



Strategic & Corporate Committee

Agenda: *Strategic & Corporate Committee*

Date: *6 December 2011*

Time: *6.00pm*

Part: *1 of 2 Parts (Report)*

Outline of Meeting Protocol & Procedure:

- The Chairperson will call the Meeting to order and ask the Committee/Staff to present apologies or late correspondence.
- The Chairperson will commence the Order of Business as shown in the Index to the Agenda.
- At the beginning of each item the Chairperson will ask whether a member(s) of the public wish to address the Committee.
- If person(s) wish to address the Committee, they are allowed four (4) minutes in which to do so. Please direct comments to the issues at hand.
- If there are persons representing both sides of a matter (eg applicant/objector), the person(s) against the recommendation speak first.
- At the conclusion of the allotted four (4) minutes, the speaker resumes his/her seat and takes no further part in the debate unless specifically called to do so by the Chairperson.
- If there is more than one (1) person wishing to address the Committee from the same side of the debate, the Chairperson will request that where possible a spokesperson be nominated to represent the parties.
- The Chairperson has the discretion whether to continue to accept speakers from the floor.
- After considering any submissions the Committee will debate the matter (if necessary), and arrive at a recommendation (R items which proceed to Full Council) or a resolution (D items for which the Committee has delegated authority).

Recommendation only to the Full Council (“R” Items)

Note: This Committee to function on the basis of referral with considerations to encompass functions and responsibilities from any other Committee.

Principal Considerations:

- Municipal Strategy
- Objectives Setting
- Policies and Codes Development
- Corporate Management
- Corporate Planning
- Woollahra Planning
- Community Services

Delegated Authority

Nil

Committee Membership:

- All Councillors

Quorum:

- The quorum for a committee meeting is 8 Councillors.

WOOLLAHRA MUNICIPAL COUNCIL

Notice of Meeting

25 November 2011

To: Her Worship the Mayor, Councillor Susan Wynne, ex-officio
Councillors Anthony Boskovitz
 Sean Carmichael
 Peter Cavanagh
 Lucienne Edelman
 Nicola Grieve
 Chris Howe
 Susan Jarnason
 Greg Medcraft
 Andrew Petrie
 Ian Plater
 Isabelle Shapiro
 David Shoebridge
 Malcolm Young
 Toni Zeltzer

Dear Councillors

Strategic & Corporate Committee Meeting – 6 December 2011

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Strategic and Corporate Committee** to be held in the **Thornton Room (Committee Room), 536 New South Head Road, Double Bay, on Tuesday 6 December 2011 at 6.00pm.**

Gary James
General Manager

Additional Information Relating to Committee Matters

Site Inspection

Other Matters

Meeting Agenda

Item	Subject	Pages
1	Leave of Absence and Apologies	
2	Late Correspondence Note Council resolution of 27 June 2011 to read late correspondence in conjunction with the relevant Agenda Item	
3	Declarations of Interest	

Items to be Submitted to the Council for Decision with Recommendations from this Committee

R1	DA10/0671 – 33 Cross Street, Double Bay - Demolition of the existing building from ground floor level, retention of the basement carpark for 154 vehicles, construction of a mixed use development with retail tenancies and a five (5) cinema complex for approximately 600 people which occupies the ground and first floor levels and seven (7) levels of residential above containing 74 units (a mix of one, two and three bedrooms) *See Recommendation page 55 Note: Annexures distributed separately	1
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DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	R1
FILE No.	DA 671/2010/1
PROPERTY DETAILS	Address: 33 Cross Street DOUBLE BAY Description: Former Stamford Plaza Hotel (referenced in the report as the Hotel) Lot & DP No: 1 & 793525 Side of Street: North Site Area (m²): 3675 Zoning: General Business 3(a)
PROPOSAL:	Demolition of the existing building from ground floor level, retention of the basement carpark for 154 vehicles, construction of a mixed use development with retail tenancies and a five (5) cinema complex for approximately 600 people which occupies the ground and first floor levels and seven (7) levels of residential above containing 74 units (a mix of one, two and three bedrooms)
TYPE OF CONSENT:	Local
APPLICANT:	Parissen Project X Pty Ltd
OWNER:	Trust Company Ltd
DATE LODGED:	10/12/2010 – Original Submission (Advertised/Notified) 29/07/2011 – Replacement Application I (Advertised/Notified) 19/10/2011 – Replacement Application II (Not Advertised/Notified) 23/11/2011 – Replacement Application III (Not Advertised/Notified)
AUTHOR:	Mr D Lukas
CONSENT AUTHORITY	Sydney East Joint Regional Planning Panel (JRPP)

THE APPLICATION INVOLVES A STATE ENVIRONMENTAL PLANNING POLICY No.1 OBJECTION FOR FLOOR SPACE.

This application is referred to Council so that it may form a view as to whether or not it wishes to make a submission to the consent authority which is the Sydney East Joint Regional Planning Panel. The Panel will consider the application on Tuesday 13 December at 5.00pm in the Thornton (committee) room of Council

1. RECOMMENDATION PRECIS

The development application is recommended for conditional consent for the following reasons.

- That on assessment of the State Environmental Planning Policy No.1 objection submitted by the applicant against the floor space ratio development standard relevant to the land it is considered that the objection is well founded, and that the strict application of the standard would be

unreasonable, unnecessary and would tend to hinder attainment of the objects of the Act in the circumstances of the case.

- That the bulk, scale and visual prominence of the existing built form on site is similar to that of the proposed development, however, the proposed architectural solution in comparison is well-articulated and modelled. Consequently, it is considered that in balance the granting of consent represents a positive outcome for the built environment of Double Bay.
- That the height, bulk and scale is a reasonable and an expected outcome on the site given the nature of the built form that exists and the scale of other development in the general vicinity of the site.
- That the height, bulk and scale of the proposed development is considered justified given the tension which exists between the statutory controls applying to the land and the built form which currently exists on that land.
- That notwithstanding the exceedence of the floor space ratio standard, the gross floor space area proposed in this application represents an actual floor space reduction of 1352m² when compared to the existing building on site.
- That notwithstanding the height and floor space ratio non-compliances associated with the proposal, the streetscape presentation of the development is considered acceptable. This assessment is supported by the fact that the ground floor, through to the fifth floor, from a pedestrian perspective will read as being consistent with Council's envelope controls and strategic objectives.
- That the non-compliant residential elements above the first and second floor levels are configured in a recessive stepped manner, which together with the well articulated façade design, will ensure that the visual dominance of those levels is minimised.
- That the proposed development will result in a positive planning outcome by activating and enlivening the streetscape.
- That the design provides high levels of pedestrian permeability which is usable, legible and accessible.
- That, subject to conditions of consent, the proposed development will sit satisfactorily within its urban context, and will not unreasonably dominate the urban environment when viewed from the perimeter of the Double Bay 'amphitheatre' or from Sydney Harbour.
- That the proposed development, as conditioned, has been designed in a manner which is respectful to its immediate locality in terms of solar access and privacy impacts.
- That the proposed development will not significantly compromise view corridors, but will, from a broader visual perspective, become part of the general skyline of Double Bay. That the introduction of additional housing stock in the centre will assist in invigorating Double Bay as well as support Council's housing targets. That the intensity of development proposed is similar to that which exists on site and, as such, will not give rise to an additional impact in relation to on-street car parking congestion or traffic generation.
- That the proposed development is consistent with expected planning outcomes as informed by Council's relevant planning controls.
- That the proposed use of the ground and first floor of the development as retail, and cinemas will promote and invigorate the Cross Street precinct resulting in a positive social and economic outcome for the Double Bay commercial area.
- That in so far as the proposed development has been considered having regard to the particular circumstances of the case and on its individual merits, the granting of consent does not create a precedent for similarly scaled future development within the precinct.
- That in the circumstances of the case, the proposed development is consistent with and supports the relevant objectives of the WLEP and the particular objectives of the floor space ratio development standard and for the reasons set out above warrants the granting of development consent.

2. PROPOSAL PRECIS

The Sydney East Joint Regional Planning Panel is the consent authority for this development application as the development has a capital investment value of more than \$10 million.

The original development proposed:

- Demolition of the existing 7 storey building (above ground level only)
- New 9 storey mixed commercial/residential building comprising:
 - 1018m² of commercial floor space at ground floor level
 - 93 new dwellings (24 x 1 bedroom, 30 x 2 bedroom and 39 x 3 bedroom)
 - Existing 2 x level basement modified for 154 car parking spaces and ancillary storage area

An amended proposal was submitted, which is identified as Replacement Application I, which refined the original design by reducing the composition of dwelling numbers, altered the design to the Cross Street elevation and changed the retail component to include a Cinema complex.

An amended scheme was submitted proposing design refinements to the layout of the upper residential levels and treatment of finishes to the elevations. This amended scheme is identified as Replacement Application II.

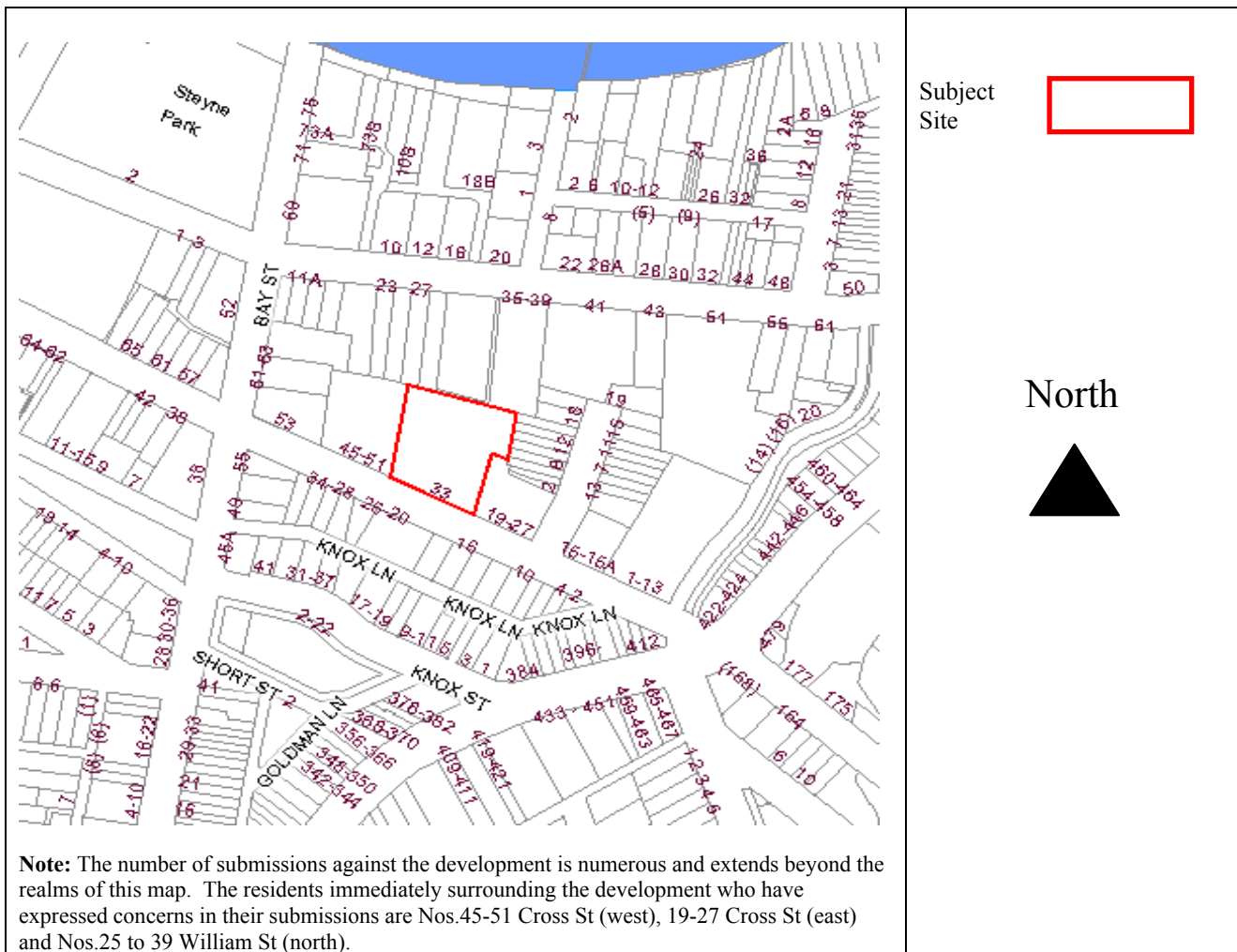
Further amendments have subsequently been submitted, and the completed design, which forms the basis of this report, is identified as Replacement Application III. The amended design includes an increased setback to the upper levels from Cross Street which reduces the extent of overshadowing to Cross Street. It also includes additional details of screening devices to balconies and fenestration.

Replacement Application Nos. II and III were considered to be relatively minor and were not advertised/notified to the public because they were assessed as having less environmental and amenity impacts than the previous advertised/notified scheme in accordance with Council's Advertising and Notifications DCP.

The development being considered and which forms the basis of this report proposes:

- Demolition of the existing 7 storey Hotel (above ground level only)
- New 9 storey mixed commercial/residential building comprising:
 - 5,472m² of commercial floor space at ground and first floor level, which includes retail shops and a 5 screen cinema complex
 - 74 new dwellings comprising (19 x 1-bedroom, 24 x 2-bedroom and 31 x 3-bedroom)
 - Existing 2 x level basement modified for 154 car parking spaces and ancillary storage area.

3. LOCALITY PLAN



4. DESCRIPTION OF PROPOSAL

The proposal is for demolition of the existing 7 storey building, being the above ground levels only, and construction of a new 9 storey mixed commercial/residential building.

The composition of the proposed building will be for a new commercial space at ground and first floor level and 74 new residential dwellings above.

The commercial component will comprise some 5,472m² of floor space which includes 2 storey retail spaces and a cinema complex containing 5 screens and 600 seats.

The residential component will comprise 19 x 1-Bedroom, 24 x 2-Bedroom and 31 x 3-Bedroom dwellings (total 74 dwellings).

A pedestrian site-through link would be provided from Cross Street to the Galbraith walkway and which also link a narrow laneway to Transvaal Avenue located to the rear of the site. Forming part of this link will be a new open space landscaped area to the rear of the. The landscaped area will also form part of a covered outdoor seating area that will be attached to the retail component of the development.

The existing 2 x level basement carpark, which is currently accessed via a right-of-way through the Georges Centre at No.45 Cross Street, will be modified to accommodate 154 car parking spaces and

ancillary storage area. These modifications will entail the introduction of additional structural columns to support the new loads for the development above, new fire stairs and minor variation of internal walls to facilitate improved vehicular and lift access, storage area as well as garbage storage facilities.

We recommend that consent be granted only for the building construction and use of the residential apartments and that the use and operation of the retail and cinema components are the subject of separate development applications (see **Condition A5**). This will allow the consent authority to consider and impose appropriate conditions on the operation of the retail spaces and cinemas once all details of their proposed operation are known. It is for this reason we have not included detailed conditions relating to the ongoing operation of the retail and cinemas in section I of the consent conditions.

5. SUMMARY

Reasons for report	Primary Issues	Submissions
To assist the Regional Panel in determining the development application; and, to permit the Council to make a submission to the Regional Panel.	<ul style="list-style-type: none"> • Height • Floor Space • Design • Public Interest • Non-compliance with Council controls • Impacts on public and private amenity • Car parking • Visual Impact 	<ul style="list-style-type: none"> • 183 submissions <i>supporting</i> the development • 166 submissions <i>opposed</i> to the development • Two petitions containing 914 signatories <i>supporting</i> the development • 9 submissions supporting part but opposing other parts of the development

6. ESTIMATED COST OF WORKS

Napier & Blakeley Pty Ltd Registered Quantity Surveyors have provided a detailed cost report of the original development which has an assessment value of \$67,705,000 inclusive of GST.

7. DESCRIPTION OF SITE OF LOCALITY



<p>Physical features</p>	<p>The site is located on the northern side of Cross Street, Double Bay, one property removed to the west of the Transvaal Avenue intersection.</p> <p>The site has an area of 3675m², a frontage to Cross Street of approximately 52m, an average depth of approximately 65m and a rear boundary width of approximately 63m.</p> <p>The site is afforded with multiple pedestrian links in the form of right-of-ways at ground floor level. To its eastern side there are 2 links between Nos.8 & 10 and Nos.16 & 18 Transvaal Avenue. To the north is a pedestrian link over the partly Council owned Galbraith walkway which links through to William Street. To the west is a pedestrian link through the Georges Centre which is currently closed off.</p> <p>Vehicular access to the existing basement car park is afforded to the west via a right-of-way through the basement level of the adjoining property at No.45 Cross Street, known as the Georges Centre.</p>
<p>Topography</p>	<p>The site is relatively level with a difference in height of approximately 800mm from front to back.</p> <p>The site is devoid of landscaping due to the existing built form however there are 2 significant and established street trees (Figs) immediately in front of the site on Cross Street.</p>
<p>Existing buildings and structures</p>	<p>On the site is an existing 7-storey building with an existing approved use as a Hotel which currently caters for special/private functions. To Cross Street is a porte-cochere which leads into the reception area of the Hotel that leads up to the function rooms/restaurant/bars at first floor level and also to the suites above.</p> <p>There is public access provided to the eastern side of the Cross Street frontage which leads through to an enclosed circular retail mall that is not currently in use. This mall is provided with pedestrian links through to the Georges Centre on its western side as well as to the Galbraith walkway and Transvaal Avenue links on its north and east sides respectively.</p> <p>The existing commercial component of the building, including the function/dining/restaurant uses of the hotel, is of rectangular configuration which terminates with a parapet building form, appearing as a podium level 3 storeys in height. The hotel suites are above and setback from the podium base and are of rectangular configuration with a central open court. The hotel suites also terminate in a parapet form 4 storeys in height above the podium base. From Cross Street, the podium level is some 10metres in height and the upper parapet level to the hotel suites is some 22.08metres in height measured from footpath level.</p> <p>The podium base of the existing building is constructed to its east and west boundaries, setback approximately 3metres from the Cross Street boundary and between 1.8-2m from the rear northern boundary.</p> <p>The suites above are setback approximately 12m from the Cross Street boundary. To the rear, the suites have a splayed setback from the northern boundary ranging between 2.5m to 13m from its western to eastern end respectively. The suites are also diagonally splayed from its east and west boundary ranging up to 5m from its eastern side and up to 8metres on its western side.</p> <p>The roof comprises a mixture of structures and levels and includes lift over-run (highest point at 29.43m), plant rooms, fire stairs, gym and a swimming pool.</p>
<p>Environment</p>	<p>The subject site forms part of the northern edge of the Double Bay Commercial centre. Immediately adjoining the northern boundary is a residential precinct of medium density development zoned 2(b) under the WLEP1995.</p> <p>The pedestrian link to Galbraith walkway is flanked by a townhouse style development on its western side and residential flat building on its eastern side, being 2 and 4 storeys in height respectively. To the west of the 2-storey townhouse development, adjoining the western end of the northern boundary, are the rear private open spaces of single dwellings with frontages to William Street.</p> <p>Immediately adjoining the northern end of the eastern boundary is the rear of single storey federation cottages with frontages to Transvaal Avenue which form part of a Heritage Conservation Area. Immediately adjoining the southern end of the eastern boundary is a 2-storey commercial development with an open style plaza that occupies the Cross Street and Transvaal Avenue corner. This</p>

	<p>development is constructed to its western boundary and immediately adjoins the subject site.</p> <p>Immediately adjoining the western boundary is a mixed use development, 6 storeys in height, comprising of retail at ground level with a mezzanine level over. A pedestrian link through to the subject development site is provided through the ground floor retail level on its eastern side which is currently closed off. Above the commercial component of this adjoining development are residential dwellings. A communal open space is provided to the rear of the complex which includes a swimming pool. A shared driveway on the western side of the Cross Street frontage of this development provides access to a basement carpark level that also provides a right-of-way for vehicles through to the subject sites basement carpark levels.</p> <p>Double Bay is sited on the southern edge of Sydney Harbour. The surrounding area is relatively level and sits at the base of a large natural amphitheatre which leads up to the ridges of Darling Point, Edgecliff and Bellevue Hill. The immediate area is characterised by development ranging in height between 1-7 storeys with a variety of uses such as residential, commercial, retail, offices, schools and places of public entertainment.</p>
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8. PROPERTY HISTORY

Current use	The building on the site has an approved use as a Hotel including retail and office tenancies at ground floor level.
Previous relevant applications	<p><i>Development Application No.88/176</i> was approved on 28 November 1988 for the building that currently occupies the site. Of pertinence is Condition Nos.2 & 40 which requires the provision of 223 car parking spaces on site. Due to the physical constraints of the site to provide the required parking spaces a monetary contribution was paid to Council in lieu of the provision of 50 car parking spaces.</p> <p>The existing built form which currently occupies the site has remained relatively unchanged since the original approval. There have been numerous applications for minor alterations to the existing built form as well as for the fitout and change of use to various tenancies to the retail component at ground floor level. These applications are irrelevant to the scope of the development that is the subject of this report.</p> <p>Since this original approval, the site was the subject of a development application made by Ashington Management Pty Ltd to which the provisions of Part 3A (Major infrastructure and other projects) of the Environmental Planning and Assessment Act 1979 applied. The application was lodged with the Department of Planning (Reference: MP08_100) which proposed demolition of the existing building to ground floor level, retention and reconfiguration of the existing basement carpark and construction of a mixed use development consisting of a 3-5 storey podium level with a 6 storey tower in the north-west corner, a 14 storey tower plus plant level above in the south-west corner and a 11 storey tower plus plant level above in the south-east corner that fronted Cross Street.</p> <p>Council's submission to the Minister, who was the consent authority for the development, concluded as follows:</p> <p><i>The Ashington development proposal is not in the public interest and must be refused. The proposal, in its building bulk and height, is grossly excessive and overwhelmingly inconsistent with the permitted height in the Double Bay Centre. Furthermore the proposal does not comply with the spirit or intent of the local planning controls. Community feedback during exhibition of the proposal overwhelmingly indicates public opposition to the development. This public opinion only serves to reinforce the community vision to preserve the Centre and its village character. The development proposal seeks substantial private gains at the expense of other private lands, the public domain and the broader public interest. It is a significantly compromised development outcome for the Double Centre that, if approved, will have a long term detrimental impact on the character of the Centre and public amenity within and surrounding Double Bay.</i></p> <p>The Minister refused the application on 28 September 2009 for the following reasons</p> <ol style="list-style-type: none"> <i>The height, bulk and scale of the tower elements are incompatible with the character of the Double Bay Centre. The tower elements will dominate the immediate surrounds and will contribute negatively to the immediate and local context of the Double Bay Centre.</i> <i>The tower elements will result in unacceptable visual impact in terms of height and bulk.</i>

	<p>3. <i>The proposal will have an unacceptable impact on the amenity of the adjoining properties, particularly on the northern boundary of the site. The proposal will create unacceptable amenity impacts in relation to noise and privacy.</i></p> <p>4. <i>The proposal will create an unacceptable impact on the Transvaal Heritage Conservation Area as identified in the Woollahra Local Environmental Plan 1995.</i></p> <p>5. <i>The proposal does not satisfactorily justify the inconsistencies with the floor space ratio and height controls identified in the Woollahra Local Environmental Plan 1995 and Woollahra Double Bay Centre DCP 2002.</i></p> <p>6. <i>The proposal is not in the public interest. The impacts of the tower elements on the character of the locality are not outweighed by any potential public benefit resulting from the piazza and public domain improvements (including pedestrian linkages).</i></p> <p>There are no other relevant applications pertinent to the assessment of the subject application.</p>
Pre-DA	There was no Pre-Development Application lodged with Council although there were several meetings held with staff to discuss the subject proposal prior to submission.
Requests for additional information	<p>15.12.2010 – Request for Additional Information letter requiring: Gross Floor area calculations, Coloured plans showing changes to basement levels, Flooding Study and Construction Management Plan</p> <p>20.09.2011 – Request for Arborists Report</p> <p>20.10.2011 – Request for updated Shadow Diagrams, Revised Floor Space Ratio calculations, Hydraulic details</p> <p>01.11.2011 – Request to update Waste Management Plan</p> <p>09.11.2011 – Request for privacy screening/treatment details</p> <p>11.11.2011 – Request for updated architectural plans with increased setback to Cross Street</p>
Amended plans/ Replacement Application	<p>Replacement Application I was lodged with Council on 29 July 2011 which modified the development to include the Cinema Complex and reduction in composition of dwellings.</p> <p>Replacement Application II was lodged on 19 October 2011 which provided further design refinements including increase in setback of the development from Cross Street so that the building takes on a stepped format.</p> <p>Replacement Application III was lodged on 23 November 2011 which amended the design by providing increased setbacks to Levels 5 – 9 from Cross Street in order to ensure solar access to the south side of Cross Street is provided in accordance with the criteria prescribed by the Double Bay DCP. The submission included details of privacy screens for fenestration. There have been various changes to the detailing of the drawings with the completed set being the basis of which this assessment report refers.</p>
Court Appeals	No appeal has been lodged.

9. REFERRALS

9.1 The following table contains particulars of internal referrals.

Referral Officer	Comment	Annexure
Urban Design	Satisfactory	2
Development Engineer + Traffic Engineer	Approval, subject to conditions	3
Heritage Officer	<i>Unsatisfactory</i> (refer to comment below)	4
Fire Safety Officer	Approval, subject to conditions	5
Environmental Health Officer	Approval, subject to conditions	6
Trees & Landscaping	Approval, subject to conditions	7

Council's Heritage Officer considers that the proposal is unsatisfactory because it will have a negative impact on the Transvaal Avenue Heritage Conservation Area. However, our planning assessment concludes that the negative impact of the proposed building will be much the same as the impact of the existing building. This is because the differences in scale and relationships

between the small scaled semi-detached houses in Transvaal Avenue and development on the subject site will be similar to the existing building.

9.2 The following table contains particulars of external referrals.

External Referral Body	Reason for referral	Comment
New South Wales Police Force	For comment under the Memorandum of Understanding – Crime Prevention Through Environmental Design (CPTED)	Approval subject to appropriate lighting, signage and plant species to landscaped area (refer to Annexure 8)
Sydney Water	Sydney Water Act 1994	Response only refers to the need for a condition requiring s73 Certificate being obtained (see Condition C.9 and Annexure 9)

The NSW Police Force commentary recommends the adaptation of signage and lighting to the pedestrian links. These links do not form part of the proposed development.

9.3 Urban Design commentary

The NSW Public Works Government Architect's Office was engaged to provide expert commentary on the original proposal. The conclusions reached indicate that the original proposal would require design refinements prior to any approval (**refer Annexure 11**).

In response, Replacement Application I of 29/07/2011 was submitted altering the design of the original proposal which now included the extended retail space and cinema complex and reduction to dwelling numbers. The NSW Public Works Government Architect's Office was once again requested to provide a peer review of the amended scheme. Unfortunately, work constraints limited the availability of the Government Architect to provide further comments at the time.

Council staff subsequently engaged Dr Stephen Collier of Stephen Collier Architects to provide a peer review of the development as amended. Dr Stephen Collier's commentary is attached as **Annexure 10**.

The conclusion reached in the report is provided as follows:

The lower levels of the project are well designed and provide a significant public addition to the Centre...However, the proposal will negatively impact on the centre and the wider context. The proposal could go a long way to satisfying the intent of the DCP if changes were made and include:

- *Reduction in overall building height of between 2-3 storeys*
- *Reduction in floor area of Levels 4-8 to reduce bulk of the deepest residential component*
- *Reduce overshadowing of Cross Street*
- *Provide a more unified and consistent design approach to all 3 components of the building*

Replacement Application II was submitted to Council which refined the design to accommodate some of the concerns raised by Dr Collier. These additional design refinements include an increased setback of the upper floors from Cross Street (Levels 5 – 8) and screening treatment of fenestration and balconies.

In response to Dr Collier's recommended design changes listed above, the following comments are provided:

- *Reduction in overall building height of between 2-3 storeys*

The reason for the recommended reduction in height relates to the scale and bulk of the development as seen from the public domain as well as the need for solar access to Cross Street. A detailed assessment of the height of the development is provided under the relevant heads of consideration below having regard to the relevant objectives of the height and envelope controls and conclude that the amended design will satisfy the intent of Council's height and envelope controls. This is because the amended design, with increased setbacks from Cross Street will provide adequate solar access to Cross Street and because the increased setbacks reduce the apparent bulk and visual impact of the building.

- *Reduction in floor area of Levels 4-8 to reduce bulk of the deepest residential component*

The reduction in floor areas on the upper levels is primarily to improve the amenity of the subject dwellings and for those dwellings adjoining. The amended design has reduced the depth of the floor areas of the upper levels. The dwellings would comply with the requirements of SEPP 65 which is the design code for Residential Flat buildings. Furthermore, more than 80% of the dwellings within the complex will have cross-ventilation and/or have access to northern sunlight. Every dwelling within the complex will be provided with excellent amenity and an outlook over open space, the harbour and/or the commercial centre.

The architectural amendments include screening devices to the residential dwellings that will ensure there will be no detrimental impact on the acoustic and visual privacy of the subject or adjoining residents (further consideration provided under the relevant heads of consideration below)

- *Reduce overshadowing of Cross Street*

The increased setback to the upper residential levels to Cross Street would ensure solar access to the southern side of Cross Street would comply with the criteria prescribed by the Double Bay Centre DCP.

- *Provide a more unified and consistent design approach to all 3 components of the building*

The Double Bay Centre DCP contains one design principle for the architectural resolution of development. This is "*to promote high architectural design throughout the Double Bay Centre to create a desirable and memorable environment.*" The view presented that the architectural resolution and finishes of the design should be altered is subjective. The architectural expression of the proposed development, in our opinion, will satisfy the above stated design principle.

A complete assessment of the proposal against the relevant planning controls and objectives is provided below under the relevant heads of considerations.

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:

10. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

10.1 SEPPs

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The development application was accompanied by BASIX Certificate Nos. 345349M_04 committing to environmental sustainability measures. These requirements can be imposed by standard conditions prescribed by clause 97A of the *Environmental Planning & Assessment Regulation 2000*.

State Environmental Planning Policy No. 55

Under clause 7 (1) (a) of State Environmental Planning Policy No. 55 – Remediation of Land, consideration has been given as to whether the land is contaminated. An assessment of the *Initial site evaluation* provided by the applicant indicates the land does not require further consideration under clause 7 (1) (b) and (c) of SEPP 55.

State Environmental Planning Policy No.65

SEPP 65 applies to all new residential flat buildings which comprise 3 or more storeys and 4 or more self-contained dwellings and therefore applies to this development.

The DA was accompanied by a design verification statement prepared by a qualified designer, as required by the EPA Regulations cl.50(1A).

The instrument requires the proposal be referred to a Design Review Panel. However, this panel has not been established for the Woollahra area. Notwithstanding this, the instrument requires the assessment of the subject development application against the 10 design quality principles contained in Part 2 and against the considerations contained in the publication "Residential Flat Design Code". Council's Urban Design Planner has provided comments in relation to SEPP 65 (see **Annexure 2**). An assessment against the 10 design quality principles is also provided as follows:

- ***Principle 1: Context***

Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area. Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.

The northern side of Cross Street contains buildings which are predominately of larger scale, coarsely modelled and articulated. The subject site and its surrounds are in a transitional state with regard to the envelope controls prescribed by the Double Bay Development Control Plan (DCP). The existing and recently developed sites immediately to the west of the site and the undeveloped site immediately to its east provide a varied context.

The proposed development achieves a prominent built form to Cross Street in line with the envelope controls and the envisaged future character objectives outlined in the DCP. The proposed

built form to Cross Street would allow for the future development of the site adjoining to it east in order to provide a unified street front presentation.

The proposal will provide an active commercial frontage at the lower levels with residential accommodation above to achieve Council's vision for Double Bay as set out in Part 1.2 of the Double Bay DCP being *"a vibrant centre that offers a unique living, working and shopping experience within a pedestrian friendly and attractive urban environment."*

The northern façade to the rear of the site will primarily contain two winged elements with a central open landscaped space, which forms part of a green wall design. The residential accommodation, stepping back from the north and south, will provide an appropriate transition with the residential precinct immediately adjoining to the north.

The proposal would respond to its site context and satisfies this principle.

- **Principle 2: Scale**

Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings. Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.

The Double Bay commercial centre varies in scale from the single storey semis in Transvaal Avenue to much higher scaled development on the northern side of Cross Street and to the 6 storey Cosmopolitan Centre in Knox Street. The existing building also has a substantial impact on the scale of the centre and should not be disregarded in understanding context and scale.

The proposed development would have a similar scale and bulk to the building which it will replace. The upper levels of the building would be setback from Cross Street which would assist in reducing the perceived scale of the building particularly as it presents to the streetfront.

The proposed design is consistent with the intent of the envelope controls of the Double Bay DCP insofar as it has a street wall design set back from Cross Street and two wings to the rear. The rear wing design maximises natural light, ventilation and views to the residential apartments. Also, the building has been designed so that the site adjoining to the east may be developed in the future in a manner which is consistent with the Double Bay DCP.

The development will remove a considerable amount of scale and bulk to its rear. The development will be divided into two wings with a centrally located landscaped courtyard. The green wall design to its base levels and landscaped treatment of the facades will assist in softening the scale of the development. The landscaped open space also provides an appropriate transition to the residential precinct immediately adjoining.

The side elevations will be provided with a variety of external finishes and stepped at the upper levels. The architectural treatment will be highly articulated and will assist in reducing its perceived scale. The proposed development provides more articulation than the existing building.

The proposal would satisfy this principle.

- **Principal 3: Built Form**

Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

The proposal will be consistent with the intent of the envelope controls prescribed by the DCP up to level 5 ensuring a street wall presentation with an active retail frontage. Above level 5 the building will be setback from the primary compliant building form to Cross Street and will continue to recess at each level above thereby minimising the building's form as viewed in its immediate context.

To its northern side the building presents as a podium base at its lower levels with a centrally located landscaped open space dividing the buildings form. The design incorporates green walls to the base levels and planters on the upper levels. The combination of these elements provides a green setting and responds positively to the residential precinct immediately adjoining.

Both side elevations although located close to their respective boundaries would either be screened by existing development or provided with a high level of articulation.

The proposal would satisfy this principle.

- **Principle 4: Density**

Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents).

Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality

The floor space of the proposed development will be less than the existing development. The proposed development responds to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.

The layout and design of the dwellings would be afforded with good amenity and provided with an outlook towards the Sydney Harbor and/or over Cross Street, adequate car parking and ease of access to a local urban village.

The proposal would satisfy this principle.

- **Principle 5: Resource, energy and water efficiency**

Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction. Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.

The development, and in particular the dwellings, would satisfy the relevant requirements of SEPP 65 with regard to good design principles. The development was accompanied by a BASIX Certificate to meet the NSW Government's requirements for sustainability with regard to water, thermal comfort and energy. The dwellings will be provided with good ventilation, solar access, outlook, views and access to open space.

Balconies will be of sufficient size to provide high quality private outdoor living areas.

The development proposes organic recycling of refuse to assist in upkeep of the proposed landscaping of the site.

The basement car park would include storage area for bicycles to cater for the residential component of the development.

The proposal will satisfy this principle.

• **Principle 6: Landscape**

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.

Landscape design builds on the existing site's natural and cultural features in responsible and creative ways. It enhances the development's natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character.

Landscape design should optimise useability, privacy and social opportunity, equitable access and respect for neighbours' amenity, and provide for practical establishment and long term management.

The existing basement car park covers virtually the entire site and will be retained, limiting the opportunity for deep soil landscaping. Notwithstanding this, the existing street trees fronting Cross Street and the centrally located landscaped open space to the rear, with direct access to northern sunlight, provides a vastly improved landscaped setting for the site over what presently exists.

The planters provided to the north facing dwellings, the green wall design to the base levels and the centrally located landscaped open space provides a functional and sustainable green setting for the development.

This landscaped setting would provide benefit to the amenity of the subject residents with regard to usability, privacy and aesthetics as well as respecting the neighbours' amenity.

The proposal is a good design with regard to this principle.

• **Principle 7: Amenity**

Good design provides amenity through the physical, spatial and environmental quality of a development.

Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.

The composition of dwellings and layout provides a varied amenity for the subject residents. North facing dwellings would be larger in scale and provided with direct sunlight and outlook towards Sydney Harbour. South facing dwellings would vary in size from single up to 3 bedrooms and would form part of the village setting of the commercial centre.

Each dwelling would be provided with good amenity with regard to room dimensions and shapes, parking spaces, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, access to service areas and outlook.

Lift access would be provided to each dwelling from both basement car park levels and from the ground floor lobby which would cater for all age groups and degrees of mobility.

The proposal is a good design with regard to this principle.

- **Principle 8: Safety and security**

Good design optimises safety and security, both internal to the development and for the public domain.

This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.

The residential component would allow overlooking of all the communal open space areas, pedestrian links and over Cross Street. The proposed design would provide a reasonable level of passive surveillance, safety and security for the residents and for the public.

The proposal would satisfy this principle.

- **Principle 9: Social dimensions and housing affordability**

Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities.

New developments should optimise provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.

New developments should address housing affordability by optimising the provision of economic housing choices and providing a mix of housing types to cater for different budgets and housing needs.

The composition of dwelling types within the complex varies and would cater for different budgets and housing needs, albeit at the upper end of the housing market.

The number of dwellings proposed would assist with Council's requirement to provide additional housing stock in its area.

In addition, the proposed cinema complex and associated retail uses are likely to provide for increased opportunities for social interaction within the centre. This is a very positive aspect of the proposed development.

The proposal would satisfy this principle.

- **Principle 10: Aesthetics**

Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.

Council's Urban Design Planner commented on this principle as follows:

"The development is designed with a high regard to contextual fit. The building does not attempt to make a strong statement, avoiding high visibility and opting to hide bulk as far as possible. The building's design is a relatively restrained, blending symmetry with the site's contextual constraints.

The façade design is successful in breaking down the perceived impact from the street. The street wall responds appropriately to the street facade of the adjacent building to the west and the desired future character of the site to the East.

The four upper levels are then setback and split into two forms breaking up the bulk of the form. Although the building bulk is clearly greater than that visualised in the desired future character of the street the massing of the proposed built form respects and integrates with this character.

The northern elevation, facing residential properties in the adjacent 2(b) zoning, steps back above the solid green wall base, and is softened by cascading planting. The diagonal public path through the building is carefully scaled and planned.

The design is generally convincing and appropriate."

The proposal would satisfy this principle.

- **Residential Flat Design Code**

This code provides clarification and further detail for the design of a residential flat building having regard to the 10 Design Principles outlined in SEPP 65, which was assessed above.

The proposal would satisfy the relevant considerations contained in the publication "Residential Flat Design Code", which draws on parallels with SEPP 65.

10.2 REPs

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The development is located on a relatively level and flat site that is partially obscured from the waterway and the foreshores by existing development and landscaping. The subject site is not a land/water interface development but notwithstanding, Division 2 of the SREP prescribes matters for consideration for interrelationship of waterway and foreshore uses as well as maintenance, protection and enhancement of views.

The subject development would not extend above the surrounding hills of the locality as seen from the harbour, thereby forming a part of the urban landscape as seen in context to its backdrop. Within the visual catchment from the harbour there are other developments of equal or higher built form

than the subject development. These other built forms include multi-storey developments along New South Head Road, Edgecliff, Darling Point and Double Bay that extend well above the height of the proposed building as seen from the Harbour. In this regard, the development would not be an anomaly within its urban context but rather another variable building form related to this established built environment.

The proposal would have no detrimental impact on wetlands or cause pollution or siltation of the waterway. It would not detrimentally impact on existing vegetation or drainage patterns and would not obstruct vistas of the waterway from the public domain.

The proposal would therefore satisfy the relevant criteria prescribed by the SREP.

10.3 Other relevant legislation

None relevant.

11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

Statutory Compliance Table

Site Area: 3675m ²	Existing A	shington	Proposed	Control	Complies
Site Area (m ²)	>930	>930	>930	930	YES
Lot Frontage (m)	>21	>21	>21	21	YES
Floor Space Ratio (m ²)	5.32:1 (19,545)*	5.36:1 (19,698)	4.95:1 (18,193)	2.5:1 (9,188)	NO

* Calculation based on details provided by Ashington's Surveyor and confirmed (other than a 214m² discrepancy based on scaled measurements) by Council staff.

NOTE: All the floor space ratios have been calculated according to the current applicable GFA definition prescribed by Schedule 1 of WLEP 1995.

11.1 Aims and objectives of WLEP 1995 and zone (Clause 8(5))

The proposed development would be permissible within the zone and was found to satisfy the aims and objectives prescribed for the zone. The development was also assessed against the relevant objectives of the Plan and was also found to satisfy the relevant objectives of the plan.

11.2 Site area and frontage requirements (Clause 10B)

The proposal would comply with the minimum Site Area and Frontage development standards and would satisfy the relevant objectives of those standards.

11.3 Floor space ratio (Clause 11)

The existing building, originally known as the Ritz Carlton Hotel and later the Stamford Plaza Hotel, was approved under the provisions of Woollahra Local Environmental Plan No.25. Part I Clause 6 of that Plan adopted the Environmental Planning and Assessment Model Provisions 1980 which provided the definition of floor space, as follows:

“Means the sum of all areas of each floor of the building excluding where the area is taken to be the area within the outer face of the external enclosing walls as measured at a height of 1400mm above each floor excluding:

1. *Columns, Fin walls, sun control devices, and any elements, projections or works outside the building*
2. *Lift towers, cooling towers, machinery and plant rooms and ancillary storage spaces and vertical air-conditioning ducts*
3. *Car parking needed to meet the requirements of the Council and any internal access thereto*
4. *Space needed for loading and unloading of goods”*

The definition of floor space under the Model Provisions no longer applies to the subject site as the provisions have been superseded by Council’s Local Environmental Plan 1995, which has its own definition of Gross Floor Area as follows:

- “In relation to a building, means the sum of the areas of each level of the building, including:*
- (a) the thickness of all external walls, and*
 - (b) the area of voids, staircases and lift shafts, counted at each level, and*
 - (c) that part of the area of balconies and verandahs which is in excess of 20m² per dwelling in the case of a building used or intended for use for residential purposes, or in excess of 10% of the site area in the case of a building used or intended for use for non-residential purposes, and*
 - (d) any other areas of the building where the height of those areas exceeds 1.5 metres aboveground level,*
- and excluding:*
- (e) car parking to meet the requirements of the Council and any access to the car park, and*
 - (f) any area used or intended for use as a car parking station, and*
 - (g) uncovered roof terraces, and*
 - (h) any area used or intended for use as an arcade”*

The relevant difference between the two definitions is that the area of voids, such as created by the large ballroom over two levels within the existing building is not included in the Model Provisions definition but is included within the WLEP 1995 definition. This explains why the floor space calculation of the existing building is less if calculated under the Model Provisions definition.

For the sake of consistency, the gross floor area of the existing and proposed buildings has been calculated according to the current applicable definition prescribed by Schedule 1 of WLEP 1995.

The difference between the existing GFA and the proposed GFA, as calculated under the WLEP 1995 is an overall reduction of 1,352m².

Clause 11(5) of the LEP indicates that Council may, for the purpose of determining floor space ratio, exclude the GFA for that part of the building intended to be used as a small professional theatre. Due to the specific descriptive wording used in relation to this Clause, the GFA exclusion would not apply to the cinema component of the development.

Nevertheless, the proposed development would exceed the maximum floor space ratio as prescribed by the LEP. In response, the applicant has submitted a State Environmental Planning Policy No.1 Objection to seek variation of the development standard which is attached as **Annexure 12**.

In relation to the SEPP 1 Objection submitted, the following assessment applies the principles arising from *Hooker Corporation Pty Limited v Hornsby Shire Council* (NSWLEC, 2 June 1986, unreported) by using the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46 (6 April 2001) whilst having regard to the criteria in assessing the SEPP 1 objection as outlined in *Wehbe v Pittwater Council* (2007).

The SEPP 1 Objection is assessed as follows:

i. *Is the planning control in question a development standard?*

The maximum floor space ratio is a development standard under Clause 11 of WLEP 1995.

ii. *What is the underlying purpose of the standard?*

The objectives of the maximum floor space ratio development standard in Woollahra LEP 1995 are as follows:

- a) *To set the maximum density for new development,*
 - b) *To control building density, bulk and scale in all residential and commercial localities in the area in order to achieve the desired future character objectives of those localities,*
 - c) *To minimise adverse environmental effect on the use of enjoyment, or both, of adjoining properties, and*
 - d) *To relate new development to the existing character of surrounding built and natural environment as viewed from the streetscape, the harbour or any other panoramic viewing point.*
- iii. *Is non-compliance with the development standard consistent with the aims of the Policy, and in particular, would strict compliance with the development standard tend to hinder the attainment of the objectives specified in s.5(a)(i) and (ii) of the EPA Act?***

In *Whebe v Pittwater Council* Preston CJ states that:

“An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

Accordingly, the following assessment considers the objection made by the applicant against the provisions of Clause 11 and whether or not it is established that the objectives of the development standard are achieved irrespective of the non-compliance.

Objective a) seeks to set a maximum density for new development.

The existing development on the site provides a higher floor space yield and a more intensive form of development than what is being proposed.

The commercial centre and surrounding area is capable of accommodating the use of the existing developed site. The site remains well serviced by infrastructure, in terms of schools, transport, employment opportunities and food sources to cater for its existing density.

The proposed mixed residential and commercial use would lessen the intensity of the existing site which has an approved use as a Hotel, without resulting in a detrimental impact on local infrastructure.

In this regard, the objective will be satisfied.

Objective b) prescribes consideration for the bulk, scale and density of the building in relation to the desired future character objectives of those locations. In this instance, the desired future character objectives and envelope controls are prescribed by the Double Bay Centre Development Control Plan 2002 (DCP).

The DCP acknowledges that *amalgamation and redevelopment of some sites along the north side of Cross Street have created buildings of different height and bulk to the predominant building stock.*

The DCP further acknowledged, at the time of its release in 2002, that *some larger hotel developments have occurred recently such as the former Ritz Carlton.*

The DCP acknowledged that the subject site forms a part of a group of buildings along the northern side of Cross Street with a predominately larger mass than what is typically found within the centre.

Objective Part 1.5 (viii) of the DCP states:

- viii. To ensure that new development is compatible with the existing built form, and streetscape and village character.*

In this regard, the height, bulk and scale of the proposed development, which would be similar in scale and bulk to the existing hotel which it would replace, will also be compatible with the height, bulk and scale of existing development on the north side of Cross Street which has been acknowledged as having a different height and bulk to other parts of the centre.

Part 3.2 of the DCP provides key objectives and strategies for the Double Bay Centre. Those pertinent to the consideration of this LEP objective are paraphrased in part as follows:

- (i) *Provide direction and certainty of outcome in relation to built form to ensure:*
- a coherent street scale;*
 - compatibility with existing urban fabric;*
 - a variety of building types;*
 - a high level of environmental amenity.*
- (iii) *Establish building envelopes that define building height and “build to” lines (at lower and upper levels) to provide coherent street definition.”*

The proposed development provides a prominent envelope to Cross Street that is consistent with the intent of the envelope controls. That is, when viewed from in and around Cross Street, the development provides a street wall design, storey height, open pedestrian link and active retail frontage that will be compliant with the relevant DCP controls.

The upper levels have been tiered and will be set back from the prominent street wall presentation up to Level 5. When viewed from in and around the Cross Street frontage, the development will maintain the village character and will provide a coherent street definition satisfying the stated objectives of the DCP.

From Cross Street, the upper levels of the development will be consistent with the setback and height of the only building of similar scale and height immediately adjoining to the west, being No.45 Cross Street. As the height of the proposed building continues to increase above the height of this adjoining building, the setbacks of the uppermost levels will also increase. The proposed setback will ensure the scale and height of the building will be compatible with the existing urban fabric when viewed from in and around its frontage.

The site on the corner of Cross Street and Transvaal Avenue is currently undeveloped with regard to the DCP envelope controls. This under developed site provides direct view from Cross Street of the height and bulk of the existing Hotel and the proposed building. Once this site is developed in accordance with the DCP envelope controls, the height, scale and bulk of the proposed development will be largely screened from view from Cross Street.

The proposed height, scale and bulk of the development would be apparent from the eastern side of Transvaal Avenue. The reason for its visual prominence is due to the restriction of development on Transvaal Avenue and in particular, to the single storey federation cottages which are located in a Heritage Conservation Area. Development of these cottages is limited in height to their ridge line. The massing of the existing building and the massing of the proposed development would have a similar visual contextual relationship as seen from Transvaal Avenue. It can be argued positively that the proposed development provides an improved architectural form to Transvaal Avenue to what presently exists.

The proposed development, which will replace the existing built form, will satisfy the objective of the controls in that it *“is compatible with the existing built form, and streetscape and village character.”*

From the residential precinct to the north and west along William Street and Bay Street respectively, the development would largely be screened by existing development and landscaping so that its scale, bulk and height would not be readable in its entirety. Notwithstanding this, the proposed development would have a similar bulk and scale to the established built form when read in context from this surrounding precinct.

When viewed from the relevant vantage points overlooking Double Bay, the development will be compatible with the existing urban fabric which contains a variety of large scale developments.

The proposed development will satisfy this objective.

In relation to **Objective c)**, the existing Hotel, its use and associated fenestration have resulted in a degree of impact on the amenity of residents of adjoining residential development with regard to privacy, overshadowing, views, scale and bulk.

The proposed use of the development including the cinema component, are permissible uses on the site. Measures can be incorporated by conditions that can limit the hours of operation of the commercial component, limit accessibility to the pedestrian links and limit the hours of use of the retail component and outdoor open courtyard. The limitation in the use of these areas to reasonable hours will minimise any adverse privacy impacts associated with this components of the development.

The upper level residential component would have an acceptable impact on the privacy of the adjoining residential area. This is because the development has incorporated screening devices to the windows and planters to the balconies to mitigate aural and visual privacy implications associated with its use. The privacy impacts are also mitigated by separation distances from adjoining properties.

There will be some inevitable overshadowing of adjoining properties as a result of the increase in height of the development over what presently exists. Notwithstanding this, the site's position and its relationship to adjoining sites will ensure solar access to the private open space and/or windows of habitable living areas of adjoining residential properties will be maintained for a period of at least 4 hours on 22 June between 9am and 3pm, compliant with C2 of 6.6.3 of the DBDCP.

The Double Bay Commercial Centre DCP has no control or criteria for consideration in relation to view loss except for a reference in an objective which is “*to encourage view sharing*”.

A view analysis was undertaken from properties that are located on the ridges of what is considered to be a natural amphitheatre that overlooks Double Bay. The conclusion of the view analysis is that the proposed development, which would have a similar visible form and height to that of the existing building, would not have a detrimental impact on these existing views. It would indeed provide an equitable sharing of views afforded from affected properties (*refer to Section 15.1 of this report titled - Views*).

The existing building is monolithic in its architectural expression. The proposed development, with its articulated architectural form, open landscaped court to the north and green wall setting, assists in reducing the scale and bulk of its built form as perceived from the adjoining residential precinct and will result in an improved architectural and visual presentation.

Subject to conditions, the proposal will minimise the adverse environmental effect on the use or enjoyment of adjoining property and accordingly would satisfy this objective.

Objective d) relates to the impact new development will have on the character of the existing built form and natural environment as viewed from various vantage points.

The northern side of Cross Street has historically contained buildings of larger scale and this is evidenced from the existing streetscape. From the western end of Cross Street, the prominent form of the proposed development will be compatible with the existing built form, being the height and setback of No.45 Cross Street immediately adjoining to the west.

Development to the east of the site on Cross Street is in a transitional period, meaning, it is yet to be developed to its potential in accordance with the relevant envelope controls of the DBDCP. This is particularly applicable to the site immediately adjoining to the east at No.19-27 Cross Street. Once the adjoining site is developed to its potential, the proposed development will ensure a coherent building form will be presented to Cross Street in accordance with the envisaged future character objectives.

Transvaal Avenue is an enclosed street with internalised views. The streetscape is read in its immediate visual context, being the consistent built forms of the cottages, their detailing and the shop displays within. The development would be setback a minimum of 30metres from the primary façade of the cottages. The eastern wall of the existing building is very large compared to the single storey semis and is a very prominent visual backdrop seen within Transvaal Avenue. However, the eastern wall of the proposed building, although higher in parts, is more richly modulated and would be likely to have no greater visual impact than the existing building. The proposed development will not be detrimental to its setting.

From William Street and Bay Street, the development would largely be screened by existing development and landscaping so that its scale, bulk and height are not apparent or readable in context to the existing built form or topography.

From the harbour, only the upper levels of the development would be prominent as the subject site and its surrounds are largely screened by existing development and landscaping. The height of the proposed building will fit into the backdrop of the urban landscape which contains other developments of equal or higher built form. When viewed from the harbour within the context of the backdrop, the multi-storey developments along New South Head Road, Edgecliff, Darling Point and Double Bay extend well above the height of the proposed building. In this regard, the development would not be an anomaly within its urban context but rather another variable building form related to this established built environment.

The only other panoramic viewpoint of the subject development would be from the public and private spaces on the ridges of the natural amphitheatre that surrounds Double Bay. The proposed development when viewed in context to the backdrop would be consistent with the existing urban landscape which contains multi-storey developments along New South Head Road, Darling Point, Edgecliff, and Double Bay.

The proposal would satisfy this objective.

The assessment of the SEPP 1 must also have regard to the objectives specified in S.5(a)(i) and (ii) of the EPA Act, which are as follows:

- 5(a)(i) *To encourage the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
- 5(a)(ii) *To encourage the promotion and co-ordination of the orderly and economic use and development of land.*

If the FSR development standard is strictly enforced, a future building on the subject site would be limited to a gross floor area of 9,188m². Since the gross floor area of the existing building is 19,545m² strict enforcement of the FSR standard requires a reduction of 10,357m² of floor space. Thus, redevelopment of the existing building and its replacement with a building with a FSR of 2.5:1 is unlikely to be economically feasible for an investment perspective.

To strictly enforce the Floor Space development standard would, from an economic perspective, sterilise the re-development of the site and force the retention of the existing built form.

To encourage the re-development of the land in order to provide a social and economic benefit both to the site and to the broader community requires variation of the building form and subsequently the development standard.

Varying the FSR development standard has occurred on other sites in the Double Bay Commercial Centre which had an existing non-compliance. Council approved further expansion of these already developed and non-complying sites in order to provide a social and economic benefit, namely:

- DA306/2006/1: 1 Transvaal Avenue (Existing FSR 2.27:1 Approved FSR 3.09:1)
- DA 135/2009/1: 376-382 New South Head Road (Existing FSR 3.66:1 Approved FSR 3.9:1)

It is concluded that for the reasons prescribed above and by the arguments presented by the applicant, the strict application of the floor space ratio development standard in the circumstances of this case would hinder the attainment of the objectives of the Act.

iv. Is compliance with the standard unreasonable or unnecessary in the circumstances of the case?

Having regard to the objectives of the development standard contained in WLEP, it is considered that strict compliance with this standard is unreasonable and unnecessary in this case because:

- The proposed development would result in a reduction in Gross Floor Area of 1,352m² over the existing building
- The proposal would result in an improved architectural form to what presently exists

- The proposed development would have the potential to reinvigorate the commercial centre both economically and socially by introducing a cinema complex and providing additional accommodation which would cater to a broader demographic
- The proposed development would result in an improved streetscape outcome as it would comply with the envelope controls as perceived from Cross Street
- The removal of the multiple driveways on Cross Street and introduction of an active retail front, awning and open pedestrian link would reactivate the street front thus satisfying the desired future character objectives prescribed for the Commercial Centre
- The scale and bulk of the proposed building would be similar to the existing built form and would not be out of character to the built form of other developments in the vicinity of the site as seen from a broader panoramic viewpoint

v. *Is the objection well founded?*

In view of the above, the objection advanced by the applicant that compliance with the development standard is unreasonable and unnecessary is well founded and it is considered that granting of development consent would be consistent with the aims and objectives of the development standard.

11.4 Other special clauses/development standards

Clause 18 Excavation: There would be no additional excavation of the site. The works would be contained within the perimeter of the existing basement level that would be retained. The new development would be supported by pad footings either on the existing lower level basement slab or directly on the structural supports beneath this existing slab.

The proposal is acceptable in terms of Clause 18.

Clause 19 HFSPA: The proposal is acceptable in terms of Clause 19(2).

Clause 24 Land adjoining public open space: The proposal is acceptable in terms of Clause 24(2).

Clause 25 Water, wastewater and stormwater: The proposal is acceptable in terms of Clause 25(1) and (2).

Clause 25D Acid Sulfate Soils: The proposed works do not require the need for an assessment of acid Sulfate soils under clause 25D of Woollahra LEP 1995 as the proposed additional structural supports for the new development will not require the excavation of any soil on the existing site.

The Geotechnical Engineers Report by Douglas and Partners Pty Ltd provides the methodology for the construction of the structural supports. The supports would be pad footings bearing on the existing lower basement level concrete slab or would be constructed on the existing concrete supports (named barrettes) beneath the existing slab.

Clauses 27 Development in the vicinity of heritage items, heritage item group, heritage conservation areas, archaeological sites or potential archaeological sites: The subject building is not listed on the State Heritage Register, has not been identified as a heritage item, is not a potential heritage item nor is it within the vicinity of a heritage item.

The subject building is not in a heritage conservation area but is adjacent to the Transvaal Avenue Conservation Area which contains a significant group of single storey semi-detached Federation cottages.

Council's Strategic Heritage Officer has provided comments in relation to the proposed development and its relationship with Transvaal Avenue Conservation Area. These comments are attached as **Annexure 4**.

Council's Heritage Officer has raised concern regarding overshadowing of Transvaal Avenue by the development, particularly late in the afternoon which *"could make the conservation area a less desirable place to inhabit and thus degrade its value and character."*

The shadow diagrams submitted indicate that on June 22, being when the sun is at its lowest point during the year, there would be no overshadowing of the existing cottages on Transvaal Avenue between 9am and 3pm other than by their own built form. Furthermore, any built form compliant with the envelope and height controls on the subject site would result in overshadowing of Transvaal Avenue in the late afternoon.

Council's Heritage Officer has raised a further concern regarding the massing of the development and concludes that it should be reduced so as *"..not to exacerbate the dissonant relationship between the subject site's bulk and scale and the adjacent Transvaal Avenue conservation area."*

The massing of the existing building and the massing of the proposed development would have a similar visual relationship as seen from the conservation area. The proposed development provides an improved architectural form to Transvaal Avenue over what presently exists.

The important elements of the cottages on Transvaal Avenue according to the Double Bay Centre DCP, is their *consistency and relative intactness...fine Federation but Gothic style brick and tile construction, stucco details and timber fretwork*. The proposed development, being setback more than 30metres from the nearest cottage facade, would not impact or be visually detrimental to these important character elements and in particular, their fine detailing. The backdrop to these cottages would be no worse than existing.

The proposal is considered acceptable in terms of Clause 27.

12. DRAFT AMENDMENTS TO STATUTORY CONTROLS

None relevant.

13. DEVELOPMENT CONTROL PLANS

13.1 Double Bay Centre Development Control Plan 2002

Compliance Table

Site Area (3675m ²)	Existing Proposed		Control	Complies
Maximum building height levels measured from existing ground level (m)	7 (22.08 – Parapet) (29.43 – Lift)	9 (29.4 – Roof)	5 (16.5)	NO
Built form envelopes (m)*				
Levels 1-2				
- Front setback	3	3	3	YES
- Rear setback	1.9	1.8 & 25	6.5 & 12	NO/YES
Levels 3-5				
- Rear setback (Level 3/4/5)	1.9/1.9/1.9	3.5/3.5/3.5	6.5/9.5/25	NO/NO/NO
- Front setback (Level 3/4)	3	3	3	YES
- Front setback (Level 5)	8.5	5.5	5.3	YES
- Side setbacks				
= East (Level 3/4/5)	0/0/0	1.5/1.5/1.5	3/3/3	NO/NO/NO

Site Area (3675m ²)	Existing Proposed		Control	Complies
= West (Level 3/4/5)	0/0/0	3/3/3 3/3/3		YES/YES/YES
Occupiable Area (m)				
- Levels 1-2 (%)	100%	100%	100%	YES
- Levels 3-5	100%	100%	100%	YES
Levels 3-5 building articulation area				
- East	Up to 40%	Part up to 40%	40%	NO
- West	Up to 40%	Up to 40%	40%	YES
- South	Up to 40%	Up to 40%	40%	YES
Continuous build-to-line to Cross Street (Level 1-4)	<100%	100% 100%		YES
Ground floor active retail frontage (m)	10% (5)	75% (39)	75% (39)	YES
Continuous awning	Not provided	Partly provided	Required	NO
Maximum frontage width for residential access (m)	<20% <20%		20%	YES
Minimum ceiling height (metres)	N/A	2.7	2.7	YES
Maximum building depth for Levels 3-5 in metres or minimum 80% of dwellings provided with cross ventilation	N/A >80%	dwellings	15.6 or more than 80%	YES
Awning height - Minimum to soffit (m)	>3.2	>3.2	3.2	YES
Minimum deep soil landscape area (m ²)	0	0	50%	NO
Minimum soil depth above underground car parking structures (mm)	N/A >500		500	YES
Mature tree requirement planted per 100m ² of deep soil landscaped area	N/A 4		1	YES
Minimum private open space (m ²)				
- Small dwelling	N/A	<8 for 4 dwellings	8	NO
- Medium dwelling		<12 for 2 dwellings	12	NO
- Large dwelling		>16	16	YES
Minimum permissible depth (m)		>1.8	1.8	YES
Hours of solar access to southern footpath of Cross Street between 12pm and 2pm in mid-winter	N/A	Preserve Solar Access	Preserve Solar Access	YES
Hours of solar access to habitable rooms and private open space of adjoining properties between 9am and 3pm in mid-winter	>4 >4		4	YES
Hours of solar access to habitable rooms and private open space of development between 9am and 3pm in mid-winter	N/A	23 of 74 dwellings provided with <3	3	NO
% of Car parking to be provided on-site (Retail and Commercial Development)	0	0	100	NO

* *There are no Built Form Envelope Controls above Level 5 (Levels 6-9 not included)*

Preliminary (Part 1)

The objectives of the DCP are listed in Part 1.5 and are assessed as follows:

- i. *To provide appropriate development control for the future development of Double Bay Centre.*

The proposed development will be an appropriate development when assessed against the relevant controls and their objectives.

- ii. *To retain and enhance through block connections which allow pedestrians to move freely within the Double Bay Centre.*

The introduction of the pedestrian link from Cross Street through to the Galbraith walkway will achieve this objective.

- iii. *To develop the particular qualities of different parts of the Double Bay Centre.*

The proposed development has been designed to be contextually compatible with the built form of development within its immediate context which will satisfy this objective.

- iv. *To encourage a diverse mix of uses in the Double Bay Centre and maintain retail uses at ground level.*

The proposed cinema and retail uses at the lower levels and residential accommodation above will achieve this objective.

- v. *To conserve and enhance the visual and environmental amenity of all buildings and places of heritage significance in the Double Bay Centre.*

The existing building provides a backdrop to the conservation area on Transvaal Avenue which will be replaced with a building of similar scale but with an improved architectural finish and articulation.

- vi. *To ensure a high standard of architectural and landscape design in any new developments within the Double Bay Centre.*

The proposed building demonstrates a high level of architectural design and improved landscaping. The proposal satisfies this objective.

- vii. *To preserve and enhance the diversity of uses in the Double Bay Centre.*

The proposed mixed use would be permissible in the locality and would benefit the commercial centre. The proposed cinema will have significant flow on social and economic benefits.

- viii. *To ensure that new development is compatible with the existing built form, and streetscape and village character.*

For the reasons already set out in this report we conclude that the proposed development will be compatible with the existing built form.

- ix. *To encourage view sharing and individual privacy.*

The proposed development will have a similar scale to the existing building. The proposed development would not obscure views or have unreasonable impacts on privacy.

In order to protect the privacy of adjoining property, the development has incorporated fixed privacy screens to fenestration and provided planters to the edge of balconies in order to minimise the extent of overlooking of private open space.

- x. *To ensure new development is designed to be compatible with the heritage significance of listed heritage items.*

The proposed development will not impact on any heritage items.

xi. To consider the needs of people with access difficulties.

The proposal will be fully accessible to people of all needs and difficulties.

Understanding the context (Part 2)

Double Bay sits at the base of a valley, cradled between the ridges of Darling Point, Edgecliff and Bellevue Hill which forms part of a large natural amphitheatre.

Part 2.3 of the DCP acknowledges that “*amalgamation and redevelopment of some sites along the north side of Cross Street have created buildings of different height and bulk to the predominant building stock.*”

The DCP further acknowledges “*some larger hotel developments have occurred recently such as the former Ritz Carlton*” (subject site).

The proposed development would be contextually compatible with the existing built form.

Urban structure (Part 3)

- ***Key objectives and strategies***

The DCP provides key objectives for consideration which are addressed in part as follows:

3.2.1 Enhance and improve the public domain and the provision of public facilities

The proposed two storey retail and cinemas, together with the proposed two storey arcade and open courtyard, will provide new publicly accessible cultural and retail spaces consistent with this objective.

3.2.2 Ensure the centre maintains its commercial viability and competitive position within the Sydney retail market

It is anticipated that the proposed two storey retail and cinemas will attract a significant number of new visitors to Double Bay. This is likely to have significant positive flow on benefits to the economic prosperity and competitive position of the Double Bay commercial centre within the Sydney retail market.

3.2.3 Develop the particular qualities of different parts of the centre

The proposed development will be similar to the scale of the existing building but it will contribute more to the vitality and life of Cross Street compared to the existing, largely vacant, hotel.

3.2.4 Retain and enhance pedestrian access and amenity in and around the centre

The proposed awning and active retail frontage to Cross Street together with the arcade link to the open space landscaped area which leads onto the Galbraith walkway will assist in achieving this objective.

3.2.5 Improve Double Bay's built form to provide appropriate definition to the public domain

The scale, floor space and volume of the proposed building are no greater than the existing building. However, the floor space and building volume have been reorganised to open up the site, to improve public access and to provide a greater level of amenity for future residents. The new built form will also address and define the public space of Cross Street much more successfully than the existing building.

3.2.6 Promote sustainable design principles and objectives in the development and use of the built environment

The construction of the new mixed use building with residential accommodation above will be designed according to the current sustainable design principles as outlined in the Ecological Sustainable Design Assessment provided by SLR Consulting and Sustainability Report prepared by Howe & Associates.

3.2.7 To preserve and enhance the visual and environmental amenity of all buildings and places of heritage significance in the centre

The massing of the existing building and the massing of the proposed development would have a similar visual relationship as seen from the conservation area. The proposed development provides an improved architectural form to Transvaal Avenue over what presently exists.

Street character (Part 4)

- ***Cross Street***

The strategy for the northern side of Cross Street is to unify the presentation of the built form by incorporating a street wall design.

The proposal incorporates a street wall design up to Level 4 (Level 5 setback), compliant with the intent of the envelope controls prescribed by the DCP.

Built form envelopes: Control drawings (Part 5)

- ***Ground and first floor levels***

The development complies with the intent of the envelope controls with a street wall design to its front and the winged elements to its rear northern side. Although there are numerical discrepancies with the prescribed rear setback control, the DCP does provide building envelope concessions for cultural facilities which include the Cinema. Further discussion is provided below under the heading *Concessions for cultural facilities*.

Levels 3-5

The development conforms with the intent of the envelope controls with a street wall design to its front and residential wings to its rear northern side. There are numerical discrepancies with the DCP controls with regard to the setbacks of these wings from the rear boundary and from the side boundary on its eastern side. Further discussion is provided below in this DCP under the heading *Setbacks*.

Levels 6-9

These levels of the development are outside the permitted envelope control of the DCP.

The following table provides the proposed setbacks of the upper levels from the boundary:

Setbacks (m)	Front (South)	Side (East)	Side (West)	Rear (North)
Level 6	7.5	1.5	3	3.5
Level 7	16	1.5	3	6.5
Level 8	20	1.5	3	6.5
Level 9	24	4-5	3	10

Development controls (Part 6)

- **Use**

The proposed retail and cinema use on the ground and first floor and residential on the upper levels will satisfy the relevant criteria prescribed by the DCP.

- **Building envelopes**

The proposed ground and first floors comply with the intent of the building envelopes with the exception of the rear setback that incorporates a cinema. However, the DCP provides concessions for envelope controls for cultural facilities which would apply to the proposed cinema. Further discussion is provided below in this DCP under the heading *Concessions for cultural facilities*.

To Cross Street, the proposed development up to Level 5 complies with the intent of the envelope control and satisfies the principle of this control which is to provide “*appropriate and consistent building forms built to the street alignment.*”

The development also provides a winged design to its rear northern section in accordance with the envelope controls although the setbacks on its north, east and west sides would be less than those prescribed by the controls. The design of these wings accommodates residential dwellings that will be provided with good amenity in the form of ventilation, views, privacy and access to northern sunlight. More than 80% of the dwellings in the development would be cross-ventilated. The proposed design will ensure Principle P3 of the building envelope controls is satisfied, namely, “*to promote building forms that allow natural daylight, ventilation and privacy between dwellings.*”

The open landscaped north facing courtyard, the arcade link through to the Galbraith walkway, and the double height entry to the arcade and commercial interiors will also ensure the development satisfies the balance of design principles prescribed by the DCP.

- **Height**

The existing building exceeds the height control both in the amount of levels and in lineal measurement.

The proposed building, which essentially replaces the existing built form above ground level, will likewise exceed the height control both in the amount of levels and in lineal measurement.

The principle which underpins this control states: “*Encourage buildings to achieve the heights along the street and lane frontages described by the control drawings.*”

The development proposes a street wall design to Cross Street up to level 4 that complies with the intent of the envelope controls.

The development above level 5 will be setback from its primary street front and continues to recess as its height increases. The effect of this stepped development form ensures that the overall height of the development will not be discernible from footpath level from in and around

the vicinity of the Cross Street frontage. The overall height of the proposed building which will be slightly less than the height of the existing building, albeit a marginal difference and only to a relatively small component of the existing building form being the lift overrun, will only be perceived from a broader perspective.

To the rear of the site, the residential wing design and open central landscaped courtyard provides an improved built form over what presently exists. Therefore the proposed design provides a positive aesthetic transition between the commercial centre and residential precinct immediately adjoining.

The proposed roof form, including part pebbled roof finish, will be an improvement on the existing built structure which comprises a variety of roof top elements including lift overrun, plant rooms, antennae and stairwells.

The proposed height of the building will have no detrimental impact on the amenity of the public or private domain.

- ***Building articulation***

The DCP prescribes that the front of the development may be provided with articulation zones in order “*to achieve high quality architectural resolution, open space that overlooks the street and environmental amenity for the dwellings.*”

The proposal provides an integrated street wall design to Cross Street between Levels 2-4 that would satisfy the intent of this principle.

The western elevation and indented section of the eastern elevation will also be provided with articulation zones that would satisfy the intent of control.

The rear section of the eastern elevation, being the section immediately adjoining the rear of the Transvaal Avenue cottages, would not be compliant with the setback control. However, this elevation will be provided with a highly articulated finish which will satisfy the intent of the design principle.

The proposal will be well articulated and will satisfy the intent of this control.

- ***Setbacks***

The front setback up to level 5 will comply with the build-to-lines prescribed by the DCP envelope controls.

The setback of the upper levels, that is, above level 5, will recess from the compliant built form to Cross Street. This design approach will ensure the street wall design remains the prominent building form to Cross Street and ensures a consistent approach with any future development of adjoining sites. The proposal would result in a coherent streetscape.

Fenestration and balconies will be treated with screening devices to protect the privacy of adjoining residents. The proposal provides an open landscaped courtyard and green wall design that provides a green setting for the residential precinct immediately adjoining to the north.

The upper levels and the rear residential wings of the development, though non-compliant with the relevant setback controls, have been designed to ensure solar access is provided to all residential properties and commercial buildings in accordance with the requirements of the DCP. Furthermore, sufficient solar access is provided to the private and public spaces compliant with the solar access criteria of the DCP.

Further assessment of solar access is provided below in the DCP under the heading *Solar Access*.

- ***Architectural resolution***

For the reasons discussed under the heading State Environmental Planning Policy 65 - Design Principles, the proposal will satisfy the relevant criteria prescribed by the DCP.

- ***Roof design***

The proposal will satisfy the relevant criteria prescribed by the DCP.

- ***Heritage + contributory character***

The proposal will satisfy the relevant criteria prescribed by the DCP for the reasons set out under the heading *Heritage and Conservation Area Provisions*.

- ***Awnings***

The DCP prescribes a continuous awning shall be provided across the frontage to Cross Street.

The proposed awning does not extend across the full frontage but rather will be setback from both side boundaries and removed over the double height arcade entry. Extending the awning over the entry will be detrimental to the setting and connectivity of the entry with the landscaped open space area to the rear of the site. Its exclusion is therefore supported.

The awning should however extend towards the side boundaries to ensure it would marry with any future development on either side of the site which are also required to provide awnings to Cross Street (see **Condition C.1**).

Subject to condition, the proposal will satisfy the relevant criteria prescribed by the DCP.

- ***Arcades, walkways and courtyards***

The proposal satisfies the relevant criteria prescribed by the DCP by way of introducing a pedestrian link from Cross Street through to an open landscaped area which links onto the Galbraith Walkway to the rear.

- ***Outdoor eating***

The proposal satisfies the relevant criteria prescribed by the DCP by virtue of providing outdoor eating areas to the Cross Street frontage both below and above the awning and to part of the landscaped open space.

Notwithstanding, the area for outdoor eating will form a part of the retail use which will be the subject of a separate development application.

- ***Ground floor active lane frontage***

The proposal satisfies the relevant criteria prescribed by the DCP.

- ***Signage and advertising***

The proposed concept for the Cinema and Retail signage as indicated in the photomontages satisfies the principles prescribed by the DCP.

It should be noted that the proposed Cinema and Retail uses are required to be the subject of separate development applications which will include any signage.

- ***Visual privacy***

In relation to visual privacy the proposal is assessed as follows:

Cinema

The proposed cinemas will be contained within the envelope of the building and will not contain any fenestration or openings, other than required emergency exits. The only visual impact would be from the fenestration that services the ticket office and lobby which includes a bar. This fenestration would be located centrally and overlooks the landscaped courtyard which is setback over 24metres from the nearest residential property boundary. The fenestration will be partially screened by the winged elements which will minimise any light spill onto the adjoining residential area. Given the separation distance to adjoining residential property, the landscaping and the extended wings to the rear, there will be no detrimental impact on the visual privacy of adjoining property.

Furthermore, the use and operation of the Cinema will be the subject of a separate development application.

Retail component

The retail component of the development will have access to the open landscaped area located at ground level. Given the separation distance to adjoining residential property and that the retail area will be confined to ground level, there will be no detrimental impact on the visual privacy of adjoining property.

The first floor retail will be provided with fenestration and balconies on the awnings over Cross Street. The balconies will be set back from the boundaries and located one storey below the adjoining residential property. The location of the balconies and fenestration will have no detrimental impact on the visual privacy of adjoining property.

Notwithstanding this, the use and operation of the retail premises will be the subject of a separate development application.

Walkways

The proposed site links are an encouraged form of development which provides pedestrian access to public spaces in and around the centre.

There will be no detrimental impact on the visual privacy of adjoining property from this aspect of the development.

Adjoining residential

Immediately adjoining the eastern side of the development there are currently no private residential properties though a mixed commercial and residential use is permissible and may occur in the future.

All balconies have been provided with planters on their eastern edge and fenestration will be fitted with fixed angled privacy screens which will inhibit sightlines into the open space to the rear of properties that immediately adjoin the eastern boundary. However, there is inconsistency in the application of the screens and the width of the planters to its eastern side. This can be corrected via condition (see **Condition C.1**).

To the northern side of the development the existing hotel has extensive fenestration and balconies to the suites that currently overlook the rear private open space and living areas of the immediately adjoining residential precinct.

The proposed development provides 2 residential wings that will immediately adjoin this residential precinct. Given the elevation of the proposed development, there will be some inevitable overlooking of the rear private open space and living areas of the adjoining residential properties.

In order to protect the privacy of the adjoining residential precinct, planters 1.5m in width have been provided to the northern edge of all immediately adjoining north facing balconies which will inhibit sightlines into the adjoining private open space of residential properties immediately below.

Providing privacy screens to the north facing fenestration will be contrary to sustainable design principles with regard to access to sunlight. The extent of overlooking from the north facing fenestration will not be unreasonable given that residential accommodation is permissible on the subject site. Notwithstanding this, the elevation of the proposed development increases the separation distance and the elevation inhibits sightlines to the adjoining private open space immediately below. Furthermore, the majority of the north facing fenestration, with the exception of those that access the proposed balconies, will be to bedrooms of the dwellings which will have a lesser impact than fenestration to living and entertaining areas of the dwellings.

On the western side of the development is a mixed commercial and residential development. There is a communal open space to its rear which contains a swimming pool. This area is not considered to be private as all the apartments at No.45 Cross Street currently overlook this communal space. Fenestration to the western elevation of the proposed development will be treated with angled privacy screens which will limit the extent of overlooking of this communal space and the private open space of the adjoining dwellings. However, the screens proposed to the west facing fenestration are inconsistent in their application. This can be corrected by condition (see **Condition C.1**).

Level 2 of the development takes advantage of the roof of the commercial component below to provide open space to the apartments on this level. A boundary fence is proposed around its perimeter to 1.8m in height which will provide sufficient visual screening to adjoining property. However, the fence on its western side should be extended towards its northern end to protect the privacy of the adjoining residential apartments (see **Condition C.1**).

The privacy screen to the front west facing balcony on Level 4 is inadequate in protecting the privacy of the adjoining residential apartments. The balcony west of the living area should be non-trafficable as screening devices will negatively impact on the building form to Cross Street (see **Condition C.1**).

Subject residential dwellings

All fenestration and terraces within the subject development will be provided with screening devices, planters and/or orientated so that there will be no direct overlooking of adjoining private open space or habitable living areas within the complex.

Subject to conditions, the proposal will satisfy relevant criteria prescribed by the DCP.

- ***Acoustic privacy***

In relation to acoustic privacy the proposal is assessed as follows:

Cinemas

The proposed cinema complex will be contained within the envelope of the building form and will not contain any fenestration or openings, other than required emergency exits. The

Acoustic Report submitted with the application concludes that subject to the use of appropriate materials in the construction of the cinema there will be no detrimental acoustic impacts associated with its use. Council's Environmental Health Officer has reviewed the Acoustic Report and concurred with its findings. The Acoustic Report forms part of the recommendation (see **Annexure 6 and Condition A.3**).

There will be a degree of inevitable acoustic impacts on the privacy of the residents within the building and those immediately adjoining at No.45 Cross Street associated with patrons leaving the cinema complex, particularly late evenings. The entry/exit of the cinema complex will be located centrally on Cross Street.

The cinema is a permissible use within the commercial centre and will be limited to the ground and first floor levels of the building in line with the DCP controls. The extent of acoustic impact on adjoining residents from this component of the development will not be unreasonable for a permissible use within a commercial centre. Notwithstanding this, car parking for the cinema will be primarily provided on the surrounding streets with the majority catered within the public carpark on Cross Street located to the east. That will result in a large number of patrons exiting the lobby and heading in an easterly direction towards the public carpark, which will minimise acoustic impacts on the adjoining residential apartments to the west.

Furthermore, the operation of the cinema will be the subject of a separate development application and further consideration on the management of the cinema complex including its proposed operation hours.

Retail Component

The retail component of the development will be primarily limited to the ground floor including to part of the centrally located open landscaped area. The proposed retail component of the development is a permissible use in the commercial centre. The acoustic implications associated with this use, with its primary frontage to Cross Street and within the envelope of the building, will not have a detrimental acoustic impact on the privacy of adjoining residents.

Furthermore, the operation of the retail use will be the subject of a separate development application and further consideration on the management of the use including its operation hours and outdoor seating will require further deliberation.

Walkways

The Galbraith Walkway presently provides access through the ground floor of the existing Hotel from 8:00am to 6:00pm Monday to Saturday.

The proposed arcade link to the Galbraith Walkway has drawn concern from residents on William Street regarding potential increase in pedestrian traffic and subsequent acoustic impacts, particularly late in the evening.

Providing unrestricted pedestrian access through the Galbraith Walkway would encourage patrons to use the surrounding road networks in the residential areas for parking. The Galbraith Walkway is flanked with residential dwellings and an increase of pedestrian traffic particularly at night may have adverse amenity impacts.

To minimise the associated acoustic impacts on the surrounding residential area as well limiting car parking within the commercial centre, it is recommended that a security fence be provided to the rear open landscaped area to limit access to the Galbraith Walkway. The access should have similar restrictions to what presently exists with the exception that access be extended to include Sundays (see **Condition C.1 & I.14**).

Adjoining Residential

The elevation of the proposed development will provide separation to adjoining residential areas which will assist in minimising acoustic implications associated with the proposed residential use.

The level of acoustic implications associated with the residential use of the development as opposed to the current commercial use of the site as a hotel will result in an improvement for the adjoining residential precinct. In any event, the residential component of the development is an expected use within this zone.

There would be some inevitable noise associated with the operation of the building from garbage trucks, goods delivery and the like that will impact on the amenity of adjoining residential development. The proposed pedestrian loading area is located to the ground floor western side of the development fronting Cross Street, in a similar location to the existing loading dock of the hotel.

The fenestration of the bedrooms of the adjoining development at No.45 Cross Street will be sufficiently screened by its existing building form and will be sufficiently setback and elevated above the loading area to mitigate any noise impact. The proposed awning will also assist in providing an acoustic screen. Notwithstanding this, the Acoustic Report submitted recommends that deliveries and waste collection be limited to daytime hours to minimise impact on the aural privacy of the adjoining residents (**see Condition I.15**).

Subject to conditions, the proposed development will not have a detrimental impact on the acoustic privacy of adjoining residents.

Subject residential dwellings

All fenestration and balconies within the subject development will be provided with privacy screens, planters or appropriately positioned so that they will provide a reasonable level of acoustic privacy for the residents.

The developer also has the option of installing double glazed fenestration to provide a high standard of acoustic comfort for the bedrooms of the dwellings. Notwithstanding this, the proposed dwellings have been appropriately designed and located having regard to the location of adjoining noise sources.

Subject to conditions, the proposal will satisfy the relevant criteria prescribed by the DCP.

- ***Landscaped open space***

The existing basement level car park will be retained and refurbished to accommodate the new structure above. As such, there is no scope to provide deep soil landscaping on the site. Notwithstanding this, the application proposes a centrally located open courtyard with a planter depth of more than 500mm in order to allow for sustainable planting in accordance with the requirements of the DCP.

The proposed landscape scheme for the site and the existing street trees which define the entry will ensure the development satisfies the relevant principles of this control.

- ***Private open space***

The 4 larger single bedroom dwellings located centrally on the southern side of Levels 2 and 3 and the 2 larger 2 bedroom dwellings located centrally on the northern side on the same levels,

will be provided with insufficient private open space (balconies) according to the requirements of the DCP.

The extent of non-compliance with the control will be relatively minor ($<4\text{m}^2$). Notwithstanding this, the balconies for these dwellings will be provided with an outlook over Cross Street and/or Sydney Harbour and will have a good level of amenity. The proposal will nevertheless satisfy the intent of the design principle which is to “*ensure every dwelling ... has direct access to private open space.*”

The balance of the proposal satisfies the relevant criteria prescribed by the DCP.

- ***Energy efficiency and conservation***

The application has been accompanied by a BASIX Certificate and an ABSA Assessors Certificate ensuring the design of the development, together with its finishes, will satisfy current building legislation for development to be energy efficient.

The proposal will satisfy the relevant objectives of the DCP.

- ***Natural daylight and ventilation***

Over 80% of dwellings will be provided with balconies and fenestration suitably positioned to provide cross-ventilation. The majority of dwellings will likewise be provided with direct access to northern sunlight.

The centrally located single bedroom dwellings between Levels 2-5 will be south facing and have limited fenestration to this elevation. These dwellings will be provided with appropriately sized balconies and fenestration with an outlook over Cross Street. Though they will not be provided with access to direct sunlight, these dwellings will have a good level of amenity and will provide variation of housing stock to appeal to a broader demographic which will also satisfy the principles of SEPP 65.

The balance of the proposal will satisfy the relevant criteria prescribed by the DCP.

- ***Solar access***

The subject development will be located to the south of the adjoining residential precinct and as such, there will be no impact on the solar access to the private open space and habitable living areas of these properties.

Immediately adjoining the eastern boundary is a commercial area that currently contains no residential dwelling and forms the rear of the Transvaal Avenue Heritage Conservation Area. To the rear of these cottages is their open space, which immediately adjoins the subject site. Due to the orientation of the subject and these adjoining sites, any compliant building envelope will impact on the solar access of these existing rear facing open spaces. Notwithstanding this, solar access will be maintained to these open spaces from 9am to 12pm, being 3 hours on June 22. Though non-compliant with the control by 1 hour, the main contributing factor which causes the non-compliance is the orientation of the sites. Further, the actual additional impact on these open spaces will be negligible. Nevertheless, the proposal would satisfy the principle of this control which is *to minimise overshadowing of adjoining properties*.

Immediately adjoining to the west are the dwellings and communal open space of the residential component of the Georges Centre at No.45 Cross Street. All private open spaces and fenestration of these dwellings will be provided with solar access from 11am to 3pm on June 22, which will be compliant with the prescribed controls.

The proposed setback of the upper levels of the development from Cross Street will ensure solar access is provided to the footpath on the southern side of Cross Street from 12pm to 2pm on June 22 in accordance with the requirements of the control.

The proposal will minimise overshadowing of adjoining property and public accessible space, thus satisfying the principles of these controls.

- ***Glazing***

The proposal will satisfy the relevant criteria prescribed by the DCP.

- ***Water conservation***

The Sustainability Report submitted with the application indicates the proposal will be provided with alternate water supplies for reticulation of reclaimed water, rainwater storage and re-use and grey water storage and reuse.

The proposal will satisfy the principles of this control.

- ***Stormwater and pollution minimisation***

The proposal will satisfy the relevant criteria prescribed by the DCP subject to standard conditions.

- ***Waste minimisation***

The Waste Management Plan provides details on the waste management of the site which is detailed below under the heading in this section titled *Site Facilities*.

The proposal will nevertheless satisfy the relevant criteria prescribed by the DCP.

- ***Environmentally sustainable building materials***

The Sustainability Report submitted with the application provides ESD initiatives for the development with recommendations for appropriate materials and finishes to maximise efficiency with regard to heating and ventilation.

The proposal will satisfy the relevant criteria prescribed by the DCP.

- ***Geotechnology and hydrogeology***

The existing basement levels will be maintained. There will be no additional excavation of the existing site other than removal of existing concrete slabs to allow construction of pad footings for the structural supports of the new development above.

The proposal will satisfy the relevant criteria prescribed by the DCP.

- ***Pedestrian access and mobility***

The proposal will satisfy the relevant criteria prescribed by the DCP and will satisfy the accessibility requirements.

- ***On-site parking***

The existing Hotel development was approved with 173 on-site basement car parking spaces. In addition, a condition of consent (Condition No.40) was imposed which required the payment of a contribution under section 94 for a further 50 spaces. The contribution required a payment of \$10,500 per space or a total of \$525,000. This money was paid to the Council in December

1989. It appears that the money was spent on the Anderson Street car park in 1992. Therefore, the existing development is credited with a total of 223 car parking spaces.

The existing basement car park will be retained and altered to accommodate additional structural supports, lift and stair access as well as storage facilities to cater for the proposed development. The modifications will result in a reduction of 19 spaces to the existing car parking spaces allocated to the site. A total of 154 car parking spaces will be provided on the site.

The Double Bay DCP provides that car parking must be provided in accordance with Council's *Development Control Plan for Off-Street Car Parking Provision and Servicing Facilities* (July 1995). However, this plan was repealed by the *Parking Development Control Plan* (PDCP) (March 2011) which came into operation on 23 March 2011. Part 1.6 of the PDCP, being the savings and transitional provisions, provides that the *Development Control Plan for Off-Street Car Parking Provision and Servicing Facilities* (July 1995) continues to apply to development applications made prior to but not determined on the date of commencement of this plan.

The subject development application, although amended after 23 March 2011, was lodged on 10 October 2010, that is, before the commencement of the 2011 PDCP. For this reason the 1995 *Development Control Plan for Off-Street Car Parking Provision and Servicing Facilities* continues to apply.

The Double Bay DCP contains parking rates for the residential components of mixed use developments which are different from the rates which apply under the 1995 and 2011 parking DCPs. However, since the Double Bay DCP was made after the 1995 parking DCP it prevails.

The car parking requirements for the residential component of the development under the Double Bay DCP are calculated as follows:

Residential Parking (mixed use)	Car Parking Generation Rate	Required Spaces
1 Bedroom (19 dwellings)	0.5 spaces per unit	10
2 Bedrooms (24 dwellings)	1 space per unit	24
3 or more Bedrooms (31 dwellings)	1.5 spaces per unit	47
Visitor parking	1 space per 5 units	15
Total (74 dwellings)		96

The proposed basement carpark with 154 car parking spaces will more than accommodate the number of spaces which are required for the residential component of the development.

The car parking requirements for the retail component of the development under the Double Bay DCP are calculated as follows:

Residential Parking (mixed use)	Car Parking Requirement	Required Spaces
Retail Uses Levels 1 and 2	3.5 spaces per 100m2 (GFA)	55

A total of 151 spaces are therefore required for the retail and residential components of the development. These can be satisfactorily accommodated within the basement.

The car parking requirements for the cinemas are calculated under the 1995 Parking DCP as follows:

Cinema Parking	Car Parking Requirement	Required Spaces
Cinema Complex (3,313m ²)	22 spaces per 100m ² (GFA)	729

The requirement is so high because it is based on gross floor area (GFA) which includes large lobby areas, escalators, void spaces, plant rooms, storage areas, administration areas, toilets, bar, service areas, garbage rooms and the floor space of the cinemas is counted twice because they are over two levels. It is clear that this standard is inappropriate because it has no regard to the number of seats or other factors that affect parking requirements. It is therefore necessary to research other authoritative guides to determine a more realistic parking requirement.

However, the *RTA Guide to Traffic Generating Developments* (October 2002) does not contain information which assists in determining an alternative requirement and there is very little information available on the traffic and parking characteristics of cinemas. A report, *Proposed Mixed Use Redevelopment with Cinemas, 33 Cross Street, Double Bay, Assessment of Traffic and Parking Implications* prepared by Transport and Traffic Planning Associates accompanied the development application. This report concludes that the normal peak patronage of the cinemas will be significantly less than 600 and that there will be an average vehicle occupancy for cinema patrons of 2.0 -2.5 persons. The report estimates that the normal peak demand would be some 100 to 150 cars. If these assumptions are correct it indicates that up to 337 people may attend the cinemas by motor vehicle. The report concludes that, "all things considered, it is apparent that the parking outcome in relation to the proposed development scheme will be quite satisfactory particularly when allowance is made for the 'dual use' visitations for the cinema, retail, restaurant and other uses in the Double Bay centre."

Council's Traffic and Development Engineer concludes that the parking shortfall related to the cinema complex is accepted for the following reasons (**see Annexure 3**).

- The Traffic report has noted that some traffic to the venue will comprise of multi-purpose trips whereby the parking demand of either cinema/retail is combined or the retail component overlapping with the existing retail activity in the area.
- It is noted that the retail and cinema component will generally have alternative peak periods of parking demand (retail during the day and cinema during the evening) and therefore the actual parking shortfall at any period is anticipated to be considerably less than the net amount.
- The Traffic report notes that Cross Street car park is capable of accommodating the parking demand. It anecdotally notes that the car park is not fully utilised most of the time. Council's occupancy data for Cross Street carpark indicates that the facility is capable of accommodating an additional 20-50 vehicles on a weekday and up to 150-320 additional vehicles on weekends.

The following table provides a comparison of parking demand and parking availability during weekdays and weekends.

Weekend Parking Demand	No. Provided by Contribution	No. Required	Cross Street Carpark capacity
150 50 100			150-320
Weekday Parking Demand			
100 50		50	20-50

It is apparent from the above table that, if the assumptions of the traffic report are correct, there will be ample parking within the Cross Street car park on weekends to accommodate cinema patrons. There is less capacity on weekdays and it is likely that on some days demand will exceed the available capacity of the Cross Street car park. Nevertheless, there is likely to be adequate parking within the centre to accommodate the likely parking demand.

Details of the allocation of car parking spaces in the basement have not been provided. Having regard to current parking trends and taking an approach to minimise conflict between private and public car parking, particularly to the existing access driveway, it is recommended that the basement car parking spaces be allocated as follows:

- 1 x Bedroom units = 1 space each (total 19)
- 2 x Bedroom units = 1.5 spaces each (total 36)
- 3 x Bedroom units = 2 spaces each (total 62)
- Visitors = 1 space per 5 units (total 15)

That would be a **total of 132 car parking spaces** allocated to the residential component of the development. The balance of remaining car parking spaces, being 22, should be allocated to the staff of the commercial component of the development (**see Condition I.13**). Council's Traffic Engineer supports this approach as providing public parking within the basement would lead to possible parking conflict particularly at the shared entry driveway.

Parking demand will rise during school holidays and during the summer period as there is likely to be increased competition for parking within the centre. However, it would be unreasonable to refuse the application on the basis of a lack of parking for a relatively short duration over holiday periods. Furthermore, the revitalisation of Double Bay is unlikely to occur without some increased traffic and parking demand.

There are parking restrictions in the surrounding residential areas which are limited to 6pm. Should consent be issued for the proposed development, Council's Traffic Engineer has indicated that these parking restrictions may need to be extended by 2 hours, that is, to 8pm, to ensure parking demand is contained within the commercial centre. This issue can be addressed separately post-development, if it is necessary.

Furthermore, the subject site is well accessed with multiple transport options:

- Ferry services operate from Double Bay wharf
- The Edgecliff Bus/Rail Interchange is a main transportation hub within 15min walking distance of the centre
- Buses serve New South Head Road, William Street and Ocean Avenue

Additionally, there are three public parking stations within the commercial centre, being the Cross Street car park, the Cosmopolitan building carpark and the Kioara Lane carpark.

The arrangements for car parking are satisfactory for the following reasons:

- Public car parking in the centre will be able to meet demand because peak cinema usage will mostly occur after business hours
 - Double Bay is served with three public car parks and excellent public transport services
 - The potential for traffic conflict from the existing combined access driveway from the Georges Centre will be reduced as the number of parking spaces allocated to the existing basement level will be reduced
 - Retail, restaurant and cinema trips will overlap, and
 - The basement will be capable of accommodating the parking demand associated with the retail and residential uses.
- ***Vehicular access***
The existing porte-cochere to Cross Street would be removed and replaced with an active retail frontage that will maximise retail frontage and minimise the existing pedestrian and vehicle conflict.

The existing basement carpark, which is to be redesigned to cater for the proposed development, is currently accessed via the existing driveway utilised and forming part of the Georges Centre car park immediately adjoining to the west.

The Traffic Report submitted provides an assessment of the traffic generation rate and vehicle movements from the basement car park. Council's Traffic Engineer has reviewed the findings and concurs that the level of traffic generated, as well as the vehicle movements within the basement car park, will not adversely affect the surrounding road network.

Subject to conditions, the proposal will satisfy the relevant criteria prescribed by the DCP.

- ***Site facilities***
For the development to function the following facilities are required to be provided:

Loading

The proposed development does not provide any truck loading dock or facilities to cater for the commercial component of the development contrary to the requirements of the DCP.

Access to the existing basement area is via a secured driveway provided through the Georges Centre. Providing a truck loading dock on site may be detrimental to pedestrian safety as there would be a potential conflict between pedestrians and vehicles over the footway.

Accessing the site would be inefficient and impractical for delivery drivers which would require intercom access for every delivery, thus causing potential traffic congestion at the driveway entrance with flow on effect onto Cross Street. Furthermore, delivery drivers would be required to traverse through both basement levels to locate the loading dock beneath the building.

The existing double driveways to the porte-cochere to Cross Street are required to be removed and the kerb reinstated. Council's Traffic Engineer has recommended that the kerb should be rationalised to provide additional on-street parking spaces which will require the approval of Woollahra's Traffic Committee (**refer Annexure 3**).

There is an existing loading zone immediately in-front of the site on Cross Street that was designated to cater for the demands of the existing Hotel. The proposed development will have a similar level of demand and as such, the loading zone in front of the site should be maintained.

Council's Traffic Engineer has indicated that this loading zone will be able to accommodate the function of a loading bay.

Furthermore, loading zones are generally limited between 7am and 6pm weekdays and to 1pm on Saturday. The loading zone would then convert to a car parking space. The utilisation of this loading zone for car parking after 6pm would assist in catering for the car parking demand generated by the proposed cinema, which generally peaks in the evenings.

Garbage (Residential)

The residential component will be serviced by garbage chutes at specific locations in each lobby in the vicinity of the entry doors/lifts to the dwellings. These chutes will transport general waste to garbage storage rooms located in the upper basement level. A caretaker will then transport the garbage bins from the storage rooms to the pedestrian loading area at ground floor level via a central loading lift. The waste will then be collected directly from the loading dock area by a private contractor. After collection, the caretaker will return the bins to their place of origin.

Recycled waste will be stored via coloured receptacles at each floor level and removed by cleaning staff to a centrally located refuse store located at upper basement level. The collection of recycling waste will follow a similar procedure to the general waste.

Organic waste is intended to be handled and managed by personnel responsible for maintaining the landscaped areas where possible.

Garbage (Commercial)

Garbage and recycling will be stored in each tenancy and transferred to a pedestrian loading area located at ground floor level. The waste will be collected directly from the loading area by a private contractor. After collection, the caretaker/staff will return the bins to their place of origin.

The frequency of collections will vary depending on the type and the extent of business generated by the commercial component of the development.

Garbage (General)

Concern has been raised regarding odours from the enclosed garbage rooms at the upper basement level. These garbage rooms are required to be ventilated under the provisions of the Building Code of Australia and relevant Australian Standard. The ventilation system to the garbage rooms as well as the car park ventilation will ensure smells emanating from the garbage rooms and any incidental movement of bins to the central lift access will not be detrimental to the amenity of the basement car park.

There are no garbage trucks proposed to access the basement car park levels thereby ensuring odours to the basement car park levels will be limited to exhaust fumes only.

The balance of the proposal will satisfy the relevant criteria prescribed by the DCP.

Mailboxes

The mailboxes will be located within the main lobby to each residential wing. Subject to condition, the design of the mailboxes will comply with the relevant Australian Standard and Australia Post requirements.

Laundry Facilities

Each dwelling will be provided with a laundry.

- ***Concessions for cultural facilities (Part 6.8.1)***

The proposed cinema is according to the DCP considered to be a cultural facility.

The DCP prescribes concessions for building envelopes with the exception of height and FSR requirements.

The proposed cinemas would be constructed 1.8metres from the rear boundary contrary to the envelope controls which prescribes a minimum setback of 6metres.

The proposed cinemas replace an existing building form of similar proportions and height. The development proposes the creation of an open landscaped space and green wall design that reduces its perceived scale and bulk and provides an improved building form over what presently exists.

The proposed cinemas will be located to the south of adjoining residential property removing any associated impact from overshadowing.

Having regard to the improved built form, the concessions may be applied to the building envelope controls in this instance.

13.2 Car parking DCP 2011

Part 1.6 of the Car Parking DCP, being the savings and transitional provisions, prescribes that the Off-Street Car Parking DCP *continues to apply to development applications....made prior to but not determined on the date of commencement of this plan.*

The subject development application, though amended, was lodged on 10 October 2010, that is, before the commencement of the DCP. In this regard, DCP would not apply to the subject development.

13.2 DCP for Off Street Car Parking Provision and Servicing Facilities 1995

Due to the date of lodgement of the development application, this DCP would apply to the proposed development.

With regard to the provisions for car parking and loading facilities these issues have been assessed above under the Double Bay Centre DCP controls with reference to the relevant controls prescribed by this DCP.

Council's Traffic Engineer has reviewed the alterations to the basement parking level and has recommended approval of the development subject to conditions (**see Annexure 3 for comments**).

Part 6.7 of the DCP, being *Change of use and non-conforming uses*, requires that any intensification in the use of a site will require additional parking spaces to be provided on the site. As established by the car parking generation rates prescribed by Council's controls, the existing hotel use is a more intensive form of development with regard to parking demands than the proposed development. Accordingly, no additional parking is required to be provided on site.

Disabled parking for the residential accommodation has been provided at the basement levels in accordance with the requirements of the DCP.

13.3 Woollahra Access DCP

The proposal will be fully accessible to people with a disability and could comply with the relevant requirements of the BCA as well as Australian Standard AS1428.2.

The proposal provides satisfactory access within the building in accordance with the requirements prescribed by the DCP.

13.4 Other DCPs, codes and policies

- **Section 94 Contributions Plan 2002**

The provisions of the *Section 94* Contribution Plan would apply to the development as it will result in an increased demand for public facilities in Council's area as a result of the increase in use of the site.

It has been established in the assessment under the heading *Car Parking* above that the proposed development would not result in any intensification in the generation of on-site car parking. Accordingly, no contribution would be required for on-site parking.

Part 2.1 provides a schedule of contribution rates for the development. The calculation is as follows:

Residential Development	Recreation and Civic improvements per Unit	Total
1 Bedroom Unit (17)	\$948.00 + \$690.00	\$27,846.00
2 Bedroom Unit (26)	\$1,312.00 + \$956.00	\$58,968.00
3 Bedroom Unit (39)	\$1,604.00 + \$1,168.00	\$85,932.00

Note: An additional administration fee applies and is calculated at 1.5c/\$.

Retail development	Civic improvements	Total
1,556m ²	\$13/m ²	\$42,012.00

Note: An additional administration fee applies and is calculated at 1.5c/\$.

Commercial development	Civic improvements	Total
3,313m ²	\$27/m ²	\$96,077.00

Note: An additional administration fee applies and is calculated at 1.5c/\$.

The total contribution under this plan, including the administration fee, would be **\$315,497.52**.

- **Section 94A Contributions Plan 2011**

The provisions of *Section 94A* Contribution Plan 2011 also applies to all development in the Woollahra Municipality, including the subject development, which is based on the cost of works.

The contribution under this plan is calculated as follows:

Development Type	Levy (percentage of proposed cost of carry out the development)	Cost of works
All developments	1%	\$67,705,000.00

The total contribution under the provisions of this plan would be **\$677,050.00**.

- **Recommended Contribution**

In determining which contribution should be applied and having regard to the nature of and the demand for facilities from the proposed development, the payment of a levy pursuant to Section 94A would be recommended to be applied if development consent is granted. The reason being is that Section 94A Contribution has a broader application including community facilities, environmental works, Council property, public infrastructure works, public open space and business centres and harbourside works (see **Condition C.2**).

It should be noted that Clause 3.5 of the Section 94A Contributions Plan specifies that where an applicant is required to pay a levy under this Plan, the Council cannot impose a further condition pursuant to Section 94 on the same development consent.

14. APPLICABLE REGULATIONS

The proposal will comply by condition with Australian Standard AS 2601-1991: *The demolition of structures*.

The proposal will also be required to comply by condition with the relevant provisions of the Building Code of Australia including the upgrade of the existing car park basement levels.

15. THE LIKELY IMPACTS OF THE PROPOSAL

15.1 Views

Some of those who made submission to the advertising/notification of the development up to and on the ridge that surround Double Bay have raised concern regarding view loss from the proposed development.

The Double Bay Centre DCP has no control or criteria for consideration in relation to view loss except for a reference in the objectives which is “to encourage view sharing”. Notwithstanding, the impact on views is a relevant consideration under Section 79 of the Environmental Planning and Assessment Act 1979. Refer to **Annexure 1** for the applicant’s visual impact assessment from various locations throughout the locality.

In assessing the view impact, the Land & Environment Court, in *Tenacity Consulting Pty Ltd v Warringah Council* (2004), adopted planning principle for assessing view impacts. These steps and assessment are as follows:

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

The concerns expressed regarding view loss primarily relates to loss of water views of Sydney Harbour. Following is a series of photographs that provide a gauge as to the extent of the impact on the residents most affected:



View from ground floor terrace of No.327b Edgecliff Road, Woollahra (standing)



View from 1st Floor balcony of No.12 Pine Hill Avenue, Double Bay (standing)



View from balcony of No.703/349 New South Head Road, Double Bay (Standing)

- ***From what part of the properties are the views obtained?***

Views are obtained from the following properties:

Living areas of **No.43a Edgecliff Road**, Woollahra

Main living room and bedroom of **Unit 20/321 Edgecliff Road**, Woollahra

Main living room and bedroom of **Unit 22/321 Edgecliff Road**, Woollahra

Ground floor terrace and rear yard of **No.327b Edgecliff Road**, Woollahra

Sitting room of **No.343a Edgecliff Road**, Woollahra (in the seated position)

Main balcony accessible from living area of **Unit 703/349 New South Head Road**, Double Bay

First floor balcony accessible from the dormitories of **No.12 Pine Hill Avenue**, Double Bay

Unit (unspecified) on William Street, Double Bay

- ***What is the extent of the impact?***

No.43a Edgecliff Road, Woollahra is located over 4kms from the subject site and is provided with a panoramic view of Sydney Harbour and the Double Bay basin. The proposed development forms part of the view as opposed to an obstruction of the view. Nevertheless, there is no water view loss from this property. The extent of impact would be *negligible*.

Unit 20 and Unit 22 of 321 Edgecliff Road, Woollahra overlook the subject site and are also provided with panoramic views of Sydney Harbour, Bellevue Hill, Cooper Valley and the Double Bay basin. The proposed development forms a small component to the totality of the view afforded to these dwellings. In addition, there is existing landscaping that screens a portion of the development from view. The impact would be *minor*.

No.327b Edgecliff Road, Woollahra is also provided with panoramic views of Sydney Harbour, Bellevue Hill, Cooper Valley and the Double Bay basin. The view impact of the proposed development was assessed from the worst affected area of the site, being the ground floor terrace/yard. The proposed development forms a small component to the totality of the view afforded to this dwelling. The impact would be *minor*.

No.343a Edgecliff Road, Woollahra, is orientated towards the east and provided with panoramic and leafy views of Bellevue Hill and Cooper Valley. Due to the dwelling and the site orientation, the Double Bay basin and waters of Sydney Harbour are an obscure view afforded from limited locations on the site. The proposed development would form a small component to the totality of the view and outlook provided from this dwelling. There is existing development and landscaping that would screen the majority of the proposed development from view. The impact would be *minor*.

Unit 703/349 New South Head Road, Double Bay is provided with panoramic views of Sydney Harbour, the North Shore, Bellevue Hill, Cooper Valley and the Double Bay basin. The proposed development would form a minor component of the totality of the views afforded from the primary living and entertaining areas of this dwelling. The impact would be *minor*.

No.12 Pine Hill Avenue, Double Bay is provided with a view corridor of Sydney Harbour from the first floor of the dwelling only. Due to the site and the dwellings orientation, together with landscape provided for privacy, there are no views afforded from the primary entertaining/living areas on the ground floor. There is a centrally located balcony on the first floor that provides the primary view outlook to the waters of Sydney Harbour. This balcony has limited use due to its small size and having regard to its point of access from the bedrooms of the dwelling. Views from a balcony forming part of or is an extension of the primary living areas would have greater

significance. However, having regard to the use and function of this existing balcony, the view impact would be *moderate*.

Finally, a submission was received on behalf of a resident from an unspecified address who resides on William Street, Double Bay. Notwithstanding the unspecified address, all unit blocks on William Street are significantly smaller in scale and height to the existing built form. Accordingly, there are no views obtained over or around the existing built form. The view impact from development on William Street would be *negligible*.

- ***What is the reasonableness of the proposal that is causing the impact?***

The proposed development would have less floor space than the existing development but proposes redistribution of this existing floor space. The increase in height to the existing built form is a consequence of redistributing the existing floor space in order to improve the existing built form and subsequently improve the amenity of the retail space at ground and first floor level as well as providing environmentally sustainable and efficient dwellings on the upper levels.

That part of the development which would cause any impact on existing views is the redistributed floor space which takes the form of additional height, which incidentally would be marginally lower than the height of the existing building's lift over-run.

The proposed development would provide a positive social and economic contribution on the Double Bay Commercial Centre. It would provide a balanced design response to replace the existing built form with a more environmentally sustainable development.

The new development would satisfy the relevant objectives of the Double Bay Centre DCP in that it would be compatible with the existing built form, streetscape and village character.

The degree of the view impacts is not unreasonable in this circumstance and the proposal would satisfy the criteria set out by the Court.

15.2 Structural damage resultant from demolition

To mitigate the potential against damage, conditions have been applied to the recommendation to provide safeguard during the demolition process as well as requiring dilapidation surveys being undertaken for all adjoining property before demolition commences.

15.3 Construction Management Issues

Concerns have been expressed regarding the inevitable temporary traffic and noise impacts associated with the construction of the development. Council's Development Engineer has recommended conditions that a Construction Management Plan be submitted and approved to mitigate the effects the demolition and construction works would have on adjoining residents, businesses, and infrastructure.

15.4 General

All other likely impacts of the proposal have been considered elsewhere in the report.

16. THE SUITABILITY OF THE SITE

The site is suitable for the proposed development subject to compliance with the recommended conditions.

17. SUBMISSIONS

The original proposal was advertised and notified in accordance with Council's Advertising and Notifications DCP. The advertising and notification period was from 12 January 2011 to 26 January 2011. Due to the date of lodgement of the application during the summer holiday period, Council extended the advertising and notification period from 12 January 2011 to 11 February 2011.

The original proposal was superseded by an amended design which included the cinema complex. The amended proposal, known as Replacement Application I, was advertised and notified in accordance with Council's Advertising and Notifications DCP. The advertising and notification period was from 10 August 2011 to 31 August 2011.

At the time of writing this report, there were 166 submissions submitted against the proposed development, 183 submissions submitted in favour of the proposed development (which included 2 petitions with 914 signatories) and 9 submissions which provided a mixed response (eg. Preference for retention of Hotel; favoured the Cinema component but not other aspects of the development).

The proposal which is the subject of this report is identified as Replacement Application III (A Replacement Application is defined by Clause 90 of the *Environmental Planning and Assessment Regulation 2000*). Replacement Application II and III were not renotified under clause 5.1 of the DCP because, having considered clause 9 of the DCP, it is substantially the same development as the previous proposal identified as Replacement Application I and is considered to have no greater environmental impact upon neighbours than this previous scheme.

A detailed list of submissions is attached as **Annexure 13**.

The following issues were raised in the submissions against the proposed development:

- *Non-compliance with the relevant planning controls*
- *Over-development of the site*
- *Too high*
- *Too big*
- *Poor architectural form*
- *Existing non-compliances should not be used to justify any proposed non-compliances*
- *Insufficient parking provided to cater for the intensification of the site*
- *Detrimental impact on existing pedestrian and traffic movement*
- *Loss of views*
- *Loss of Privacy*
- *Loss of outlook*
- *Overshadowing of public and private land*
- *Detrimental impact on the streetscape and the Transvaal Avenue Heritage Conservation Area*
- *Precedence created by approving non-compliances*
- *Misleading and insufficient information submitted*
- *No legal entitlement to use the Gailbraith walkway by the developers*
- *Light spill*
- *Restriction of future development of adjoining sites*

- *Inappropriate signage (Cinema)*
- *Structural damage resultant from demolition*
- *Wind tunnel effect from development*
- *No restriction/control to maintain Cinema use*
- *Development should maintain existing hotel use*
- *Confirmation that if approval is granted the Cinema use can be maintained via a Covenant or the like*

The issues raised have been addressed under the relevant heads of consideration in the report. Other issues raised have been addressed as follows:

- **Wind Effect**

Concerns have been expressed regarding the possibility of a wind tunnel effect created by the proposed development which is an impact generally associated with high rise development.

Having regard to the height, modulation, location, landscaping and the surrounding existing built form, the proposed development would not have a detrimental impact on the amenity of the pedestrian environment in the locality having regard to the effects of wind.

- **Precedence created by approving non-compliances**

A large number of resident submissions included reference to the building non-compliance with the height control and the subsequent *precedence* approving a non-complying development would create.

In this case there are particular and unique circumstances relating to the scale, height and bulk of the existing building which lead to a conclusion that strict application of the FSR development standard and height controls in the DCP would not be consistent with the objectives of the EPA Act as specified in s.5(a)(i) and(ii). These circumstances do not apply in the same way to other sites within the Double Bay commercial centre. Therefore, approval of this application does not create a precedent for the approval of similarly scaled developments on other sites.

- **Misleading and insufficient information submitted**

All necessary information has been submitted in accordance with Council's requirements in order to enable the determining authority to make an informed and accurate determination of the application.

- **No legal entitlement to use the Galbraith Walkway by the developers**

Galbraith Walkway is a public thoroughfare with its western side owned by Council. There is a right-of-way that forms part of the walkway on its eastern side. This right-of-way is 2.1 metres in width and was dedicated for use by the public as part of the redevelopment of No.35-39 William Street, Double Bay.

Access to the Galbraith Walkway through the subject site is encouraged under the provisions of the Double Bay DCP and is proposed under this development.

As mentioned above, access to the Galbraith Walkway should be limited to ensure the commercial use of the development is contained within the commercial centre with particular regard to car parking and noise generation. Accordingly, it is recommended a time limited gate system be

provided limiting access from the rear open courtyard of the development to the walkway (see **Condition C.1 and I.14**).

- **Light spill**

The extent of light spill from the proposed development would not be detrimental to the amenity of surrounding residents particularly having regard to the buildings locations within a commercial centre. Furthermore, standard conditions are recommended to ensure all outdoor lighting complies with the relevant Australian Standard (see **Condition I.7 & I.8**).

- **Restriction of future development of adjoining sites**

The proposed development has been designed with specific regard to the envelope controls of adjoining development as prescribed by the Double Bay Centre DCP. This particularly applies to the under developed site on the corner of Cross Street and Transvaal Avenue immediately adjoining to the east. The proposed development would enable a coherent street form to Cross Street and would enable residential accommodation to its rear by aligning with the setback controls for the adjoining property as prescribed by the Double Bay DCP.

Furthermore, the design has incorporated screening to fenestration and balconies to ensure a reasonable level of privacy is afforded to those properties immediately adjoining.

The proposed development would not inhibit the future redevelopment of adjoining property.

- **No restriction/control to maintain Cinema use if approved**

There are no enforceable restrictions or controls applicable that would prohibit the applicant from proposing a change to the use of the development should approval be granted.

The mechanism available to amend any approved development application is provided under Section 96 of the Environmental Planning and Assessment Act 1979. Any amendment must relate to aspects of the approved development and is required to be relative to the scope of the approved works. The criteria in determining an amended design is that it must be *substantially the same development to that which was originally approved*.

Should any amended design not satisfy the criteria prescribed by Section 96, a new development application would need to be submitted. The new development application would be considered on its merits and assessed against the relevant considerations prescribed by Section 79C of the Environmental Planning and Assessment Act 1979.

While there are no planning mechanisms available to ensure that the cinemas are maintained there are a number of factors which indicate that, if approval is granted and the cinemas are constructed, they are likely to be maintained. These factors are that:

- The building has been purpose designed to accommodate the cinemas
- The cinemas cannot be readily converted for retail, residential or commercial uses
- Significant costs would be involved in re-engineering the building to remove the cinemas
- A cinema operator is ready to lease the space and operate the cinemas
- The cinema operator has undertaken detailed market studies to confirm the viability of the cinema operation.

- **Development should maintain existing hotel use**

There is no legal requirement to maintain or reinstate the existing hotel use.

- **Confirmation that if approval is granted the cinema use can be maintained via a covenant or the like**

A restrictive condition cannot be applied to maintain a particular use under the provisions of the Environmental Planning and Assessment Act 1979.

18. THE PUBLIC INTEREST

The existing Hotel would essentially be replaced with a building of similar visible bulk and scale. Council's current controls came into force after the construction of the existing Hotel. The current controls require any redevelopment on site to reduce the scale and bulk of the existing building even though this is unlikely to ever be achieved as there is an undeniable economic reality ingrained with any redevelopment of the existing built form.

Notwithstanding, the proposed development would result in a reduction of 1,352m² of Gross Floor Area over what presently exists.

The proposed development will result in an improved streetscape outcome as it would provide a building envelope that will be consistent with the relevant controls for Cross Street and a superior architectural form to that which presently exists.

The existing street front would be redeveloped by removing the multiple driveways on Cross Street, introduce an active retail front, provide an appropriate awning over the footway and provide an open pedestrian link that would reactivate this barren building form.

The introduction of a cinema complex within the development would have the potential to reinvigorate the commercial centre socially as it will provide an alternate form of entertainment that is currently lacking in the centre.

Independent analysis provided by the Palace Cinema indicates that a comparative 400 seat cinema provides 200,000 admissions annually. The statistics indicate that 60,000 of those admissions use retail facilities in the locality pre-screening. The proposed Cinema would have the potential to provide an economic benefit to the commercial centre and the locality.

The development also provides opportunity for Council to achieve its target of increasing housing stock within its municipality, particularly as the composition of dwellings within the complex could appeal to a broader demographic. The residential component would provide an appropriate transition from the commercial centre to its southern side with the residential precinct to its north without any detrimental impact on the amenity of adjoining residents.

The proposed development would support Council's strategic plan for Double Bay which is *to create a vibrant centre with a unique living, working and shopping experience within a pedestrian friendly and attractive urban environment.*

It is concluded that the granting of consent to the proposed development would be in the public interest.

19. CONCLUSION

After an assessment of the development against the relevant considerations under s79C of the *Environmental Planning and Assessment Act* 1979, State Environmental Planning Policy 65, Woollahra Local Environmental Plan 1995 and the Double Bay Centre Development Control Plan 2002 it is concluded that the proposed development would satisfy the objectives of those controls and would be an appropriate development for the site.

20. 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.

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

THAT the Joint Regional Planning Panel (JRPP), as the consent authority, is of the opinion that the objection under *State Environmental Planning Policy No. 1 – Development Standards* to Clause 11 - *Floor Space* under Woollahra Local Environmental Plan 1995 is well founded. The Joint Regional Planning Panel, as the consent authority, is also of the opinion that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of this case as the development will still uphold the objectives underlying the development standard;

AND

THAT the Joint Regional Planning Panel, as the consent authority, being satisfied that the objection under SEPP No.1 is well founded and also being of the opinion that the granting of consent to Development Application No.671/2010/1 is consistent with the aims of the Policy, grant development consent to DA No.671/2010/1 for demolition of the existing building from ground floor level, retention of the basement carpark for 154 vehicles, construction of a mixed use development with retail tenancies and a five (5) cinema complex for approximately 600 people which occupies the ground and first floor levels and seven (7) levels of residential above containing 74 units (a mix of one, two and three bedrooms) on land at 33 Cross Street DOUBLE BAY, subject to the following conditions:

A. General Conditions

A.1 Conditions

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

Standard Condition: A1

A.2 Definitions

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

Applicant means the applicant for this Consent.

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

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

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

Council means Woollahra Municipal Council

Court means the Land and Environment Court

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

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

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

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

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

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

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

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

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

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

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

Site means the land being developed subject to this consent.

WLEP 1995 means *Woollahra Local Environmental Plan 1995*

Work for the purposes of this consent means:

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

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

A.3 Approved Plans and supporting documents

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

Reference Des	Description	Author/Drawn	Date(s)
220/C, 201/C, 202/B, 203.2/B, 203.3/B & 203.4/B; & 204/E, 205/E, 206/E, 207/E, 303/D & 302/E	Architectural Plans	PTW Architects	25.07.2011 23.11.2011
SK960 to SK963, SK970 & SK971	Privacy Study Plan	PTW Architects	14.10.2011
345349M_04 BASIX	Certificate	Department of Planning	23/11/2011
10113	Demolition Report	GSA Planning	December 2010
101449	Flood Study	Taylor Thomas Whitting Pty Ltd Consulting Engineers	23.12.2010
11525.04 Geotechn	ical Report	Douglas Partners Pty Ltd	03.10.2008
101449	Structural Report	Taylor Thomas Whitting Pty Ltd Consulting Engineers	26.07.2011
Concept, GF, L2, L3, L4, L5, LL6, L7, L8, L9 & Roof	Landscape Concept Plans	Oculus	18.10.2011
Revision E	Landscape Design Report Oculus		26.07.2011
33/CR/AIA/B	Arboricultural Impact Assessment	TreelQ	19.10.2011
20110684.1	Noise Impact Assessment Acoustic	Logic	Undated
N/A	Heritage Impact Statement	Golden Mackay Logan Heritage Consultants	December 2010
DA900	Sample Boards	PTW Architects	26.11.2010
SKC00 to SKC04 Revision P3	Stormwater Disposal Concept Plan	Taylor Thomas Whitting Pty Ltd Consulting Engineers	26.10.2011
N/A Waste	Management Plan	J.D.MacDonald	October 2011
10180	Traffic and Parking Assessment	Transport and Traffic Planning Associates	July 2011
610.10668-R1	Thermal Comfort Assessment	SLR Consulting Australia Pty Ltd	23.11.2011
610.10668-R2 Revision 0	Energy Efficiency Assessment	SLR Consulting Australia Pty Ltd	29.07.2011
610.10668-R3 Revision 0	Ecological Sustainable Design Assessment	SLR Consulting Australia Pty Ltd	29.07.2011
N/A Sustainability	Report	Howe & Associates	25.07.2011
N/A Access	Review	Morris-Goding Accessibility Consulting	27.07.2011

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

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

Standard Condition: A5

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

The owner must procure the repair, replacement or rebuilding of all road pavement, kerb, gutter, footway, footpaths adjoining the site or damaged as a result of work under this consent or as a consequence of work under this consent. Such work must be undertaken to Council's satisfaction in accordance with Council's “Specification for Roadworks, Drainage and

Miscellaneous Works” dated January 2003 unless expressly provided otherwise by these conditions at the *owner's* expense.

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

A.5 Development Consent is not granted in relation to these matters

This approval does not give consent to the fitout, use, hours of operation, plan of management, staff numbers, waste management and car parking allocation of the retail and cinema components of the development.

A separate Development Consent will need to be obtained prior to such development work commencing.

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.

B.2 Recording of buildings with little or no heritage significance that are to be demolished:

A photographic archival record of the building and landscape elements to be demolished is to be submitted prior to the commencement of demolition work and prior to the issue of a Construction certificate.

The photographic archival recording is to be bound in an A4 format and is to include the following:

- a) Site plan at a scale of 1:200 (or 1:500 if appropriate) of all structures and major landscape elements including their relationship to the street and adjoining properties.
- b) Postcard sized photographs of:
 - each elevation,
 - each structure and landscape feature;
 - views to the subject property from each street and laneway or public space.

Each photograph to be mounted, labelled and cross-referenced in accordance with recognised archival recording practice.

One original coloured photographic set and a coloured photocopy are to be submitted to the satisfaction of Council prior to the commencement of demolition work and prior to the issue

of a construction certificate. The original will be retained by Council and the coloured photocopy will be provided to the Woollahra Local History Library
Standard Condition: B4

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)*
1	<i>Ficus microcarpa</i> var. 'Hillii' Hills Weeping Fig	Front – Council verge west	Fence existing tree pit
2	<i>Ficus microcarpa</i> var. 'Hillii' Hills Weeping Fig	Front – Council verge east	Fence existing tree pit

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	
1	<i>Ficus microcarpa</i> var. 'Hillii' Hills Weeping Fig	Front – Council verge west
2	<i>Ficus microcarpa</i> var. 'Hillii' Hills Weeping Fig	Front – Council verge east

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.

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 fixed vertical angled louvres as depicted on SK drawing No.971 shall be provided to all fenestration and to the western side of balconies on the western elevation between Level 3 and 7 inclusive that are positioned forward of any north facing fenestration at No.45 Cross Street.
- b) The privacy screen fence to the western boundary on Level 2 shall be extended to the northern end of the northern balcony.
- c) All fenestration to the eastern elevation immediately adjoining the Transvaal Avenue cottages shall be provided with screening devices as depicted on SK drawing 970.
- d) The planters to the balconies to the north east corner shall be increased in width to 1500mm on their eastern side.
- e) The triangular shaped balconies to the bedrooms on the eastern elevation on Levels 6 and 7 shall be provided with a planter to match those on the lower levels or screening device which inhibits downward sightlines onto the rear open space of the Transvaal Avenue cottages immediately adjoining.
- f) The planter to the western side of Level 8 shall have a minimum depth of 1.5metres.
- g) The balcony west of the external wall of the living room to the south west dwelling located on Level 4 shall be non-trafficable.
- h) A secured access gate, 1.8metres in height, shall be provided to the rear of the landscaped open space to limit access to the Galbraith walkway.
- i) The awning to Cross Street shall be extended to its east and west boundary. The extended awning shall be non-trafficable.
- j) All reference to the swimming pools shall be deleted.

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 A	mount	Indexed	Council Fee Code
LONG SERVICE LEVY under Building and Construction Industry Long Service Payments Act 1986			
Long Service Levy http://www.lspc.nsw.gov.au/levy_information/?le	Contact LSL Corporation or use	No	

vy information/levy_calculator.stm	online calculator		
SECURITY			
under section 80A(6) of the Environmental Planning and Assessment Act 1979			
Property Damage Security Deposit -making good any damage caused to any property of the Council	\$1,356,100.00 N	o	T115
Tree Damage Security Deposit – making good any damage caused to any public tree as a consequence of work associated with this consent	\$44,533.00 N	o	T600
DEVELOPMENT LEVY			
under Woollahra Section 94A Development Contributions Plan 2009 This plan may be inspected at Woollahra Council or downloaded at www.woollahra.nsw.gov.au .			
Development Levy (Section 94A)	\$677,050.00 + Index Amount	Yes, quarterly	T96
INSPECTION FEES			
under Section 608 of the Local Government Act 1993			
Public Tree Management Inspection Fee	\$166.00	No	T95
Public Road/Footpath Infrastructure Inspection Fee	\$420.00 N	o	T45
Security Administration Fee	\$180.00	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$2,078,449.00 plus any relevant indexed amounts and long service levy		

Building and Construction Industry Long Service Payment

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

How must the payments be made?

Payments must be made by:

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

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

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

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 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 BASIX commitments

The *applicant* must submit to the *Certifying Authority* *BASIX Certificate* No.345349M_04 with any application for a *Construction Certificate*.

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

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

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

Standard Condition: C7

C.4 State Environmental Planning Policy 65 – Design Verification Statement

Pursuant to Clause 143A of the *Regulation* a *Certifying Authority* must not issue a *Construction Certificate* for residential flat development unless the *certifying authority* has received a *design verification statement* from a *qualified designer*, being a statement in which the *qualified designer* verifies that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the

design quality principles set out in Part 2 of SEPP 65: Design Quality of Residential Flat Development.

Note: Although a certifying authority may pursuant to clause 161(2) of the Regulation be satisfied to any matter that relates to the external finish of a building the specific provisions of clause 143A of the Regulation overrides the Certifying Authority's powers under clause 161(2). No certifying authority can set aside this requirement.

Note: Qualified designer means a person registered as an architect in accordance with the Architects Act 2003. There are several methods of verifying the status of an individual or corporation or firm offering architectural services.

Ask the individual for their four digit NSW Architects Registration Number, ask a corporation or firm for the name and registration number of their "nominated architect", check to see whether an individual is listed on the NSW Register of Architects or the corporation or firm is listed on the List of architect corporations and firms on the Board's website www.architects.nsw.gov.au, contact the Architects Board's staff to check the status of an individual or corporation or firm.

Standard Condition: C11

C.5 Road and Public Domain Works

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

a) Redundant driveways:

- Eastern crossing driveway pavers are to be removed and replaced with pavers and pattern to match existing footpath pavers on Cross Street. The layback is to be replaced with barrier kerb
- The western crossing is to be removed. The redundant driveway pavers are to be removed and replaced with pavers and pattern to match existing footpath pavers on Cross Street. The layback is also to be replaced with barrier kerb.
- Provide additional on-street parking spaces with driveway removal and adjustments.
- Removal of all driveway crossings and kerb laybacks which will be no longer required.
- Reinstatement of footpath, kerb and gutter to match existing.

b) Remove planting bay on road shoulder (adjacent to the eastern crossing) and reinstate the road pavement

c) Existing signage is to be rationalised (this will require approval of Woollahra Traffic Committee)

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 Advising in Section K titled - Roads Act Application.

Standard Condition: C13

C.6 Waste Storage – Mixed Developments (both commercial and residential)

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 in accordance with the approved Waste Management Plan.

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.7 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.8 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.9 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.

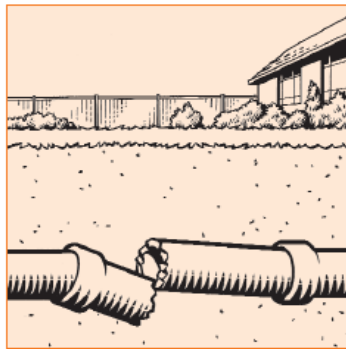
Note: Following application to Sydney Water, a 'Notice of Requirements' will detail water and sewer extensions to be built and charges to be paid. Please make early contact with Sydney Water's authorised Coordinator, since building of water/sewer extensions can be time consuming and may impact on other 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.

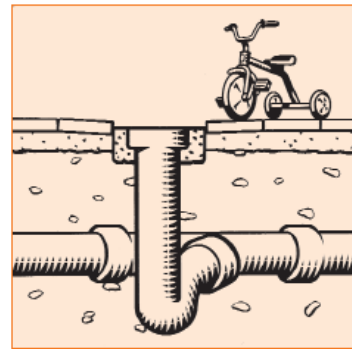
The Construction Certificate plans and specifications, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail the replacement of all private sewer pipes between all sanitary fixtures and Sydney Waters sewer main where they are not found by inspection to be Sewer grade UPVC or copper with continuously welded joints.



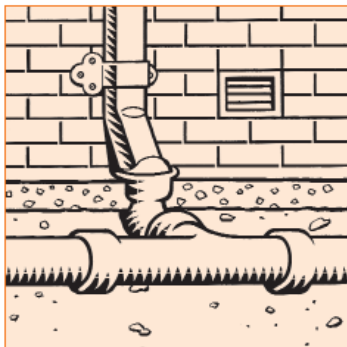
Cracked pipes



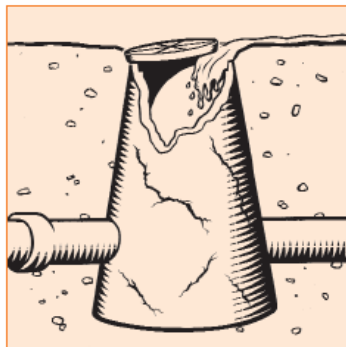
Broken pipes



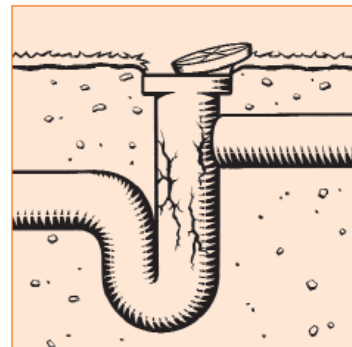
Damaged or low-lying gullies



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.10 Dry Recycling Systems and Services

The development is to incorporate dry recycling systems and services consistent with the *Better Practice Guide for Waste Management in Multi-Unit Dwellings* (the Guide), prepared by the Department of Environment and Climate Change.

The Guide can be accessed at www.environment.nsw.gov.au/warr/BetterPracticeMUD

This condition is imposed to promote better practices in the design, establishment, operation and on going management of waste services in residential multi unit dwellings.

Standard Condition: C23

C.11 Soil and Water Management Plan – Submission & Approval

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

- a) “ *Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and

- b) “ *Managing Urban Stormwater - Soils and Construction*” published by the NSW Department of Housing 4th Edition” (*The Blue Book*’).

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

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

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

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

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

C.12 Structural Adequacy of Existing Supporting Structures

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

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

Standard Condition: C35

C.13 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.14 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 Councils

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.15 Parking Facilities

The *Construction Certificate* plans and specifications required by clause 139 of the *Regulation*, must include detailed plans and specifications for any bicycle, car and commercial vehicle parking demonstrating 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.

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.16 Stormwater management plan (Clause 25(2) WLEP 1995)

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

The *Stormwater Management Plan* must detail:

- (a) General design in accordance with Stormwater disposal concept plan prepared by TTW, dated 26/10/2011, Dwgs No. SKC00 to SKC04, Revision P3 other than amended by this and other conditions;
- (b) The discharge of all stormwater, by direct connection, to the nearest in-ground stormwater system (not to the K&G);
- (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).

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 Councils 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.

C.17 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.

The 1:100 year Flood Levels determined by Taylor Thomson Whitting Pty Ltd, dated 23 December 2010, reference No.101449 are as follows:

- Eastern boundary/building - RL3.24m AHD
- Western boundary/building - RL3.36m 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.

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.18 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 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](#).
Standard Condition C59

C.19 Design sound levels for building interiors

The *Construction Certificate* plans and specifications required by clause 139 of the *Regulation*, must provide details showing compliance with the design sound levels for building interiors and should not exceed those recommended maximum design sound levels, LAeq, dB(A) specified by AS 2107-2000, *Acoustics - Recommended design sound levels and reverberation times for building interiors*.

Note: The design sound levels given in AS 2107-2000 are not necessarily appropriate in all circumstances. In particular, lower noise levels may be appropriate in quiet environments or where expectations of quality are high. For example, lower design sound levels than those given as satisfactory in AS 2107-2000 may be preferred for luxury hotels and apartments. However, additional costs will be incurred in achieving sufficient sound attenuation between spaces for acoustic privacy requirements. For each 5 dB reduction in the ambient sound level, 5 dB must be added to the overall sound isolation performance of the dividing elements to maintain the same level of acoustic privacy. There could also be additional costs associated with the provision of quieter building services. As a minimum compliance with the *BCA* is mandatory.
Standard Condition: C63

C.20 Submission of a Site Waste Minimisation and Management Plan (SWMMP)

A SWMMP being submitted to Council for approval prior to a Construction Certificate being issued. The SWMMP is to be prepared in accordance with Council's Site Waste Minimisation and Management Development Control Plan 2010.
Standard Condition: C68

C.21 Carpark Ventilation

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

- a) The car park in which vehicles powered by internal combustion engines are parked is required to comply with Section 4 'Ventilation of Enclosures Used by Vehicles with Internal Combustion Engines' of Australian Standard 1668.2-1991. In general air distribution must achieve uniform dilution of contaminants in the garage and maintain contaminant concentrations below recommended exposure standards.
- b) The car park must be naturally ventilated or provided with a combination of both supply and exhaust mechanical ventilation. The applicant is to determine the method of ventilation of the basement car park and provide details to the *Certifying Authority* accordingly. Except as varied in accordance with Clause 4.4.1 (a), (b) or (c), the basement car park shall be mechanically ventilated by a combination of general exhaust with flow rates in accordance with Clause 4.4.2, and supply with flow rates specified in Clause 4.8 of Australian Standard 1668.2-1991.
- c) The Air Discharge for the car park ventilation system is to comply with Section 3 (Exhaust Air Dilution Procedure) of Australian Standard 1668.2-1991 and in particular Clause 3.7 (1-4) pertaining to air discharges.

C.22 Compliance with Acoustic Reports

The *Construction Certificate* plans and specification required to be submitted pursuant to clause 139 of the *Regulation* must detail the following works required or recommended by the Noise Impact Assessment Document prepared by Acoustic Logic, Reference 20110684.1/1507A/RO/BW or the subsequent 'Mechanical Noise Assessment' report required by condition C.3. above;

- a) Full compliance with Sections 6, 8, 9 and 10 of the Noise Impact Assessment Document, prepared by Acoustic Logic Reference 20110684.1/1507A/RO/BW; and
- b) Additional sound attenuation identified in the 'Mechanical Noise Assessment' report required by condition C.3 above.

Note: This condition has been imposed to ensure that sound attenuation measures required or recommended by the Acoustic Report that must be implemented are detailed.

Note: Further information including lists of Acoustic Engineers can be obtained from:

1. **Australian Acoustical Society**—professional society of noise-related professionals ([www.acoustics.asn.au /index.php](http://www.acoustics.asn.au/index.php)).
 2. **Association of Australian Acoustical Consultants**—professional society of noise related professionals (www.aaac.org.au).
- Standard Condition: C60

C.23 Acoustic Certification of Mechanical Plant & Equipment

The *Construction Certificate* plans and specification required to be submitted pursuant to clause 139 of the *Regulation* must be accompanied by a detailed 'Mechanical Noise Assessment' report of all mechanical ventilation (carpark), air conditioning and lift services plant prepared by a *professional engineer* (acoustic engineer) and certifying that the noise level measured at any boundary of the site at any time while the proposed mechanical plant and equipment is operating will not exceed the *background noise level*. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed *background noise level*, at any time.

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

Where sound attenuation is required this must be detailed.

Note: Further information including lists of Acoustic Engineers can be obtained from:

1. **Australian Acoustical Society**—professional society of noise-related professionals ([www.acoustics.asn.au /index.php](http://www.acoustics.asn.au/index.php)).
 2. **Association of Australian Acoustical Consultants**—professional society of noise related professionals (www.aaac.org.au).
- Standard Condition: C62

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

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

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

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

This condition does not apply:

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

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

Note: This condition must be satisfied prior to commencement of any work in relation to the contract of insurance under the Home Building Act 1989. This condition also has effect during the carrying out of all building work with respect to compliance with the Building Code of Australia.
Standard Condition: D1

D.2 Dilapidation Reports for existing buildings

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

These properties must include (but is not limited to):

- No. 19-27 and 45-51 Cross Street, Double Bay
- No. 2, 4, 6, 8, 10, 12, 14, 16 and 20 Transvaal Avenue, Double Bay
- No. 29, 31-33 and 35-39 William Street, Double Bay.

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

D.3 Construction Management Plan

As a result of the site constraints, limited space and access a Construction Management Plan is to be submitted to Council. Also, due to the lack of on-street parking a Work Zone may be required during construction.

A construction management plan must be submitted and approved by Council's Development Engineer. The plan must:-

- a) Describe the anticipated impact of the demolition, excavation and construction works on:
 - Local traffic routes
 - Pedestrian circulation adjacent to the building site
 - On-street parking in the local area
- b) Describe the means proposed to:
 - Manage construction works to minimise such impacts,
 - Provide for the standing of vehicles during construction,
 - Provide for the movement of trucks to and from the site, and deliveries to the site
- c) Show the location of:
 - Any site sheds and any anticipated use of cranes and concrete pumps,
 - Any areas of Council property on which it is proposed to install a Works Zone (Construction Zone)
 - Structures to be erected such as hoardings, scaffolding or shoring
 - Any excavation
- d) Describe the excavation impact on the area including:
 - Number and types of trucks to be used
 - Time frame
 - Streets to be used
 - Routes to be taken
 - Directions of travel
 - Truck storage areas
 - It is recommended that vehicle routes be shared
 - Excavation is to only be carried out outside peak and school hours between 9.30am to 2.30pm week days
- e) Protect Trees, Bushland and Public Open Space:
 - Show the location of all Tree Protection (Exclusion) Zones as required within the conditions of this development consent.

The Plan must make provision for all materials, plant, etc. to be stored within the development site at all times during construction. Structures or works on Council property such as hoardings, scaffolding, shoring or excavation need separate approval from Council. Standing of cranes and concrete pumps on Council property will need approval on each occasion.

Note: A minimum of eight weeks will be required for assessment. Work must not commence until the Construction Management Plan is approved. Failure to comply with this condition may result in fines and proceedings to stop work.
Standard Condition: D9

D.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.

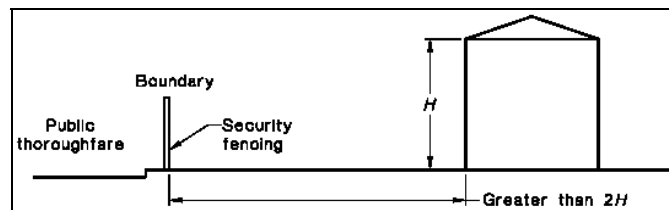
Note: The *principal contractor* or *owner* must allow not less than four to six weeks (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under the Clause 22 of the *Transport Administration (General) Regulation 2000* 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.

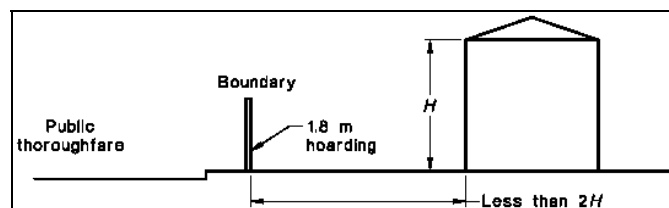
Standard Condition: D10

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.

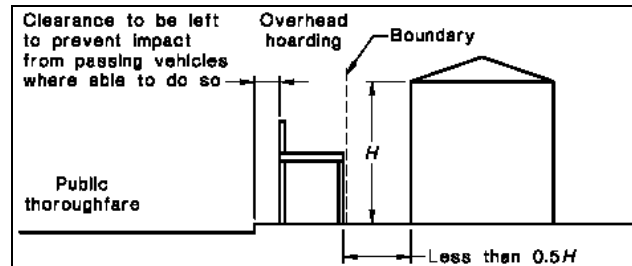


Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an *overhead protective structure* and the facing facade protected by heavy-duty scaffolding, unless either:

- The vertical height above footpath level of the structure being demolished is less than 4.0 m; or
- 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/oheadprotstrcuts.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 downloaded free of charge from www.woollahra.nsw.gov.au.

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

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

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

Standard Condition: D14

D.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.

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 Notification of Home Building Act 1989 requirements

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

Standard Condition: D17

D.11 Establishment of boundary location, building location and datum

Prior to the commencement of any work the principal contractor or owner builder must ensure that a surveyor registered under the *Surveying 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.12 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

Standard Condition: D19

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.

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
Standard Condition: E6

E.7 Noise during demolition works

To assist in managing impacts of noise from the demolishing of the existing building on residences and other sensitive land uses, it is recommended that the *NSW Department of Environment & Climate Change: Construction Noise Guideline* be applied to the site to provide a quantitative and qualitative assessment for evaluating performance and compliance of resultant noise from demolishing works of the existing building. In particular reference is made to Table 2 of the *NSW Department of Environment & Climate Change: Construction Noise Guideline* which sets out management levels for noise at residences and other sensitive land uses.

E.8 Protection of the Environment Operations Act 1997

During demolishing works, no equipment, building materials or other articles are to be used or placed in a manner on or off the site that will cause or likely to cause a 'pollution incident' as defined under the *Protection of the Environment Operations Act 1997*.

E.9 Public Footpaths – Safety, Access and Maintenance

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

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

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

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

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

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

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

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

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

E.10 Tree Preservation

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

General Protection Requirements:

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

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

E.11 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 Council Land

Council Ref No	Species Location	Dimension (metres)	Tree Value
1	<i>Ficus microcarpa</i> var. 'Hillii' Hills Weeping Fig	Front – Council verge west	\$27,024
2	<i>Ficus microcarpa</i> var. 'Hillii' Hills Weeping Fig	Front – Council verge east	\$17,485

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

- b) The following trees may be pruned in accordance with Australian Standard AS 4373 – 2007 "Pruning of Amenity Trees" and Workcover NSW Code of Practice Amenity Tree Industry, 1998 to the minimum extent necessary to provide clearance to the new development:

Council Ref No	Species	Location	Approved pruning (extent of pruning)
1	<i>Ficus microcarpa</i> var. 'Hillii' Hills Weeping Fig	Front – Council verge west	Prune as recommended in supplied arborists report
2	<i>Ficus microcarpa</i> var. 'Hillii' Hills Weeping Fig	Front – Council verge east	Prune as recommended in supplied arborists report

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

Note: Water Restrictions take precedence over this condition.

Note: Having regard to water restrictions manual hosing may be necessary.
Standard Condition: E9

E.12 Maintenance of Environmental Controls

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

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

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

E.13 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.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 or obtained from Council’s office.

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

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

E.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 downloaded free of charge from Council's website www.woollahra.nsw.gov.au
Standard Condition: E24

E.22 Site waste minimisation and management – Demolition

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

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

When implementing the SWMMP the applicant must ensure:

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

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

E.23 Site waste minimisation and management – Construction

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

- a) The provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work
- b) Arrange for the delivery of materials so that materials are delivered 'as needed' to prevent the degradation of materials through weathering and moisture damage
- c) Consider organising to return excess materials to the supplier or manufacturer
- d) Allocate an area for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation)
- e) Clearly 'signpost' the purpose and content of the storage areas
- f) Arrange contractors for the transport, processing and disposal of waste and recycling. Ensure that all contractors are aware of the legal requirements for disposing of waste.
- g) Promote separate collection bins or areas for the storage of residual waste

- h) implement measures to prevent damage by the elements, odour and health risks, and windborne litter
 - i) Minimise site disturbance and limit unnecessary excavation
 - j) Ensure that all waste is transported to a place that can lawfully be used as a waste facility
 - k) Retain all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as council, Department of Environment and Climate Change (DECC) or WorkCover NSW
- Standard Condition: E32

E.24 Shoring and adequacy of adjoining property

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 an excavation that extends below the level of the base of the footings of a building on adjoining land.

The person having the benefit of the development consent must, at the person's own expense;

- a) protect and support the adjoining premises from possible damage from the excavation, and
- b) where necessary, underpin the adjoining premises to prevent any such damage

Note: this condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

Standard Condition: E33

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

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

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

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

Standard Condition: F1

F.2 Fire Safety Certificates

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

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

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

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

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

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

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

Note: In this condition:

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

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

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

Standard Condition: F4

F.3 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.4 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
Standard Condition: F8

F.5 State Environmental Planning Policy 65 – Design Verification Statement

Pursuant to clause 154A of the *Regulation* a *Certifying Authority* must not issue an *Occupation Certificate* to authorise a person to commence occupation or use of residential flat development unless the certifying authority has received a design verification from a *qualified designer*, being a statement in which the *qualified designer* verifies that the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design quality principles set out in Part 2 of State Environmental Planning Policy No 65—Design Quality of Residential Flat Development.

Note: Although a *Certifying Authority* may pursuant to clause 161(2) of the Regulation be satisfied to any matter that relates to the external finish of a building clause 154A of the Regulation overrides the *Certifying Authority's* powers under clause 161(2).

Note: Qualified designer means a person registered as an architect in accordance with the *Architects Act 1921*.
Standard Condition: F10

F.6 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.7 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

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

G.1 Strata Title Subdivision Certificate (s37 & s37A of the Strata Schemes (Freehold Development) Act 1973)

In addition to the statutory requirements of the Strata Schemes (Freehold Development Act 1973) a *Strata Certificate* must not be issued which would have the effect of:

- a) Transferring to any strata unit entitlement, any areas of common property shown upon the approved Development Application plans,
- b) Transferring to any strata unit entitlement, any visitor parking spaces, or
- c) Creating any unit entitlement to any car parking spaces not associated with an occupiable unit entitlement within the strata plan.

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

All BASIX commitments must be effected in accordance with the BASIX Certificate No.345349M_04.

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

Standard Condition: H7

H.2 Landscaping

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

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

Standard Condition: H9

H.3 Removal of Ancillary Works and Structures

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

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

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

Standard Condition: H12

H.4 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 or obtained from Council's customer service centre.

Standard Condition: H13

H.5 Acoustic certification of completed works

Prior to the issue of the final occupation certificate a report is to be submitted to the certifying authority from by a *professional engineer* (acoustic engineer), certifying that the noise level measured at any boundary of the site at any time while all or part of the installed mechanical plant and equipment is operating does not exceed the *background noise level* and all sound attenuation work has been completed in accordance with the noise assessment reports.

Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed *background noise level*, at any time.

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

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

I.1 Maintenance of BASIX commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No.345349M_04.

Note: This condition affects successors in title with the intent that environmental sustainability measures must be maintained for the life of development under this consent.
Standard Condition: I7

I.2 Clothes drying etcetera

No clothes, linen or the like must be hung from any balcony, terrace or veranda such that they are visible from any public place.

This condition has been imposed to ensure that the visual amenity of the neighbourhood is not detrimentally affected by a proliferation of such practices.
Standard Condition: I9

I.3 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 down loaded free from:
http://www.health.nsw.gov.au/pubs/2004/pdf/legionnaires_disease.pdf.

Standard Condition: I11

I.4 Waste Management - Commercial

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

All waste must be presented for collection in a receptacle. Waste receptacles must be presented no earlier than the close of business on the day before collection. Waste and

recycling bins/crates must be removed from the road or footpath within 1 hour of collection or otherwise in accordance with the approved SWMMP.

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.

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

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

Note: No waste will be collected by Council that isn't presented properly. The waste must be presented with lid closed to reduce littering.
Standard Condition: I15

I.5 Annual Fire Safety Statements (Class 1b to 9c buildings inclusive)

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

Note: *Essential fire safety measure* has the same meaning as in clause 165 of the *Regulation*. *Annual fire safety statement* has the same meaning as in clause 175 of the *Regulation*. Part 9 Division 5 of the *Regulation* applies in addition to this condition at the date of this consent. Visit Council's web site for additional information in relation to fire safety www.woollahra.nsw.gov.au.
Standard Condition: I22

I.6 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.7 Outdoor lighting – Residential

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

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

Note: This condition has been imposed to control the obtrusive effects of outdoor lighting.
Standard Condition: I42

I.8 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.9 Waste Management - Residential

Waste Management must comply with the approved Site Waste Minimisation and Management Plan (SWMMP) and with the requirements of Council's Site Waste and Minimisation Development Control Plan 2010.

The occupier of the site must place waste and recycling bins/crates on the footpath for collection but not earlier than 12 hours prior to the designated collection time.

The occupier of the site must remove waste and recycling bins/crates from the footpath within 12 hours of being emptied by Council's waste service and they must be stored within the site in the approved waste storage area.

No commercial waste must be placed within residential waste and recycling bins/crates.

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

Note: For further residential wastes management policy information go to www.woollahra.nsw.gov.au or contact Council's Waste Education Officer.
Standard Condition: I45

I.10 Dry Recycling Systems and Services – Multi-unit residential developments

The development is to incorporate dry recycling systems and services consistent with the *Better Practice Guide for Waste Management in Multi-Unit Dwellings* (the Guide), prepared by the Department of Environment and Climate Change.

The Guide can be accessed at www.environment.nsw.gov.au/warr/BetterPracticeMUD

This condition is imposed to promote better practices in the design, establishment, operation and on going management of waste services in residential multi-unit dwellings.

Standard Condition: I47

I.11 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).

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

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

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

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

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

Standard Condition: I50

I.12 Ongoing operation of mechanical plant and equipment

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

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

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

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

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

ISBN 0 7313 2715 2, dated January 2000, and

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

ISBN 1741370671, dated December 2004.

Standard Condition: I53

I.13 Provision for off-street car parking

The owner and occupier, in compliance with AS/NZS 2890.1:2004: Parking facilities off-street car parking, must maintain access to off-street parking as follows:

(Mixed Commercial/Residential)	Number of spaces
1 x Bedroom dwellings (19 dwellings)	1 space per dwelling (Total 19)
2 x Bedroom dwellings (24 dwellings)	1.5 spaces per dwelling (Total 36)
3 x Bedroom Dwellings (31 dwellings)	2 spaces per dwelling (Total 62)
Visitor Parking	15 spaces
Commercial (Retail and Cinema staff only)	22 Spaces

This condition has been imposed to ensure adequate on site parking is maintained.

Standard Condition: I4

I.14 Hours for operation of security gate to Galbraith walkway

The required access gate between the landscaped open space and the Galbraith walkway shall be opened during the following period:

- a) Everyday, including Public Holidays, from 8:00am to 6:00pm

The gate shall remain locked at all other times.

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

I.15 Waste Collection

Waste collection shall only be undertaken during daylight hours.

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

J. Miscellaneous Conditions

None relevant.

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.

K.2 Criminal Offences – Breach of Development Consent & Environmental laws

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

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

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

Warnings as to potential maximum penalties

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

Warning as to enforcement and legal costs

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

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

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

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

Standard Advising: K1

K.3 Dial before you dig



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

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

Standard Advising: K2

K.4 Commonwealth Disability Discrimination Act 1992 (“DDA”)

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

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

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

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

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

Standard Advising: K3

K.5 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.6 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.7 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.8 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.9 Asbestos Removal, Repair or Disturbance

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

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

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

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

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

Standard Advising: K8

K.10 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.11 Dividing Fences

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

Note: Further information can be obtained from the NSW Department of Lands - <http://www.lands.nsw.gov.au/LandManagement/Dividing+Fences.htm>. Community Justice Centres provide a free mediation service to the community to help people resolve a wide range of disputes, including dividing fences matters. Their service is free, confidential, voluntary, timely and easy to use. Mediation sessions are conducted by two impartial, trained mediators who help people work together to reach an agreement. Over 85% of mediations result in an agreement being reached. Mediation sessions can be arranged at convenient times during the day, evening or weekends. Contact the Community Justice Centre either by phone on 1800 671 964 or at <http://www.cjc.nsw.gov.au/>.
Standard Advising: K10

K.12 Free Parking Area Agreement

Where there is a potential for the trespass of private motor vehicles upon private parking servicing the owner of the site may seek to enter into a free parking area agreement with Council. Council may under such agreement enforce parking restrictions under section 650 of the *Local Government Act 1993*.

Further information can be obtained from Council's Manager Compliance and from the Department of Local Government: <http://www.dlg.nsw.gov.au/Files/Information/parking>
Standard Advising: K11

K.13 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.14 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.15 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Mr Dimitri Lukas, Senior Assessment Officer, on (02) 9391 7159.

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.16 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.17 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.18 Owner Builders

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

Standard Condition: K18

K.19 Pruning or Removing a Tree Growing on Private Property

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

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

Standard Condition: K19

K.20 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.21 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.22 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.

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.

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

Mr D Lukas
SNR ASSESSMENT OFFICER

Mr D Waghorn
TEAM LEADER

Mr P Robinson
MANAGER

Mr A Coker
DIRECTOR

ANNEXURES

1. Plans and elevations
2. Referral Response - Urban Design
3. Referral Response - Development Engineer + Traffic Engineers comments attached
4. Referral Response - Heritage Officer
5. Referral Response - Fire Safety Officer
6. Referral Response – Environmental Health Officer
7. Referral Response - Trees and Landscaping
8. External Referral Response - NSW Police Force
9. External Referral Response – Sydney Water
10. Urban Design Peer Review - Dr Stephen Colliers comments
11. Urban Design Peer Review - Government Architects comments
12. Applicant's SEPP 1 Objection - FSR
13. List of names and addressed of submissions

POLITICAL DONATIONS DECISION MAKING FLOWCHART FOR THE INFORMATION OF COUNCILLORS

