service and Council concurs with them:

##### ***Demolition of Buildings, Car Parks and Slip Ways***

*Temporary fencing can help reduce the incidence of theft and vandalism. Fencings to be erected around the demolition zone to prevent access from the public during construction and after hours.*

*Consider placing an on-site storage container or compound for secure storage of tools and materials. It is a good idea, space permitting, to park trade vehicles within the site to prevent theft of, or from vehicles.*

*All materials, dirt or rubbish left on the footpath are a hazard and can leave the builder/owner subject to expensive legal action should an injury or damage take place. All building materials/rubbish should be removed daily.*

##### ***Provision of 97 car spaces***

*Consideration for car park lighting to be spaced out to protect patrons returning to their cars as dark areas can generate fear, reduce natural supervision and stimulate criminal activity.*

*Internal car park structures such as concrete columns, solid internal walls, service rooms and enclosed fire exits can create significant visual obstruction in car parks. The use of portholes in car park walls can open sightlines, reduce feelings of claustrophobia and help to distribute light.*

*The configuration of car parking spaces can impact the risk to car thieves. The use of grid rows increases natural surveillance.*

*The use of security gates helps to monitor movement of vehicles both in and out of the car park.*

*The height of the car park ceiling can impact lighting distributions. Lighting should meet with the minimum Australian Lighting Standards. Effective lighting can reduce fear, increase community activity, improves visibility and increases the likelihood that offenders will be detected and apprehended. A broadly accepted yardstick of lighting effectiveness in public car parks that lighting should be bright and even enough to permit an observer to see inside a parked vehicle.*

*White ceilings and walls in car parks greatly help to reflect light and gives the impression of looking larger and more spacious.*

*The use of signage – that is clear, legible and useful. This can be used to reinforce behavioural expectations and provide advice.*

### **Construction of new 1-2 storey building**

*From crime prevention perspective, enclosed fire exits, corridors and waiting areas require bright, even lighting as poor lit areas are often heavily vandalised. Avoid creating outer ledges capable of supporting hands/feet. This is to prevent offenders climbing the building to accessing the room or building.*

*Entry points should be designed so as to maximise surveillance opportunities to and from these areas from both inside as well as outside.*

*The placement and orientation of common entry areas should maximise opportunities for natural supervision by staff and other guardians.*

*Surveillance equipment can enhance the physical security of your business and assist in the identification of people involved in anti-social or criminal behaviour. Cameras should be installed both within and around the business to maximise surveillance opportunities.*

*Cameras should monitor the cashier's area, high cost merchandise areas with poor natural supervision.*

*TV monitors should enable staff to monitor activities on the camera and recording equipment should be installed away from the counter area to avoid tampering.*

*Install security lighting in and around the business, particularly over entry/exit points to create an even distribution of light with no glare.*

*Effective signage and directions will provide guidance to visitors/customers in locating main areas and keep them away from restricted areas. Signage can also assist in controlling activities and movements throughout the premises.*

*Malicious damage is often an offence caused to such developments. Strong consideration must be given to the use of graffiti resistant materials, particularly on the fences, ground floor and areas which are accessible by other structures to reduce such attacks or assist in the quick removal of such attacks.*

*The installation of CCTV in all areas throughout the premises and in areas of risk.*

**Note:** This advising reflects the requirements of the NSW Police Service sought following the referral of the proposal to the local NSW Police Service's Community Safety Officer under a memorandum of understanding between the NSW Police Service and Council. This advising is imposed to improve natural surveillance and community safety.

Standard Condition: A26

P Kauter

**Executive Planner**

A Coker

Director- Planning & Development

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## ANNEXURES

1. Development Engineer's referral response 4/11/09
- 1A Development Engineer's referral response 29/9/10
2. Traffic Engineer's memo 27/10/09 – original DA
- 2A. Traffic Engineer's memo 22/6/10 (Development Engineer's referral response 23/7/10 – amended DA)

- 2B. Traffic Engineer's memo 1/10/10 (Development Engineer's referral response 7/10/10)
  - 3. Landscaping Officer's referral response 21/10/09
  - 3A. Landscape Officer's referral response 29/10/10
  - 4. Team Leader – Open Space and Recreation Planning's referral response
  - 5. Environmental Health Officer's referral response
  - 6. Heritage Officer's referral response
  - 7. Urban Design Planner's referral response
  - 8. Fire Safety Officer's referral response
  - 9. NSW Industry & Investment's letter 20/5/10
  - 10. NSW Office of Water's letter 17/5/10
  - 11. NSW Planning's letter 6/10/09
  - 12. NSW Maritime's letter 22/9/10
  - 13. NSW Police's letter 18/9/09
  - 14. SHREP Assessment Table
  - 15. SHDCP Assessment Table
  - 16. Plans and elevations – original DA
  - 17. Plans and elevations – amended DA
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